

GBP 345,000,000  
CHF 170,000,000  
FACILITIES AGREEMENT

DATED 30 OCTOBER 2025

BETWEEN

**CICOR TECHNOLOGIES LTD.**  
AS COMPANY

AND

**COMMERZBANK AKTIENGESELLSCHAFT AND UBS SWITZERLAND AG**  
AS ARRANGERS

AND

**COMMERZBANK AKTIENGESELLSCHAFT**  
ACTING AS AGENT AND SECURITY AGENT

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**THIS AGREEMENT** is dated 30 October 2025 and made between:

- (1) **CICOR TECHNOLOGIES LTD.**, a company incorporated under laws of Switzerland with registered office in Route de l'Europe 8, 2017 Boudry, Switzerland registration number CHE-103.362.109 (the "**Company**"), as original borrower (in such capacity, the "**Original Borrower**") and original guarantor (in such capacity, the "**Original Guarantor**");
- (2) **COMMERZBANK AKTIENGESELLSCHAFT** as documentation agent, bookrunner and mandated lead arranger, and **UBS SWITZERLAND AG** as bookrunner and mandated lead arranger (whether acting individually or together the "**Arranger**");
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as original lenders (the "**Original Lenders**");
- (4) **COMMERZBANK AKTIENGESELLSCHAFT** as facility agent of the other Finance Parties (the "**Agent**"); and
- (5) **COMMERZBANK AKTIENGESELLSCHAFT** as security trustee for the Secured Parties (the "**Security Agent**").

**IT IS AGREED** as follows:

## **SECTION 1 INTERPRETATION**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

**"Acceptable Bank"** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa2 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Agent.

**"Acceptance Condition"** means, in relation to a Takeover Offer, a condition such that the Takeover Offer may not become or be declared unconditional, until the Company has received valid acceptances of the Takeover Offer in respect of a certain percentage or number of the Target Shares.

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

**"Accounting Principles"** means generally accepted accounting principles in Switzerland, including IFRS and Swiss GAAP FER.

**"Accounting Reference Date"** means the last day of each annual accounting period of each member of the Group.

**"Acquisition"** means the acquisition by the Company of the Target Shares pursuant to the Scheme or the Offer (including, if applicable, the Compulsory Acquisition Procedure and any acquisition of Target Shares following the Scheme Effective Date pursuant to the articles of association of the Target).

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

**"Additional Borrower"** means the Target upon its accession to this Agreement as borrower in accordance with Clause 26 (*Changes to the Obligors*).

**"Additional Business Day"** means any day specified as such in the applicable Reference Rate Terms.

**"Additional Guarantor"** means a company which becomes an Additional Guarantor in accordance with Clause 26 (*Changes to the Obligors*).

**"Additional Obligor"** means the 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.

**"Affiliated Ancillary Borrower"** means a Subsidiary of the Company that becomes a borrower of an Ancillary Facility with the approval of the relevant Ancillary Lender pursuant to Clause 6.9 (*Subsidiaries of Borrowers*).

**"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.

**"Ancillary Borrower"** means the Company or an Affiliated Ancillary Borrower.

**"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 Facility D.

**"Ancillary Commitment"** means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (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 6 (*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 (including, for the avoidance of doubt, any Existing Ancillary Facility).

**"Ancillary Facility"** means any ancillary facility made available by an Ancillary Lender in accordance with Clause 6 (*Ancillary Facilities*).

**"Ancillary Lender"** means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 6 (*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.

**"Anti-Corruption Laws"** means all anti-corruption measures and provisions, including, but not limited to, in countries where the Company or any of its Subsidiaries has business activities, as well as measures set out in the US Foreign and Corrupt Practices Act 1977, the Swiss Criminal Code, the UK Bribery Act 2010 and §§ 299 and 331 of the German Criminal Code (*Strafgesetzbuch*).

**"Anti-Money Laundering Laws"** means all applicable regulations for the prevention of money laundering and combating the financing of terrorism, including, but not limited to, the German Money Laundering Act (*Geldwäschegesetz*), the Swiss Federal Act on Combating Money Laundering and Terrorist Financing (*Schweizerische Bundesgesetz über die Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung*), the UK Proceeds of Crime Act 2002 and the US Money Laundering Control Act 1986 (including any predicate offences for money laundering pursuant to any such regulations, as well as any related or derivated regulation issued and enforced by the relevant authorities).

**"AS Division"** means the advanced substrates division of the Group.

**"Assignment Agreement"** means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

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

**"Availability Period"** means:

- (a) in relation to Facility A, the period from and including the date of this Agreement to and including the earliest of:
  - (i) the date falling 2 Business Days after the date of this Agreement, if the Press Release has not been made prior to such day;
  - (ii) (A) six weeks after the Original Long Stop Date, if the Acquisition is made by way of a Scheme; or (B) eight weeks after the Original Long Stop Date if the Acquisition is made by way of a Takeover Offer;
  - (iii) if the Acquisition is made by way of a Scheme, the earliest of:
    - (A) the date on which a Court Meeting is held (and not adjourned or otherwise postponed) to approve the Scheme, and at which a vote is actually held to approve the Scheme, but the Scheme is not approved by the requisite majority of the shareholders at such Court Meeting, unless, within 5 (five) Business Days of such event, the Company

notifies the Agent that the Company intends to issue, and then within 10 (ten) Business Days the Company does issue, a press release announcing a conversion from a Scheme to a Takeover Offer in compliance with the terms of Clause 22.24 (*The Offer*);

- (B) the date on which a General Meeting is held (and not adjourned or otherwise postponed) to pass the Scheme Resolutions, but the Scheme Resolutions are not passed by the requisite majority of the shareholders of the Target at such General Meeting, unless, within 5 (five) Business Days of such event, the Company notifies the Agent that the Company intends to issue, and then within 10 (ten) Business Days the Company does issue, a press release announcing a conversion from a Scheme to a Takeover Offer in compliance with the terms of Clause 22.24 (*The Offer*);
  - (C) the date on which an application for the issuance of the Scheme Court Order is made to the Court (and not adjourned or otherwise postponed) but the Court (in its final judgment) refuses to grant the Scheme Court Order, unless, within 5 (five) Business Days of such event, the Company notifies the Agent that the Company intends to issue, and then within 10 (ten) Business Days the Company does issue, a press release announcing a conversion from a Scheme to a Takeover Offer in compliance with the terms of Clause 22.24 (*The Offer*);
  - (D) the date on which the Scheme lapses or is withdrawn with the consent of the Panel or by order of the Court, unless, the Company has given prior written notice to the Agent that the Company intends to issue, and then has issued, a press release announcing a conversion from a Scheme to a Takeover Offer in compliance with the terms of Clause 22.24 (*The Offer*); and
  - (E) the date falling 15 (fifteen) days after the Scheme Effective Date; and
- (iv) if the Acquisition is by way of a Takeover Offer, the earlier to occur of:
- (A) the date on which the Takeover Offer lapses, terminates or is withdrawn with the consent of the Panel unless, the

Company has given prior written notice to the Agent that the Company intends to issue, and then has issued, a press release announcing a conversion from a Takeover Offer to a Scheme in accordance with Clause 22.24 (*The Offer*); and

- (B) the date falling 15 (fifteen) days after the later of the date on which the Takeover Offer is closed for further acceptances and (where applicable) the date of completion of the Compulsory Acquisition Procedure; and
- (v) the date on which all of the consideration payable under the Acquisition in respect of the Target Shares or proposal made or to be made under Rule 15 of the Takeover Code in connection with the Acquisition has, in each case, been paid in full including in respect of any Target Shares to be acquired pursuant to a Compulsory Acquisition Procedure;
- (b) in relation to Facility B, the period from and including the date of this Agreement to and including the date falling 15 days after the Utilisation of Facility A;
- (c) in relation to Facility C, the period from and including the date of this Agreement to and including the first Utilisation Date under Facility A; and
- (d) in relation to Facility D, the period from and including the date of this Agreement to and including the date falling one month prior to the Termination Date.

**"Available Commitment"** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the amount of its participation in any outstanding Loans under that Facility and, in the case of Facility D only, the Base Currency Amount of the aggregate of its (and its Affiliates') Ancillary Commitments; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on under that Facility or before the proposed Utilisation Date and, in the case of Facility D only, the Base Currency Amount of its (and its Affiliates') 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 Facility D only, the following amounts shall not be deducted from the Lender's Facility D Commitment:

- (i) the amount of that Lender's participation in any Facility D Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) the Base Currency Amount of that Lender's (and its Affiliates') 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 Currency"** means CHF.

**"Base Currency Amount"** means the amount specified as such in the notice delivered to the Agent by the Company pursuant to Clause 6.2 (*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 cancellation or reduction of an Ancillary Facility.

**"Baseline CAS"** means any rate which is either:

- (a) specified as such in the applicable Reference Rate Terms; or
- (b) determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology specified in the applicable Reference Rate Terms.

**"Borrower"** means the Original Borrower or the Additional Borrower and, in respect of an Ancillary Facility only, any Subsidiary of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to Clause 6.9 (*Subsidiaries of Borrowers*) and **"Borrowers"** means all of them jointly.

**"Break Costs"** means any amount specified as such in the applicable Reference Rate Terms.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt, London and Zurich, and (in relation to (i) any date for payment or purchase of an amount relating to a Loan or Unpaid Sum or (ii) the determination of the first day or the last day of an Interest Period for a Loan or Unpaid Sum, or otherwise in relation to the determination of the length of such an Interest Period), which is an Additional Business Day relating to that Loan or Unpaid Sum.

**"Central Bank Rate"** has the meaning given to that term in the applicable Reference Rate Terms.

**"Central Bank Rate Adjustment"** has the meaning given to that term in the applicable Reference Rate Terms.

**"Certain Funds Period"** means:

- (a) in relation to each of Facility A and Facility B, the applicable Availability Period; and
- (b) in relation to each of Facility C and Facility D, the period from the date of this Agreement until the earlier of:
  - (i) the date of first Utilisation under Facility A; and
  - (ii) the date of first Utilisation under Facility C.

**"Certain Funds Utilisation"** means a Loan made or to be made during the Certain Funds Period (other than any Loan under Facility D which is not utilised for the RCF Refinancing Purpose).

**"CHARDONNAY Group"** means the Company and all of its Subsidiaries prior to the Target becoming a Subsidiary of the Company.

**"Clean-Up Default"** means each and any of the Events of Default, **other than** the Events of Default set out in Clauses 23.1 (*Non-payment*), 23.6 (*Insolvency*), 23.7 (*Insolvency proceedings*) and 23.8 (*Creditors' process*).

**"Clean-Up Period"** means the period beginning on the date of this Agreement and ending on the date falling 90 days after the Closing Date.

**"Clean-Up Representation"** means each and any of the representations and warranties set out in Clause 19 (*Representations*).

**"Clean-Up Undertaking"** means each and any of the undertakings set out in Clause 22 (*General Undertakings*).

**"Closing Date"** means the first Utilisation Date in relation to Facility A.

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

**"Commitment"** means a Facility A Commitment, Facility B Commitment, Facility C Commitment or Facility D Commitment.

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

**"Compulsory Acquisition Notice"** means a notice sent to a non-accepting shareholder of the Target pursuant to and in accordance with the Compulsory Acquisition Procedure.

**"Compulsory Acquisition Procedure"** means the 'squeeze-out' procedures set out in sections 979 to 982 of the Companies Act 2006 pursuant to which the Company may compulsorily acquire any remaining Target Shares the subject of the Takeover Offer which have not been acquired pursuant to the Takeover Offer.

**"Compounded Reference Rate"** means, in relation to any RFR Banking Day during the Interest Period of a Loan, the percentage rate per annum which is the aggregate of:

- (a) the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
- (b) the applicable Baseline CAS.

**"Compounding Methodology Supplement"** means, in relation to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate, a document which:

- (a) is agreed in writing by the Company, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders);
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Company and each Finance Party.

**"Confidential Information"** means all information relating to the Company, any Obligor, the Group, the Target, the Target Group, the Finance Documents, a Facility or the Offer Documents and the transactions contemplated thereby (including the Acquisition) 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, 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 38.1 (*Confidentiality*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group, 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 paragraph (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, 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.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Company and the Agent.

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

**"Controlled Concert Parties"** means:

- (a) any company in which the Company owns directly or indirectly, more than 50 per cent. of the equity share capital and/or controls the voting

rights of more than 50 per cent. of the company's ordinary voting shares;  
and

(b) each of the members of the Company's management board of directors.

**"Conversion Press Release"** means the press announcement to be issued by the Company (or on its behalf) in accordance with the Takeover Code, electing to switch from the Scheme to a Takeover Offer, or from a Takeover Offer to a Scheme, as the means to implement the Acquisition.

**"Court"** means the High Court of Justice of England and Wales.

**"Court Hearing"** means the hearing at which the Court sanctions the Scheme pursuant to section 899 of the Companies Act 2006.

**"Court Meeting"** means, the meeting or meeting(s) of Target shareholders (including any adjournment, postponement or reconvening thereof) convened or to be convened at the direction of the Court pursuant to Part 26 of the Companies Act 2006 for the purpose of considering and, if thought fit, approving the Scheme (with or without modification).

**"Cumulative Compounded RFR Rate"** means, in relation to an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 12 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

**"Daily Non-Cumulative Compounded RFR Rate"** means, in relation to any RFR Banking Day during an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

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

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

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

- (a) which has failed to make its participation in a Loan available (or has notified the Agent or the Company (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*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing, unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event, and payment is made within 5 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 Borrower 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 Borrower 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.

**"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.

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

**"EMS Division"** means the electronic manufacturing services division 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.

**"Event of Default"** means any event or circumstance specified as such in Clause 23 (*Events of Default*).

**"Existing Ancillary Facility"** means each of the following bilateral facilities:

- (a) CHF 8,000,000 ancillary agreement originally dated 26/27 July 2017 between the Company and Commerzbank AG, Zweigniederlassung Zurich (as most recently amended prior to the date of this Agreement pursuant to a supplement no. 2); and
- (b) CHF 5,000,000 ancillary agreement originally dated 30 June / 8 July 2021 between the Company and Commerzbank AG, Frankfurt am Main (as most recently amended prior to the date of this Agreement pursuant a first amendment agreement.

**"Existing Financial Indebtedness"** means the Financial Indebtedness listed in Schedule 13 (*Existing Financial Indebtedness and Existing Security*).

**"Existing Security"** means the Security listed in **Error! Reference source not found.** (*Existing Financial Indebtedness and Existing Security*).

**"Existing Syndicated Facilities Agreement"** means the CHF syndicated facilities agreement dated 22 December 2014 between, among others, the Company as borrower and Commerzbank Aktiengesellschaft as agent and security agent.

**"Existing Syndicated Facilities Agreement Security"** means any Security provided under the Existing Syndicated Facilities Agreement.

**"Existing Target Debt"** means indebtedness of the Target and/or its Subsidiaries under or in connection with:

- (a) the Existing Target RCF; and
- (b) the Existing Target Notes.

**"Existing Target Notes"** means the notes issued pursuant to a note purchase agreement dated 3 August 2021 (as amended and/or amended and restated from time to time) between, amongst others, the Target as issuer and the purchasers named therein.

**"Existing Target Notes Repayment Utilisation"** means the Utilisation under Facility B to discharge Financial Indebtedness of the Target and/or its Subsidiaries under the Existing Target Notes.

**"Existing Target RCF"** means the multicurrency revolving credit facilities agreement originally dated 27 June 2022 (as amended and/or amended and restated from time to time) between, amongst others, the Target and National Westminster Bank plc as agent.

**"Existing Target RCF Repayment Utilisation"** means the Utilisation under Facility B to discharge Financial Indebtedness of the Target and/or its Subsidiaries under the Existing Target RCF.

**"Extended Termination Date"** means the date falling 3 (three) months after the Initial Termination Date.

**"Extension Notice"** means a written notice given or to be given by the Company to the Agent pursuant to paragraph (a) of Clause 2.5 (*Extension Option*), substantially in the form of Schedule 14 (*Form of Extension Notice*).

**"Facility"** means Facility A, Facility B, Facility C or Facility D.

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

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

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

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

**"Facility D Commitment"** means:

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

- (b) in relation to any other Lender, the amount of any Facility D Commitment transferred to it under this Agreement,

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

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

**"Facility Office"** means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

**"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 any Finance Party and the Company setting out any of the fees referred to in Clause 12 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 12.5 (*Interest, commission and fees on Ancillary Facilities*) or under any other Finance Document.

**"Finance Document"** means this Agreement, any Security Document, any Fee Letter, any Accession Letter, any Ancillary Document, any Extension Notice, any Reference Rate Supplement, any Compounding Methodology Supplement, any Utilisation Request, any Selection Notice, any Compliance Certificate and any other document designated as such by the Agent and the Company.

**"Finance Party"** means the Agent, the Security Agent, an Arranger, a Lender or any Ancillary Lender.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with the Accounting Principles in force prior to 1 January 2019, have been treated as an operating lease);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing and treated as a borrowing in accordance with applicable GAAP;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination

or close-out of that derivative transaction, that amount) shall be taken into account);

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying obligation which falls within one of the other paragraphs of this definition; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 11.3 (*Cost of funds*).

**"General Meeting"** means, the general meeting of the holders of the Target Shares (including any adjournment thereof) to be convened for the purpose of considering, and, if thought fit, approving the shareholder resolutions necessary to approve or give effect to the Scheme.

**"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 Company and each of their respective Subsidiaries for the time being (including, without limitation, the Target upon completion of the Acquisition).

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

**"Guarantor"** means the Original Guarantor or an Additional Guarantor.

**"Guidelines"** means, together, the guidelines, S-02.123 in relation to interbank loans of 22 September 1986 (*Merkblatt S-02.123 vom 22. September 1986 betreffend Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben)*), and S-02.130.1 in relation to money market instruments and book claims of Swiss debtors of April 1999 (*Merkblatt S-02.130.1 vom April 1999 "Geldmarktpapiere und Buchforderungen inländischer Schuldner"*), the circular letters no. 15 (1-015DVS-2017) of 3 October 2017 in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss federal withholding tax and Swiss federal stamp taxes (*Kreisschreiben Nr. 15 "Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer sowie der Stempelabgaben" vom 3. Oktober 2017*) and no. 34 (1-034-V-2011) of 26 July

2011 in relation to deposits (*Kreisschreiben Nr. 34 "Kundenguthaben" vom 26. Juli 2011*), the circular letter No. 46 of 24 July 2019 (1-046-VS-2019) in relation to syndicated credit facilities, promissory note loans, bills of exchange and subparticipations (*Kreisschreiben Nr. 46 vom 24. Juli 2019 betreffend "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen"*) and the circular letter No. 47 of 25 July 2019 (1-047-V-2019) in relation to bonds (*Kreisschreiben Nr. 47 vom 25. Juli 2019 betreffend "Obligationen"*) and the practice note 010-DVS-2019 dated 5 February 2019 published by the Swiss Federal Tax Administration regarding Swiss Withholding Tax in the Group (*Mitteilung-010-DVS-2019-d vom 5. Februar 2019 - Verrechnungssteuer: Guthaben im Konzern*), in each case as issued by the Swiss Federal Tax Administration, and as amended 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 the 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) or (b) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent,

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

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within 3 (three) 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 9 (*Form of Increase Confirmation*).

**"Initial Material Companies"** has the meaning given to it in paragraph (a) of the definition of "Material Company".

**"Initial Termination Date"** means, in relation to each Facility, the date falling twelve Months after the date of this Agreement.

**"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 a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) 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);
- (h) 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;
- (i) 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) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"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 of and rights to use such assets of each member of the Group (which may now or in the future subsist).

**"Interest Payment"** means the aggregate amount of interest that is, or is scheduled to become, payable under any Finance Document.

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (*Default interest*).

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

**"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 understanding 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;
- (c) similar principles, rights and remedies 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 any legal opinions supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date or on or before the accession of an Additional Obligor.

**"Lender"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.2 (*Increase*) or Clause 24 (*Changes to the Lenders*),

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

**"Limitation Acts"** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

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

**"Loan"** means a Facility A Loan, a Facility B Loan, a Facility C Loan or a Facility D Loan.

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

**"Major Default"** means any event or circumstance constituting an Event of Default under any of:

- (a) in relation to a Utilisation of Facility A or Facility B, Clause 23.1 (*Non-payment*) but only insofar as it arises from the non-payment by the Borrower of: (i) principal or interest under Facility A or Facility B or (ii) the fees referred to under Clause 12 (*Fees*) or payable under a Fee Letter in so far as such fees relate to Facility A and/or Facility B, and provided that such non-payment shall only constitute a Major Event of Default if and to the extent that any outstanding fee is not paid from the first Utilisation of Facility A or Facility B;
- (b) in relation to a Utilisation of Facility C or Facility D and, for the avoidance of doubt, the following will not constitute a Major Default in respect of any other Facility or for the purpose of the exercise of rights under paragraph (b) of Clause 4.5 (*Utilisations during the Certain Funds Period*) or paragraph (a) of Clause 24.2 (*Company consent*) other than in respect of Facility C or Facility D, Clause 23.1 (*Non-payment*) but only in so far as it arises from the non-payment by the Borrower of: (i) principal or interest under Facility C and/or Facility D or (ii) the fees referred to under Clause 12 (*Fees*);
- (c) Clause 23.3 (*Other obligations*), insofar as it relates to a breach of Major Obligations and provided that, in all cases, any reference to a Finance Document in such clauses shall be deemed to exclude any Ancillary Document and any reference to a Finance Party in such clauses shall be deemed to exclude any Ancillary Lender;
- (d) Clause 23.4 (*Misrepresentation*), insofar as it relates to a breach of any Major Representation which is not correct in all material respects unless that Major Representation is already qualified by materiality, in which case such Major Representation must be correct in all respects **provided that**, in all cases, any reference to a Finance Document in such clauses shall be deemed to exclude any Ancillary Document and any reference to a Finance Party in such clauses shall be deemed to exclude any Ancillary Lender;
- (e) Paragraph (a) of Clause 23.6 (*Insolvency*) provided that in paragraph (a)(iv) the words "one or more of its creditors" shall be deemed replaced with "its creditors generally (or any class of them)";
- (f) Paragraphs (a), (b) and (c) (inclusive) of Clause 23.7 (*Insolvency proceedings*) but only to the extent of formal legal proceedings or any other formal procedure falling within paragraph (a) of that Clause (and other than in relation to a moratorium of any indebtedness arising other than by reason of actual or anticipated financial difficulty);

- (g) Clause 23.10 (*Unlawfulness and invalidity*) but only on the basis that paragraph (a) of that Clause is subject to the Legal Reservations and Perfection Requirements and provided that the words "or is alleged by a party to it (other than a Finance Party) to be ineffective" in paragraph (c) of that Clause shall be disregarded **provided that**, in all cases, any reference to a Finance Document in such clauses shall be deemed to exclude any Ancillary Document and any reference to a Finance Party in such clauses shall be deemed to exclude any Ancillary Lender; or
- (h) Clause 23.11 (*Repudiation and rescission of agreements*) provided that the words "or purports to rescind" and "or purports to repudiate" in that paragraph shall not apply **provided that**, in all cases, any reference to a Finance Document in such clauses shall be deemed to exclude any Ancillary Document and any reference to a Finance Party in such clauses shall be deemed to exclude any Ancillary Lender,

in each case, in relation to the Original Borrower only and excluding, for the avoidance of doubt, (i) any procurement obligation on the part of the Original Borrower (as applicable) or (ii) any failure to comply, any breach of any other obligation, any matter or any circumstance that relates to any member of the Group (or any member of the Target Group) other than the Original Borrower.

**"Major Obligation"** means an undertaking under any of:

- (a) Clause 22.3 (*Negative pledge*);
- (b) Clause 22.4 (*Disposals*);
- (c) Clause 22.8 (*Financial Indebtedness*);
- (d) Clause 22.9 (*Mergers*); or
- (e) Paragraphs (a), (b), (f), (h), (i), (j) and (k) of Clause 22.24 (*The Offer*),

in each case, in relation to the Original Borrower only and excluding, for the avoidance of doubt, (i) any procurement obligation on the part of the Original Borrower (as applicable) or (ii) any failure to comply, any breach of any other obligation, any matter or any circumstance that relates to any member of the Group (or any member of the Target Group) other than the Original Borrower.

**"Major Representation"** means a representation or warranty with respect to:

- (a) Paragraphs (a) and (b) of Clause 19.2 (*Status*)
- (b) Clause 19.3 (*Binding Obligations*) provided the words "and the Perfection Requirements" are deemed added after "Legal Reservations";

- (c) Paragraphs (a) and (b) of Clause 19.4 (*Non-conflict with other obligations*) provided that the words "and the Offer Documents" shall be deemed not included;
- (d) Clause 19.5 (Power and authority) provided that the words "and the Offer Documents" in both paragraphs (a) and (b) of that clause shall be deemed not included; and
- (e) Paragraph (a) of Clause 19.6 (*Validity and admissibility in evidence*),

in each case, in relation to the Original Borrower only and excluding, for the avoidance of doubt, any matter or circumstance that relates to any member of the Group (or any member of the Target Group) other than the Original Borrower.

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$  per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 $\frac{2}{3}$  per cent. of the Total Commitments immediately prior to the reduction).

**"Margin"** means the percentage rate per annum specified as such in the applicable Reference Rate Terms.

**"Market Disruption Rate"** means the rate (if any) specified as such in the applicable Reference Rate Terms.

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

- (a) the business, operations or condition (financial or otherwise) of the Company or the Group taken as a whole; or
- (b) the ability of any Obligor to perform its payment obligations under the Finance Documents to which it is a party; 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:

- (a) the Company;
- (b) each Obligor;
- (c) Swisstronics Contract Manufacturing AG, Cicor Romania SRL, Axis Electronics Ltd, Cicor Deutschland GmbH, RHe Microsystems GmbH,

Cicor Digital Elektronik GmbH, STS Defence Ltd, Cicorel SA and Cicor Microtech AG (and together with the Company, the "**Initial Material Companies**");

- (d) each Ancillary Borrower;
- (e) the Target once it becomes a member of the Group; and
- (f) each other member of the Group which:
  - (i) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA representing ten (10) per cent. or more of EBITDA;
  - (ii) has gross assets or turnover (excluding intra-group items and calculated on an unconsolidated basis) representing 10 (ten) per cent. or more of the gross assets, net assets or turnover of the Group, calculated on a consolidated basis,

The determination whether a member of the Group qualifies as a Material Company shall be made annually by reference to the latest audited unconsolidated annual financial statements of that Subsidiary and the latest audited consolidated annual financial statements of the Group.

"**Minimum Acceptance Condition**" has the meaning given to it in paragraph (e)(iv) of Clause 22.24 (*The Offer*).

"**Month**" means, in relation to an Interest Period (or any other period for the accrual of commission or fees in a currency), a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as Business Day Conventions in the applicable Reference Rate Terms.

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

"**Net Debt**" has the meaning given to that term in Clause 21 (*Financial Covenants*).

"**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 24 (*Changes to the Lenders*).

"**Obligor**" means a Borrower or a Guarantor.

**"Offer"** means the Scheme or the Takeover Offer.

**"Offer Documents"** means:

- (a) in the case of a Scheme, the Press Release (and, in the event of a subsequent Switch to a Scheme, the relevant Conversion Press Release), the Scheme Circular together with the notices convening the General Meeting and the Court Meeting which accompany the Scheme Circular, the Scheme Court Order, the Scheme Resolutions and any other document dispatched by or on behalf of the Target to the Target's shareholders in connection with the Scheme;
- (b) in the case of a Takeover Offer, the Press Release, the Conversion Press Release relating to the Takeover Offer, the Takeover Offer Document, if and when applicable, all documents required to effect the Compulsory Acquisition Process and any other documents to be sent to the Target's shareholders and otherwise made available to such persons and in the manner required by Rule 24.1 of the Takeover Code in connection with the Offer; and
- (c) any other document designated as an "Offer Document" in respect of either the Scheme or the Takeover Offer (as applicable) by the Agent and the Company.

**"Original Financial Statements"** means in relation to the Company:

- (a) the audited consolidated financial statements of the Group for the financial year ended 31 December 2024; and
- (b) its audited unconsolidated financial statements for its financial year ended 31 December 2024.

**"Original Long Stop Date"** means 30 July 2026.

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

**"Panel"** means 'The Panel on Takeovers and Mergers'.

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

**"Perfection Requirements"** means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Party.

**"Permitted Acquisition"** means:

- (a) the Acquisition;
- (b) the acquisition of, or subscription for, the issued share capital or membership interests of a limited liability company or partnership (including by way of formation) which has not traded prior to the date of the acquisition;
- (c) any acquisition constituting a Permitted Joint Venture;
- (d) 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;
- (e) an acquisition made pursuant to any agreement existing at the Closing Date (to the extent disclosed to the Agent prior to the date of this Agreement, which shall include the acquisition of 100% of the shares of the US and Moroccan entities of the Valtronic Group ("Project Dufour")) or, in the case of any person which becomes a member of the Group after the Closing Date, made pursuant to any agreement existing at the date on which the Group commits to acquire that member of the Group (to the extent it is approved by the Majority Lenders or it would constitute a Permitted Acquisition under another paragraph of this definition);
- (f) an acquisition where the Total Consideration (when aggregated with the Total Consideration for any other Permitted Acquisition and/or Permitted Joint Venture made in reliance on this paragraph (f)) does not in any financial year of the Company exceed in aggregate CHF 30,000,000 or its equivalent;
- (g) an acquisition of more than 50 per cent. of the voting shares or any equivalent ownership interest in a company, partnership or corporation (the "**Relevant Target**") if:
  - (i) no Default is continuing on the date of signing of the purchase agreement for the acquisition and the closing date for the acquisition or could occur as a result of the acquisition;
  - (ii) the Relevant Target is incorporated or established, and carries on its principal business in a country which is not a Sanctioned Country, and is engaged in a business which is substantially the same as or complementary to that carried on by the Group;

- (iii) the Company has provided evidence that the Relevant Target (on consolidated basis if the Relevant Target has Subsidiaries) has had positive earnings before interest and taxation in the last 12 months preceding the execution of binding documentation in respect of the acquisition (to be evidenced by way of the latest audited financial statements of the Relevant Target);
- (iv) the Company as provided to the Agent by no later than 10 (ten) Business Days prior to the closing date of the Acquisitions copies of:
  - (A) the purchase agreement and all material acquisition documents including available due diligence reports subject to the Agent executing such release and/or hold-harmless letters as the relevant report provider(s) may require (on a non-reliance basis unless Total Consideration exceeds CHF 25,000,000 in which case the Company shall use its reasonable endeavours to provide that the legal and financial due diligence reports are provided on a reliance basis for the Agent);
  - (B) if available, the audited (if available, otherwise unaudited) annual financial statements of the Relevant Target (consolidated if the Relevant Target has Subsidiaries; and
  - (C) an updated budget of the Group for the then current and the following two financial years; and

the Company has delivered a certificate confirming on pro forma basis (taking into account the Total Consideration) based on the Group's most recent annual financial statements and the updated budget referred to under paragraph (iii)(C) above that Net Leverage will be complied with on the Testing Date immediately preceding the closing date of the acquisition and the three Testing Dates falling thereafter.

**"Permitted Disposal"** means any sale, lease, licence, transfer or other disposal:

- (a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of any asset (other than Target Shares and claims against the Target or any Subsidiary of the Target) 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; and
  - (ii) 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 and claims against the Target or any Subsidiary of the Target) in exchange for (or exchanged for credit against the purchase price of) 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, surplus or redundant assets (other than shares or businesses) on arm's-length terms which are not required for the efficient operation of its business;
  - (e) arising as a result of any Permitted Security;
  - (f) of assets disposed of to the extent required to comply with any mandatory law or regulation or any order of any governmental entity or required in order to comply with any ruling or request of, or any condition imposed by, any relevant competition authority, including as part of satisfying the conditions to the Acquisition set out in the relevant Offer Document;
  - (g) of assets seized, expropriated or acquired by compulsory purchase or by order of any central or local government agency or authority which has not or is reasonably likely not to have a Material Adverse Effect;
  - (h) of receivables through factoring arrangements, provided that the nominal amount of receivables disposed of and not paid for by the relevant factoring provider may not exceed CHF 20,000,000 (or its equivalent) at any time; and
  - (i) of assets (either in a single transaction or series of related transactions) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed CHF 20,000,000 (or its equivalent) in any financial year of the Company.

**"Permitted Distribution"** means:

- (a) the payment to the Company or any of its wholly-owned Subsidiaries; and
- (b) any tax-exempt distribution of equity reserved in lieu of a dividend.

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

- (a) arising under the Finance Documents;
- (b) arising under derivative transactions that have been entered into in the ordinary course of business and not for speculative purposes;
- (c) incurred under the Finance Documents;
- (d) to the extent covered by a letter of credit, guarantee or indemnity issued under an Ancillary Facility;
- (e) arising under the Existing Target RCF until the earlier of (i) the end of the Availability Period for Facility B and (ii) 11.59 p.m. in London on the Utilisation Date for the Existing RCF Target Repayment Utilisation;
- (f) arising under the Existing Target Notes until the earlier of (i) the end of the Availability Period for Facility B and (ii) 11.59 p.m. in London on the Utilisation Date for the Existing Target Notes Repayment Utilisation;
- (g) arising under rent guarantees in respect of any lease of real property on arm's-length terms;
- (h) arising under any cash management or cash pooling arrangement to the extent entered into in the ordinary course of the banking arrangements of the Group, for the purpose of netting balances of members of the Group and **provided that**, to the extent any Obligors participate in the respective cash management or cash pooling arrangements, the cash is pooled in a bank account held by an Obligor;
- (i) arising under a Permitted Loan or Permitted Guarantee;
- (j) 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 or six months following the date of acquisition;
- (k) until the first Utilisation Date, arising under or in connection with the Existing Syndicated Facilities Agreement;

- (l) arising as a result of daylight exposures of any member of the Group in respect of banking arrangements entered into in the ordinary course of its treasury activities;
- (m) arising under supplier credits on normal commercial terms in the ordinary course of trade;
- (n) which is Existing Financial Indebtedness or any refinancing of such Existing Financial Indebtedness that does not increase the maximum principle amount able to be outstanding under the relevant debt document; and
- (o) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding principal amount of which does not exceed CHF 20,000,000 (or its equivalent in other currencies) in aggregate for the Group at any time.

**"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 customary indemnity given to a purchaser or seller (as applicable) in relation to a Permitted Acquisition or Permitted Disposal **provided that** the maximum potential liability under any such indemnity does not exceed the total consideration received or receivable (respectively paid or payable) by the Group (including any assumed indebtedness) in respect of that disposal or acquisition;
- (d) any guarantee permitted under Clause 22.8 (*Financial Indebtedness*);
- (e) any guarantees granted under the Finance Documents;
- (f) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of "Permitted Security";
- (g) 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

- (h) any guarantee or indemnity not permitted under paragraphs (a) to (i) above the aggregate liability (whether actual or contingent) of which does not exceed at any time CHF 20,000,000 (or its equivalent in another currency or currencies).

**"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 an EEA Member Country, Switzerland, the United Kingdom or the United States of America and not in a Sanctioned Country;
- (b) the Joint Venture is engaged in a business substantially the same as or complementary to that carried on by the Group; and
- (c) in any financial year of the Company, the aggregate 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 market value of any assets transferred by any member of the Group to any such Joint Venture,

when aggregated with the Total Consideration in respect of Permitted Acquisitions in that financial year permitted pursuant to paragraph (f) of the definition of "Permitted Acquisition" does not exceed CHF 30,000,000 (or its equivalent in other currencies).

**"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 (i) of that definition);
- (c) any deferred consideration for Permitted Disposals on normal commercial terms, provided that the amount of deferred consideration payable in respect of any Permitted Disposal does not exceed 30 per

cent. of the Total Consideration payable in respect of that Permitted Disposal;

- (d) any investments made in the ordinary course of treasury transactions and not for speculative purposes (including for the avoidance of doubt, any investment in bonds, notes, money market instruments, term deposits and similar instruments);
- (e) loans made by an entity prior to such entity becoming a member of the Group; and
- (f) any loan not permitted by the preceding paragraphs so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed 20,000,000 (or its equivalent) at any time.

**"Permitted Security"** means (in each case other than in relation to shares, stocks or interest in members of the Group (except for paragraph (e) if the Security is already granted by the member of the Group before it becomes a member of the Group)):

- (a) any Security granted or arising under the Security Documents;
- (b) any lien arising by operation of law (or by an agreement evidencing the same) or by order of any court or authority;
- (c) any lien arising in the ordinary course of trading and not as a result of any default or omission by any member of the Group
- (d) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group;
- (e) any Security arising under customary general terms and conditions of banks or financial institutions;
- (f) any payment or close out netting or set-off arrangement pursuant to any foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness;
- (g) any Security securing liabilities under or in connection with the Existing Target RCF until the earlier of (i) the end of the Availability Period for Facility B and (ii) 11.59 p.m. in London on the Utilisation Date for the Existing Target RCF Repayment Utilisation;
- (h) any Security securing liabilities under or in connection with the Existing Target Notes until the earlier of (i) the end of the Availability Period for

Facility B and (ii) 11.59 p.m. in London on the Utilisation Date for the Existing Target Notes Repayment Utilisation;

- (i) any Security (other than any Security securing Existing Target Debt) over or affecting any asset acquired by a member of the Group after the date of the Agreement if:
  - (i) the 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 is removed or discharged within 6 (six) months of the date of acquisition of such asset;
- (j) any Security (other than any Security securing Existing Target Debt) over or affecting any asset of any company which becomes a member of the Group after the date of the Agreement, where the Security is created prior to the date on which that company becomes a member of the Group if:
  - (i) the Security was not created in contemplation of the acquisition of that company;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that company; and
  - (iii) the Security is removed or discharged within 6 (six) months of that company becoming a member of the Group;
- (k) until the first Utilisation Date, any Existing Syndicated Facilities Agreement Security and, on and following the first Utilisation Date, any cash collateral provided by the Company or a member of the Group in connection with the repayment of 'Ancillary Facilities' (as defined in the Existing Syndicated Facilities Agreement);
- (l) any Existing Security and any replacement or re-granting of that Existing Security provided that the principle amount secured is not increased; or
- (m) 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

(l) above) does not exceed CHF 20,000,000 (or its equivalent in other currencies) at any time.

**"Permitted Transaction"** means:

- (a) any matter contemplated by the Transaction Documents;
- (b) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents; or
- (c) 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.

**"Press Release"** means the press announcement in the form agreed by or on behalf of the Company and the Arranger, issued (or to be issued) by or on behalf of the Company pursuant to Rule 2.7 of the Takeover Code by which a firm intention to make an Offer is announced which is to be implemented by way of a Scheme and stating the intention of the board of directors of the Target to unanimously and unconditionally recommend that the Target's shareholders vote in favour of the Scheme (including any subsequent announcement and any amendment, replacement, revision, restatement, supplement or modification from time to time).

**"Qualifying Bank"** means

- (a) any bank as defined in the Swiss Federal Code for Banks and Savings Banks dated 8 November 1934 (*Bundesgesetz über die Banken und Sparkassen*) as amended from time to time; or
- (b) a person or entity which effectively conducts banking activities with its own infrastructure and staff as its principal business purpose and which has a banking license in full force and effect issued in accordance with the banking laws in force in its jurisdiction of incorporation, or if acting through a branch, issued in accordance with the banking laws in the jurisdiction of such branch, all and in each case in accordance with the Guidelines.

**"Qualifying Lender"** has the meaning given to it in Clause 13 (*Tax gross-up and indemnities*).

**"RCF Refinancing Purpose"** has the meaning given to that term in paragraph (d) of Clause 3.1 (*Purpose*).

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

**"Reference Rate Supplement"** means, in relation to a currency, a document which:

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

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

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

the terms set out for that currency, and (where such terms are set out for different categories of Loan, Unpaid Sum or accrual of commission or fees in that currency) for the category of that Loan, Unpaid Sum or accrual, in Schedule 10 (*Reference Rate Terms*) or in any Reference Rate Supplement.

**"Registrar"** means the Registrar of Companies for England and Wales.

**"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) 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);

- (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 Security Documents entered into by it.

**"Relevant Market"** means the market specified as such in the applicable Reference Rate Terms.

**"Repeating Representations"** means each of the representations and warranties set out in Clause 19.2 (*Status*) to Clause 19.7 (*Governing law and enforcement*) (inclusive), paragraph (a) of Clause 19.10 (*Insolvency*), paragraph (d) of Clause 19.14 (*Financial statements*), paragraph (a) of Clause 19.17 (*Anti-Corruption and Anti-Money Laundering*), Clause 19.18 (*Ranking of Security*), Clause 19.19 (*Good title to assets*), Clause 19.20 (*Legal and beneficial ownership*) and paragraphs (a)(i) and (b) of Clause 19.28 (*Sanctions*).

**"Reporting Day"** means the day (if any) specified as such in the applicable Reference Rate Terms.

**"Reporting Time"** means the relevant time (if any) specified as such in the applicable Reference Rate Terms.

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

**"Restricted Obligations"** has the meaning given to that term in paragraph (a) of Clause 18.12 (*Guarantee limitations – Switzerland*).

**"Restricted Party"** means a party that is:

- (a) listed on, or owned or (directly or indirectly) controlled by one or more parties listed on, or acting on behalf of a party listed on, any Sanctions List;
- (b) located in, resident in, incorporated or organized under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a party located in, resident in, incorporated or organized under the laws of a Sanctioned Country; or
- (c) otherwise a target of Sanctions.

For the purposes of this definition, a party is "owned" by another party where the owning party owns directly or indirectly, more than 50 per cent. of the equity

share capital and/or controls the voting rights of more than 50 per cent. of the party's ordinary voting shares.

"**RFR**" means the rate specified as such in the applicable Reference Rate Terms.

"**RFR Banking Day**" means any day specified as such in the applicable Reference Rate Terms.

"**Rollover Loan**" means one or more Facility D Loans:

- (a) made or to be made on the same day that a maturing Facility D Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Facility D Loan; and
- (c) made or to be made for the purpose of refinancing that maturing Facility D Loan.

"**Sanctioned Country**" means any country or territory that is the target of comprehensive, country- or territory-wide Sanctions.

"**Sanctions**" means the economic, financial and trade sanctions laws and other restrictive measures administered, enacted or enforced by:

- (a) the European Union, as implemented by its Member States;
- (b) the United Kingdom;
- (c) Switzerland;
- (d) the United States of America;
- (e) the United Nations; and
- (f) the respective governmental institutions and agencies of any of the foregoing.

"**Sanctions Authority**" means any institution or agency referred to in paragraph (f) of the definition of "Sanctions."

"**Sanctions List**" means any Sanctions-related list, as amended, supplemented or substituted from time to time, maintained by, or public announcement of Sanctions designation made by, any Sanctions Authority.

"**Scheme**" means an English law governed scheme of arrangement under Part 26 of the Companies Act 2006 to be proposed by the Target to its shareholders

in connection with the Acquisition substantially on the terms set out in the Press Release (and, in the case of a subsequent Switch to a Scheme, the relevant Conversion Press Release), with or subject to any modifications, additions or conditions approved by or imposed by the Court or the Panel from time to time, to the extent permitted by the terms of this Agreement.

**"Scheme Circular"** means the circular (including any supplementary circular) issued by or on behalf of the Target to the Target's shareholders setting out the proposals for, and terms of conditions of, the Scheme, stating the unanimous and unconditional recommendation to the Target's shareholders to vote in favour of the Scheme by the board of directors of the Target and including the notices convening the General Meeting and the Court Meeting.

**"Scheme Court Order"** means the order of the Court sanctioning the Scheme as required by Part 26 of the Companies Act 2006 in connection with the Acquisition.

**"Scheme Effective Date"** means the date on which the Scheme Court Order is filed or registered (as the case may be) at the Registrar of Companies in accordance with section 899 of the Companies Act 2006.

**"Scheme Resolutions"** means the resolutions referred to in the Scheme Circular and to be considered at the Court Meeting and the General Meeting.

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Secured Party under each Finance Document.

**"Secured Party"** means a Finance Party, a Receiver or a Delegate.

**"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.

**"Security Asset"** 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.

**"Security Document"** means:

- (a) any document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or
- (b) any other document designated as such by the Security Agent and the Company.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by an Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties.

**"Selection Notice"** means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 10 (*Interest Periods*).

**"Specified Time"** means a day or time determined in accordance with Schedule 8 (*Timetables*).

**"Subsidiary"** means any person (referred to as the "**first person**") in respect of which another person (referred to as the "**second person**"):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
- (d) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting

rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or

- (e) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (f) together with the first person are managed on a unified basis,

and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or, if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries. A subsidiary undertaking shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security.

**"Swiss 10-Non-Bank Rule"** means the rule that the aggregate number of creditors (within the meaning of the Guidelines) under this Agreement that are not Qualifying Banks must not at any time exceed ten (10), if and as long as a violation of this rule results in Swiss Withholding Tax consequences for a Swiss Borrower, in each case in accordance with the meaning of the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

**"Swiss 20-Non-Bank Rule"** means the rule that (without duplication) the aggregate number of lenders (including the Lenders) other than Qualifying Banks, of a Swiss Borrower under all its outstanding debt relevant for classification as debenture (*Kassenobligation*) (including debt arising under this Agreement, loans, facilities and/or private placements) must not at any time exceed twenty (20), if and as long as a violation of this rule results in Swiss Withholding Tax consequences for a Swiss Borrower, in each case in accordance with the meaning of the Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

**"Swiss Non-Bank Rules"** means the Swiss 10-Non-Bank Rule and the Swiss 20-Non-Bank Rule.

**"Swiss Obligor"** means any Obligor incorporated in Switzerland.

**"Swiss Withholding Tax"** means the tax imposed based on the Swiss Federal Act on Withholding Tax of 13 October 1965 (*Bundesgesetz über die Verrechnungssteuer*) as amended from time to time together with the related ordinances, regulations and guidelines.

**"Switch"** means the Company electing to switch from a Scheme to a Takeover Offer, or from a Takeover Offer to a Scheme, as a means to implement the Acquisition.

**"Takeover Code"** means the UK City Code on Takeovers and Mergers issued and enforced by the Panel from time to time.

**"Takeover Offer"** means a contractual takeover offer proposed to be made by the Company to acquire all of the Target Shares not already owned by the Company on the terms set out in the relevant Conversion Press Release relating to the Offer (as the same may be varied, supplemented, renewed or waived in accordance with the Takeover Code and with the consent of the Panel (if required), to the extent permitted by the terms of this Agreement).

**"Takeover Offer Document"** means any public offer document (including any supplementary offer document) issued or to be issued by or on behalf of the Company to the Target's shareholders setting out the terms of the Offer (including any amendments, revisions or extensions thereof) and otherwise made available to such persons and in the manner required by Rule 24.1 of the Takeover Code.

**"Target"** means TT Electronics PLC, a company incorporated under the laws of England and Wales with registered number 00087249.

**"Target Group"** means the Target and its Subsidiaries.

**"Target Shareholders"** means all the holders of the ordinary shares in the Target from time to time.

**"Target Shares"** means all of the shares in the Target in issue from time to time.

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

**"Term Facility"** means Facility A, Facility B or Facility C.

**"Term Loan"** means a Facility A Loan, Facility B Loan or Facility C Loan.

**"Termination Date"** means, in relation to each Facility:

- (a) if, by such date, the Facilities have not been extended pursuant to Clause 2.5 (*Extension Option*), the Initial Termination Date; and

- (b) if, prior to the Initial Termination Date the Facilities have been extended to the Extended Termination Date pursuant to Clause 2.5 (*Extension Option*), the Extended Termination Date.

**"Total Commitments"** means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments, the Total Facility C Commitments and the Total Facility D Commitments, being GBP 345,000,000 and CHF 170,000,000 at the date of this Agreement.

**"Total Consideration"** means the consideration (including associated costs and expenses) for an acquisition and any Financial Indebtedness or other actual or contingent liability assumed by the acquirer, in each case remaining in the acquired company (or any such business) at the date of acquisition.

**"Total Facility A Commitments"** means the aggregate of the Facility A Commitments, being GBP 195,000,000 at the date of this Agreement.

**"Total Facility B Commitments"** means the aggregate of the Facility B Commitments, being GBP 150,000,000 at the date of this Agreement.

**"Total Facility C Commitments"** means the aggregate of the Facility C Commitments, being CHF 50,000,000 at the date of this Agreement.

**"Total Facility D Commitments"** means the aggregate of the Facility D Commitments, being CHF 120,000,000 at the date of this Agreement.

**"Transaction Document"** means a Finance Document or an Offer Document.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

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

**"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.

**"Unconditional Date"** means the date on which a Takeover Offer becomes, or is declared to be, unconditional.

**"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 utilisation of any Facility.

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

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

**"VAT"** means:

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

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the **"Agent"**, any **"Arranger"**, any **"Finance Party"**, any **"Lender"**, any **"Obligor"** any **"Secured Party"**, the **"Security Agent"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents 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 Company and the Agent or the Company and both Arranger;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) a Lender's "**cost of funds**" in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;
  - (v) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (vi) a "**group of Lenders**" includes all the Lenders;
  - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
  - (xi) a time of day is a reference to Frankfurt time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) 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.

- (d) A Borrower providing "**cash cover**" for an Ancillary Facility means a Borrower paying an amount in the currency of the Ancillary Facility to an interest-bearing account and the following conditions being met:
  - (i) either:
    - (A) the account is in the name of the Borrower and is with the Ancillary Lender for which that cash cover is to be provided and until no amount is or may be outstanding under that 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 Ancillary Facility; or
    - (B) the account is in the name of the Ancillary Lender for which that cash cover is to be provided; and
  - (ii) the Borrower has executed documentation in form and substance satisfactory to the Finance Party for which that cash cover is to be provided, creating a first ranking security interest, or other collateral arrangement, in respect of the amount of that cash cover.
- (e) A Default or an Event of Default is "**continuing**" if it has not been remedied or waived.
- (f) A Borrower "**repaying**" or "**prepaying**" Ancillary Outstandings means:
  - (i) that Borrower providing cash cover for in respect of the Ancillary Outstandings;
  - (ii) the maximum amount payable under the Ancillary Facility being reduced or cancelled in accordance with its terms;
  - (iii) the Ancillary Lender being satisfied that it has no further liability under that Ancillary Facility; or
  - (iv) the implementation of any other arrangement, including the delivery of a counter-guarantee or any agreement pursuant to which the Ancillary Outstandings shall be continued on a bilateral basis, in each case as agreed with the relevant Ancillary Lender,

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

- (g) An amount borrowed includes any amount utilised by way of an Ancillary Facility.
- (h) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,

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

- (i) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (j) Any Reference Rate Supplement relating to a currency overrides anything relating to that currency in:
  - (i) Schedule 10 (*Reference Rate Terms*); or
  - (ii) any earlier Reference Rate Supplement.
- (k) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
  - (i) Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 12 (*Cumulative Compounded RFR Rate*), as the case may be; or
  - (ii) any earlier Compounding Methodology Supplement.
- (l) 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.

- (m) Without prejudice to the generality of any provision of this Agreement, in this Agreement, where it relates to an entity incorporated or established under Swiss law, a reference to:
- (i) "constitutional documents" means an up-to-date certified extract from the commercial register and an up-to-date and certified copy of the articles of association;
  - (ii) a "liquidator", "trustee", "administrative receiver", "receiver" or "administrator" or similar officer includes any of (i) "Sachwalter" appointed in accordance with the provisions of the Swiss Code of Obligation of 30 March 1911, (ii) "Liquidator" appointed in accordance with the provisions of the Swiss Code of Obligation of 30 March 1911, and (iii) "Konkursamt" or "Konkursverwaltung", any "Liquidator" or "Sachwalter" or "Sanierungsbeauftragter" (including a supervisory authority acting in any such capacity) or any of their officials or employees or other officers appointed in accordance with the Swiss Debt Collection and Bankruptcy Act of 11 April 1889 (*Bundesgesetz über Schuldbetreibung und Konkurs*) as amended and restated from time to time;
  - (iii) a "moratorium", "dissolution", "administration", "reorganisation", "winding-up", "administration", "liquidation" or "insolvency" includes, without limitation, bankruptcy, liquidation, composition with creditors (*Nachlassvertrag*) or moratorium (*provisorische or definitive Nachlassstundung/Stundung/Notstundung*) or protective measures (*Schutzmassnahmen/sichernde Massnahmen*);
  - (iv) a person being unable to pay its debts includes that person being in a state of inability to make payments (*zahlungsunfähig*) and being over-indebted (*überschuldet*);
  - (v) a director or a manager includes in relation to a company limited by shares (*Aktiengesellschaft*) a member of the board of directors (*Verwaltungsrat*) or a member of the executive management (*Geschäftsleitung*); and
  - (vi) "Insolvency Proceeding" shall include the opening of bankruptcy proceedings, a declaration of insolvency, a moratorium of any indebtedness (by way of composition moratorium (*Nachlassstundung*) or otherwise), winding-up or dissolution of it or the appointment of a liquidator, bankruptcy administrator, composition commissioner or other similar officer in respect of it or of any of its assets; with the exception of any corporate action,

legal proceeding or other procedure or step which is frivolous or vexatious and is discharged, stayed or dismissed within 60 days of commencement.

### 1.3 **Currency symbols and definitions**

"£", "GBP" and "sterling" denote the lawful currency of the United Kingdom.

"CHF" and "Swiss francs" denote the lawful currency of Switzerland.

### 1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any person described in paragraph (b) of Clause 27.11 (*Exclusion of liability*) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

## SECTION 2 THE FACILITIES

### 2. THE FACILITIES

#### 2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available:
  - (i) to the Original Borrower, a sterling term loan facility in an aggregate amount equal to the Total Facility A Commitments;
  - (ii) to the Borrowers, a sterling term loan facility in an aggregate amount equal to the Total Facility B Commitments;
  - (iii) to the Original Borrower, a Swiss francs term loan facility in an aggregate amount equal to the Total Facility C Commitments; and
  - (iv) to the Original Borrower, a Swiss francs revolving loan facility in an aggregate amount equal to the Total Facility D Commitments.
- (b) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Facility D Commitment available to any Borrower as an Ancillary Facility.

#### 2.2 Increase

- (a) The Company may by giving notice after the effective date of a cancellation of the Commitments of a Lender in accordance with Clause 8.1 (*Illegality*) or paragraph (a) of Clause 8.9 (*Right of cancellation and repayment in relation to a single Lender*), request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount of up to the amount of the Commitment so cancelled as follows:
  - (i) 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;
  - (ii) 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;

- (iii) 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;
  - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
  - (v) any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
  - (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
  - (d) 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.
  - (e) The Company shall promptly on demand pay each of the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by each of them and, in the case of the Security

Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.

- (f) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 24.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 24.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (g) 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.
- (h) Clause 24.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
  - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

### 2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from 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.

## 2.4 **Obligors' Agent**

- (a) Each Obligor (other than the Company) by its execution of an Accession Letter irrevocably appoints the Company (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 Company 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 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 Company,

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.
- (c) Each Obligor (other than the Company) hereby exempts the Company in its capacity as Obligors' Agent pursuant to this Clause 2.4 from the restrictions pursuant to section 181 of the Civil Code (*Bürgerliches*

*Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law.

## 2.5 **Extension Option**

- (a) Subject to this Clause the Company may, within the period beginning 30 days and ending 5 days before the Initial Termination Date only, by delivering to the Agent of a duly completed Extension Notice complying with paragraph (b) below, extend the Facilities (in whole) to the Extended Termination Date.
- (b) No consent of any Finance Party is required to extend the Facilities to the Extended Termination Date, provided that:
  - (i) no Default is continuing at the date of the Extension Notice or would arise as a result of the extension of the Facilities to the Extended Termination Date; and
  - (ii) the Repeating Representations are true in all respects (or, in respect of any Extension Representation which is not otherwise subject to a qualification of materiality or Material Adverse Effect, is true in all material respects) at that time.
- (c) The Agent will promptly notify the Lenders following receipt of an Extension Notice.
- (d) The Company must pay an extension fee in accordance with Clause 12.5 (*Extension Fee*) on or before the Initial Termination Date.

## 3. **PURPOSE**

### 3.1 **Purpose**

- (a) The Original Borrower shall apply all amounts borrowed under Facility A towards the financing of:
  - (i) the cash component of the consideration payable by the Company for the purchase price for the Acquisition of any Target Shares pursuant to the Scheme or Offer and any Compulsory Acquisition Process;
  - (ii) the cash consideration payable to holders of options, warrants or awards or other instruments convertible into or exchangeable for Target Shares pursuant to any proposal made by the Company in connection with the Acquisition as required by or in accordance with the Takeover Code; and

- (iii) any Acquisition Costs.
- (b) Subject to Clause 5.5 (*Limitation on Utilisations*), the Borrower which utilises Facility B shall apply all amounts borrowed by it under Facility B towards the direct discharge in full of the Existing Target Debt.
- (c) The Original Borrower shall apply all amounts borrowed under Facility C towards discharge in full of all indebtedness outstanding under or in connection with the term facilities under the Existing Syndicated Facilities Agreement.
- (d) The Original Borrower shall apply all amounts borrowed under Facility D towards the financing of:
  - (i) in case of the first Utilisation under Facility D, discharge in full of all indebtedness outstanding under or in connection with the revolving facility and any ancillary facility under the Existing Syndicated Facilities Agreement (the "**RCF Refinancing Purpose**"); and
  - (ii) in case of any other Utilisation under Facility D, general corporate purposes.

### 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 – Facility A**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation under Facility A, if, on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in:
  - (i) Part I (*Initial Conditions Precedent – All Facilities*) of Schedule 2 (*Conditions precedent*); and
  - (ii) Part II (*Initial Conditions Precedent – Facility A*) of Schedule 2 (*Conditions precedent*),

in each case, in form and substance satisfactory to the Agent. The Agent shall notify the Company 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.

#### 4.2 **Initial conditions precedent – Facility B**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation under Facility B, if, on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in:
  - (i) Part I (*Initial Conditions Precedent – All Facilities*) of Schedule 2 (*Conditions precedent*); and
  - (ii) Part III (*Initial Conditions Precedent – Facility B*) of Schedule 2 (*Conditions precedent*),

in each case, in form and substance satisfactory to the Agent. The Agent shall notify the Company 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.

#### 4.3 **Initial conditions precedent – Facility C and Facility D**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation under Facility C or Facility D, if, on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in:
  - (i) Part I (*Initial Conditions Precedent – All Facilities*) of Schedule 2 (*Conditions precedent*); and
  - (ii) Part IV (*Initial Conditions Precedent – Facility C and Facility D*) of Schedule 2 (*Conditions precedent*),

in each case, in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.

- (b) Other than to the extent that any Lender notifies the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

#### 4.4 Further conditions precedent

- (a) Subject to Clauses 4.1 (*Initial conditions precedent – Facility A*), 4.2 (*Initial conditions precedent – Facility B*) and 4.3 (*Initial conditions precedent – Facility C and Facility D*), the Lenders will only be obliged to comply with Clause 5.4 (*Lender's 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:
  - (i) 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
  - (ii) the Repeating Representations made by each Obligor are, to the extent not qualified by materiality or Material Adverse Effect, true in all material respects or, to the extent so qualified, true in all respects.

#### 4.5 Utilisations during the Certain Funds Period

- (a) Subject to Clauses 4.1 (*Initial conditions precedent – Facility A*), 4.2 (*Initial conditions precedent – Facility B*) and 4.3 (*Initial conditions precedent – Facility C and Facility D*), 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, to the extent not qualified by materiality or Material Adverse Effect, true in all material respects or, to the extent so qualified, true in all respects; and

- (iii) with respect to each Utilisation of Facility B, the Original Borrower specifically confirms in the relevant Utilisation Request which Existing Target Debt will be discharged out of the proceeds of such Utilisation and delivers to the Agent a copy of the notice of prepayment issued by the Target in respect of the Target Debt being refinanced and such notice of prepayment states that the relevant Target Debt is being refinanced and (where applicable) cancelled in full.
- (b) Notwithstanding any other term of any Finance Documents, 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 (*Lender's participation*) and subject as provided in Clause 8.1 (*Illegality*) (to the extent that such Clause relates to a Lender's ability to fund, issue or maintain its participation in any Loan and provided that any such illegality shall not excuse any other Lender from its obligations and participating in the relevant Loan) during the Availability Period 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 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 or amount 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 or enforce any of its rights under any Security Document; or
  - (vi) take any other action or make or enforce any other claim to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of or the principal amount of a Certain Funds Utilisation or the application of the proceeds of such Certain Funds Utilisation for the purposes contemplated by this Agreement,

***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 it may not have been used or been available for use during the Certain Funds Period.

#### 4.6 **Maximum number of Loans**

- (a) The Original Borrower may not deliver a Utilisation Request in respect of Facility A if as a result of the proposed Utilisation:
  - (i) if the Acquisition proceeds by way of a Scheme, more than 1 (one) Facility A Loan would be outstanding; or
  - (ii) if the Acquisition proceeds by way of a Takeover Offer, more than 5 Facility A Loans would be outstanding.
- (b) No Borrower may deliver a Utilisation Request in respect of Facility B if as a result of the proposed Utilisation more than 2 (two) Facility B Loans would be outstanding.
- (c) The Original Borrower may not deliver a Utilisation Request in respect of Facility C if as a result of the proposed Utilisation more than 2 (two) Facility C Loans would be outstanding.
- (d) The Original Borrower may not deliver a Utilisation Request in respect of Facility D if as a result of the proposed Utilisation more than 10 Facility D Loans would be outstanding.
- (e) No Borrower may request that a Loan be divided.

## **SECTION 3 UTILISATION**

### **5. UTILISATION**

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

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

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

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) it identifies the Borrower;
  - (iii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (iv) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
  - (v) the proposed Interest Period complies with Clause 9 (Interest Periods).
- (b) Only one Loan may be requested in each Utilisation Request.

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

- (a) The currency specified in a Utilisation Request must be:
  - (i) in relation to Facility A and Facility B, sterling; and
  - (ii) in relation to Facility C and Facility D, Swiss francs.
- (b) The amount of the proposed Loan must be:
  - (i) for Facility A, an amount which is not more than the relevant Available Facility and which is a minimum of GBP 5,000,000 or, if less, the relevant Available Facility;
  - (ii) for Facility B, an amount which is not more than the relevant Available Facility and which is a minimum of GBP 5,000,000 or, if less, the relevant Available Facility;

- (iii) for Facility C, an amount which is not more than the relevant Available Facility and which is a minimum of CHF 5,000,000 or, if less, the relevant Available Facility; or
- (iv) for Facility D, an amount which is not more than the relevant Available Facility and which is a minimum of CHF 5,000,000 or, if less, the relevant Available Facility.

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

- (a) If the conditions set out in this Agreement have been met, and subject to Clause 7.2 (*Repayment of Facility D Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) 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) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan and, in the case of a Facility D Loan and if different, the amount of that participation to be made available in accordance with Clause 31.1 (*Payments to the Agent*), in each case by the Specified Time.

#### 5.5 **Limitation on Facility Utilisations**

- (a) Facility B may be utilised only if Facility A has been utilised (in whole or in part) or will be utilised (in whole or in part) concurrently.
- (b) Facility D shall not be utilised unless Facility C has been utilised or will be utilised concurrently.
- (c) Without prejudice to paragraph (b) of Clause 5.2 (*Completion of a Utilisation Request*), if at the time of the first Utilisation under Facility C any amounts are outstanding under the revolving facility made available pursuant to the Existing Syndicated Facilities Agreement, then the first Utilisation under Facility D may be utilised only concurrently on the same Utilisation Date.

#### 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 Facility D Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility D.

## **6. ANCILLARY FACILITIES**

### **6.1 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,

in each case, as agreed by the Company with an Ancillary Lender.

### **6.2 Availability**

- (a) If the Company and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Facility D Commitment as an Ancillary Facility.
- (b) On the first Utilisation Date under Facility D, each Existing Ancillary Facility shall become an Ancillary Facility provided pursuant to this Agreement by the relevant Ancillary Lender out of its Facility D Commitment upon the terms set out in the Ancillary Documents relating thereto. The Company and Commerzbank AG agree that from the first Utilisation Date under Facility D every reference in the agreement underlying any Existing Ancillary Facility to the Existing Syndicated Facilities Agreement shall be a reference to this Agreement, and further agree to negotiate in good faith and agree on amendments to the Existing Ancillary Facilities or to conclude replacement Ancillary

Documents within four weeks from the first Utilisation Date under Facility D.

- (c) Other than in respect of any Existing Ancillary Facility, an Ancillary Facility shall not be made available unless, not later than 5 (five) Business Days prior to the Ancillary Commencement Date for that Ancillary Facility, the Agent has received from the Company:
  - (i) a notice in writing of the establishment of that Ancillary Facility and specifying:
    - (A) the proposed Borrower(s) (or Affiliates 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.
- (d) The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
- (e) Subject to compliance with paragraph (c) (or, in the case of each Existing Ancillary Facility, paragraph (b) above) 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 Company and the Ancillary Lender.

### 6.3 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 Company.
- (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 Subsidiaries of Borrowers nominated pursuant to Clause 6.9 (*Subsidiaries 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 Facility D (before taking into account the effect of the Ancillary Facility on that Available Commitment);
  - (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 Facility D (or such earlier date as the Facility D Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero); and
  - (vi) must ensure compliance with the Swiss Non-Bank Rules and the related limitations and representations similar to those set out in this Agreement.
- (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 34.3 (*Day count convention and interest calculation*) 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 12.5 (*Interest, commission and fees on Ancillary Facilities*).

#### 6.4 **Repayment of Ancillary Facility**

- (a) An Ancillary Facility shall cease to be available on the Termination Date applicable to Facility D 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 Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
  - (ii) the Facility D Commitments have been cancelled in full or all outstanding Utilisations under Facility D have become due and payable in accordance with the terms of this Agreement;
  - (iii) a Change of Control occurs;
  - (iv) 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
  - (v) both:
    - (A) the Available Commitments relating to Facility D; 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 a Utilisation under Facility D.
- (d) If a Facility D Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

## 6.5 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
- (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.

## 6.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 6.6:
  - (i) "**Facility D Outstandings**" means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
    - (A) its participation in each Facility D Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under Facility D); 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 Facility D Outstandings**" means the aggregate of all Facility D Outstandings.
- (b) If (i) any Event of Default occurs pursuant to Clause 23.1 (*Non-payment*) in respect of Facility D on the Termination Date, (ii) insolvency proceedings are commenced in relation to the Company or (ii) the Agent exercises any of its rights under Clause 23.18 (*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 Facility D Outstandings) their claims in respect of amounts outstanding to them

under Facility D and each Ancillary Facility to the extent necessary to ensure that after such transfers the Facility D Outstandings of each Lender bear the same proportion to the Total Facility D Outstandings as such Lender's Facility D Commitment bears to the Total Facility D Commitments, each as at the date the Event of Default occurs, the Agent exercises the relevant right(s) under Clause 23.18 (*Acceleration*) or the commencement of insolvency proceedings in relation to the Company, as applicable.

- (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 Facility D 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 Facility D Outstandings made pursuant to this Clause 6.6 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Facility D Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to Clause 24.10 (*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 6.6 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 6.6 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 or in another currency which is acceptable to that Lender.

## 6.7 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.

## 6.8 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 Facility D Commitment is the amount set out opposite the relevant Lender's name in Schedule 1 (*The Original Lenders*) and/or the amount of any Facility D 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 Company shall specify any relevant Affiliate of a Lender in any notice delivered by the Company to the Agent pursuant to paragraph (a)(i) of Clause 6.2 (*Availability*).
- (c) 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.
- (d) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender 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.

## 6.9 Subsidiaries of Borrowers

- (a) Subject to the terms of this Agreement, a Subsidiary of a Borrower may with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.
- (b) The Company shall specify any relevant Subsidiary of a Borrower in any notice delivered by the Company to the Agent pursuant to paragraph (a)(i) of Clause 6.2 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with this Agreement, its Subsidiaries 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 a Subsidiary of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Subsidiary.
- (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 Subsidiary of a Borrower being under no obligations under any Finance Document or Ancillary Document.

#### 6.10 **Facility D Commitment amounts**

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Facility D Commitment is not less than:

- (a) its Ancillary Commitment; or
- (b) the Ancillary Commitment of its Affiliate.

#### 6.11 **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 6). In such a case, Clause 37 (*Amendments and Waivers*) will apply.

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

**7. REPAYMENT**

**7.1 Repayment of Term Loans**

- (a) The Original Borrower shall repay the aggregate Facility A Loans made to it in full on the Termination Date.
- (b) Each Borrower which utilised Facility B shall repay the aggregate Facility B Loans made to it in full on the Termination Date.
- (c) The Original Borrower shall repay the aggregate Facility C Loans made to it in full on the Termination Date.
- (d) No Borrower may reborrow any part of a Facility which is repaid.

**7.2 Repayment of Facility D Loans**

- (a) The Original Borrower shall repay each Facility D Loan on the last day of its Interest Period.
- (b) Without prejudice to the Original Borrower's obligation under paragraph (a) above, if:
  - (i) one or more Facility D Loans are to be made available to the Original Borrower:
    - (A) on the same day that a maturing Facility D Loan is due to be repaid; and
    - (B) in whole or in part for the purpose of refinancing the maturing Facility D Loan; and
  - (ii) the proportion borne by each Lender's participation in the maturing Facility D Loan to the amount of that maturing Facility D Loan is the same as the proportion borne by that Lender's participation in the new Facility D Loans to the aggregate amount of those new Facility D Loans,

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

- (A) if the amount of the maturing Facility D Loan exceeds the aggregate amount of the new Facility D Loans:
  - (1) the Original Borrower will only be required to make a payment under Clause 31.1 (*Payments to the Agent*) in an amount equal to that excess; and
  - (2) each Lender's participation in the new Facility D Loans shall be treated as having been made available and applied by the Original Borrower in or towards repayment of that Lender's participation in the maturing Facility D Loan and that Lender will not be required to make a payment under Clause 31.1 (*Payments to the Agent*) in respect of its participation in the new Facility D Loans; and
- (B) if the amount of the maturing Facility D Loan is equal to or less than the aggregate amount of the new Facility D Loans:
  - (1) the Original Borrower will not be required to make a payment under Clause 31.1 (*Payments to the Agent*); and
  - (2) each Lender will be required to make a payment under Clause 31.1 (*Payments to the Agent*) in respect of its participation in the new Facility D Loans only to the extent that its participation in the new Facility D Loans exceeds that Lender's participation in the maturing Facility D Loan and the remainder of that Lender's participation in the new Facility D Loans shall be treated as having been made available and applied by the Original Borrower in or towards repayment of that Lender's participation in the maturing Facility D Loan.

## **8. PREPAYMENT AND CANCELLATION**

### **8.1 Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, 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 paragraph (d) of Clause 8.9 (*Right of replacement or repayment and cancellation in relation to a single Lender*), each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

## 8.2 **Change of Control**

- (a) If a Change of Control occurs:
  - (i) the Company shall promptly notify the Agent upon becoming aware of that event;
  - (ii) a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan); and
  - (iii) if a Lender so requires and notifies the Agent within 30 days of the Company notifying the Agent of the event, the Agent shall cancel each Available Commitment of that Lender (and the Ancillary Commitments of that Lender and its Affiliates under any Ancillary Facility) and declare the participation of that Lender in all Loans (and Ancillary Outstandings owed to such Lender and its Affiliates), together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment (and Ancillary Commitments, as applicable) will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, Ancillary Outstandings, accrued interest and other amounts shall become immediately (or on any other date specified by the relevant Lender) due and payable.
- (b) For the purpose of paragraph (a) above:

- (i) "**Change of Control**" means (A) any person or group of persons acting in concert gains direct or indirect control of the Company or (B) a disposal of all or substantially all assets of the Group or a cessation of a substantial part of the Group's operations.
- (ii) "**control**" of the Company means:
  - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (1) cast, or control the casting of, more than 33 1/3 % of the maximum number of votes that might be cast at a general meeting of the Company;
    - (2) appoint or remove all, or the majority, of the directors or equivalent officers of the Company; or
    - (3) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company are obliged to comply:
  - (B) the holding beneficially of more than 33 1/3 % of the issued share capital of the Company (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); and
- (iii) "**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 Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company.

### 8.3 **Mandatory prepayment - Relevant Proceeds**

- (a) For the purposes of this Clause 8.3 and Clause 8.4 (*Application of mandatory prepayments and cancellations*):

"**Capital Markets Issue**" means any issue of a public or private bond or note (including, for the avoidance of doubt, any convertible or hybrid bond or note and any promissory note loans (*Schuldscheine*)) and any other debt-linked capital markets sale, offer or issue, in each case by a member of the Group after the date of this Agreement.

**"Capital Markets Issue Net Proceeds"** means, in relation to a Capital Markets Issue, the cash proceeds received by any member of the Group in connection with that Capital Markets Issue, except for Excluded Capital Markets Issue Proceeds and after deducting:

- (i) any reasonable expenses which are incurred in relation to that Capital Markets Issue 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 the relevant member of the Group in connection with that Capital Markets Issue (as reasonably determined by that member of the Group, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Debt Financing"** means any Financial Indebtedness incurred by any member of the Group after the date of this Agreement under any loan facility.

**"Debt Financing Net Proceeds"** means, in relation to a Debt Financing, the proceeds of that Debt Financing advanced to any member of the Group, except for Excluded Debt Financing Proceeds and after deducting:

- (i) any reasonable expenses which are incurred in relation to that Debt Financing 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 the relevant member of the Group in connection with that Debt Financing (as reasonably determined by that member of the Group, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Equity Raising"** means any public or private equity capital markets sale, offer or issue by a member of the Group after the date of this Agreement.

**"Equity Raising Net Proceeds"** means, in relation to an Equity Raising, the consideration receivable by any member of the Group in connection with that Equity Raising, except for Excluded Equity Raising Proceeds and after deducting:

- (i) any reasonable expenses which are incurred in relation to Equity Raising 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 the relevant member of the Group in connection with that Equity Raising (as reasonably determined by that member of the Group, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Excluded Capital Markets Issue Proceeds"** means the proceeds raised in connection with a Capital Markets Issue made for the purposes of a Working Capital Financing.

**"Excluded Debt Financing Proceeds"** means the proceeds received in connection with a Debt Financing incurred for the purposes of a Working Capital Financing.

**"Excluded Equity Raising Proceeds"** means:

- (i) the consideration receivable for any Equity Raising made in connection with the grant of management and/or employee stock options, stock ownership plans and other equity incentive or compensation plans;
- (ii) the consideration receivable for any Equity Raising to the extent the cash proceeds or the newly issued shares are used solely as consideration in relation to the Acquisition; and
- (iii) the consideration receivable by a member of the Group from another member of the Group for any Equity Raising.

**"Excluded General Disposal Proceeds"** means proceeds of a General Disposal which:

- (i) do not exceed CHF 250,000 in each case and, to the extent in excess of this amount, not exceed CHF 2,000,000 in aggregate per annum; or
- (ii) (other than in relation to proceeds resulting from a disposal of shares in Cicor UK Ltd.) are reinvested into the business of the Group within 6 months after receipt.

**"Excluded Insurance Proceeds"** means any proceeds of an insurance claim under any insurance maintained by any member of the Group which 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 within 6 months after receipt.

**"General Disposal"** means any sale, transfer or other disposal of fixed assets (whether by a voluntary or involuntary single transaction or series of transactions) other than a Target Shares Disposal.

**"General Disposal Net Proceeds"** means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any General Disposal made by any member of the Group except for Excluded General Disposal Proceeds and after deducting:

- (i) any reasonable expenses which are incurred in relation to that General Disposal 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 the seller in connection with that General Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Insurance Net 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.

**"Net Proceeds"** means any Capital Markets Issue Net Proceeds, Debt Financing Net Proceeds, General Disposal Net Proceeds, Equity Raising Net Proceeds, Insurance Net Proceeds and Target Shares Disposal Net Proceeds.

**"Target Shares Account Security Agreement"** means the security agreement whereby the Company grants Security to the Security Agent over the Custody Account.

**"Target Shares Disposal"** means any sale, transfer or other disposal by the Company of any Target Share (whether by a voluntary or involuntary single transaction or series of transactions), other than, for the avoidance

of doubt, the creation of Transaction Security over the Custodian Account in which the Target Shares are held.

**"Target Shares Disposal Net Proceeds"** means the consideration receivable by the Company for any Target Shares Disposal made by it and after deducting:

- (i) any reasonable expenses which are incurred in relation to that Target Shares Disposal by the Company 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 Target Shares Disposal (as reasonably determined by the Company, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Working Capital Financing"** means any Financial Indebtedness incurred by a member of the Group in order to cover working capital requirements of the Group (including, for the avoidance of doubt, any liquidity needs of the operative business of the Group).

- (b) Subject to paragraph (c) below, upon receipt of any Net Proceeds, the Company shall promptly:
  - (i) notify the Agent; and
  - (ii) ensure that an amount equal to such Net Proceeds is applied in prepayment of the Loans in accordance with Clause 8.3(c) (*Application of mandatory prepayments and cancellations*).

If and to the extent no Loan and Ancillary Outstanding is outstanding on the date of receipt of any Net Proceeds which would, had any Loan or Ancillary Outstanding been outstanding on that date, have been required to be applied in prepayment of such Loans in accordance with this Clause 8.3 and Clause 8.4 (*Application of mandatory prepayments and cancellations*), then the Available Commitments (first, pro rata across the Term Facilities; secondly, in relation to Facility D) shall be cancelled in an amount equal to the amount of Net Proceeds that would have been so required to be applied in prepayment of the Loans and the Ancillary Outstandings. The Company shall notify the Agent of any such cancellation promptly on receipt of the relevant Net Proceeds. The cancellation shall become effective on the date the Agent is notified by the Company. Any cancellation under this Clause 8.3 shall reduce the Commitments of the Lenders rateably under the relevant Facility/ies.

- (c) Prior to the first Utilisation Date, to the extent Net Proceeds need to be applied towards mandatory prepayments under the Existing Syndicated Facilities Agreement (in the form made available to the Lenders prior to the date of this Agreement), such Net Proceeds will not be required to be applied pursuant to paragraph (b) above.
- (d) Notwithstanding anything to the contrary in Clause 8.3 (Mandatory prepayment – Relevant Proceeds) or Clause 8.4 (*Application of mandatory prepayments and cancellations*), the Company (respectively the relevant Borrower) shall not be obliged to prepay the Loans from any Net Proceeds or to cancel and reduce the relevant Commitments (as applicable) in the manner contemplated if and to the extent that:
  - (i) it is illegal (including by virtue of financial assistance and similar restrictions or as a result of up-streaming or cross-streaming of such amounts), provided that, to the extent legally possible, reasonable steps have been taken in order to avoid the application of such restrictions) for a member of the Group to pay or distribute such Net Proceeds;
  - (ii) it would result in the incurrence of material costs or expenses (including tax liabilities) and the relevant members of the Group have used reasonable endeavours to mitigate such risk, costs or expenses;
  - (iii) there is a risk that it would or is reasonably likely to result in (personal or criminal) liability of the relevant member of the Group or its directors or representatives and the relevant members of the Group, having used all reasonable endeavours to avoid such liability arising, have been unable to remove such liability.

#### **8.4 Application of mandatory prepayments and cancellations**

- (a) A prepayment of Utilisations and Ancillary Outstandings or cancellation of Available Commitments and Ancillary Commitments made under Clause 8.3 (*Mandatory prepayment - Relevant Proceeds*) shall be applied on the date provided in accordance with paragraph (b) below in the following order:
  - (i) first, in or towards prepayment of Term Loans (on a *pro rata* basis);
  - (ii) secondly, in cancellation of Available Commitments under Facility D (and the Available Commitments of the Lenders under Facility D will be cancelled rateably);

(iii) thirdly, in prepayment of Facility D Loans (and the corresponding Facility D Commitments will be cancelled rateably); and

(iv) fourthly, 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) The Borrowers shall prepay Utilisations and Ancillary Outstandings in accordance with paragraph (a) above promptly upon receipt of the relevant Net Proceeds.

## 8.5 Excluded proceeds

Where Excluded Capital Markets Issue Proceeds, Excluded Debt Financing Proceeds, Excluded General Disposal Proceeds, Excluded Equity Raising Proceeds and Excluded Insurance Proceeds include amounts which are intended to be applied for a specific purpose (and/or within a specified period) (as set out in the definitions of "Excluded Capital Markets Issue Proceeds", "Excluded Debt Financing Proceeds", "Excluded General Disposal Proceeds", "Excluded Equity Raising Proceeds" and "Excluded Insurance Proceeds" (as applicable)), the Company shall ensure that those amounts are applied for that specific purpose.

## 8.6 Voluntary cancellation

(a) Subject to paragraph (c) below, the Company may, if it gives the Agent not less than 5 (five) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part of an Available Facility (being, in respect of Facility A or Facility B, a minimum amount of GBP 5,000,000 and integral multiples of GBP 1,000,000 and, in the case of Facility C, a minimum amount of CHF 5,000,000 and integral multiples of CHF 1,000,000 of an Available Facility).

(b) Any cancellation of an Available Facility under this Clause 8.6 shall reduce the Commitments of the Lenders under the relevant Facility rateably.

(c) The Company may only cancel Available Commitments in respect of Facility A if it provides evidence (satisfactory to the Lenders) together

with the cancellation notice that it has sufficient other financial resources to complete the Acquisition.

## 8.7 **Voluntary prepayment of Term Loans**

- (a) A Borrower to which a Term Loan has been made may, if it gives the Agent not less than 5 (five) RFR Banking Days' (or such shorter period as the Majority Lenders and the Agent may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being a minimum amount of GBP 5,000,000 and integral multiples of GBP 1,000,000 in relation to Facility A or Facility B, and being a minimum amount of CHF 5,000,000 and integral multiples of CHF 1,000,000 in relation to Facility C).
- (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).

## 8.8 **Voluntary Prepayment of Facility D Loans**

The Original Borrower may, if it gives the Agent not less than 5 (five) RFR Banking Days' (or such shorter period as the Majority Lenders and the Agent may agree) prior notice, prepay the whole or any part of any Facility D Loan (but, if in part, being an amount that reduces the amount of the Facility D Loan by a minimum amount of CHF 5,000,000 and integral multiples of CHF 1,000,000).

## 8.9 **Right of replacement or repayment and cancellation in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under Clause 9.5 (*Minimum interest*) or paragraph (c) of Clause 13.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Company under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased Costs*),

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

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

the Company may, on 10 (ten) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 24 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 24 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 24.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Company shall have no right to replace the Agent;
  - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and

- (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### 8.10 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) 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.
- (c) No Borrower may reborrow any part of a Term Facility which is prepaid.
- (d) Unless a contrary indication appears in this Agreement, any part of Facility D which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.
- (e) The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (f) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If the Agent receives a notice under this Clause 8 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (h) If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.4 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

### 8.11 **Application of prepayments**

Any prepayment of a Loan pursuant to Clause 8.3 (*Mandatory prepayment – Relevant Proceeds*), Clause 8.7 (*Voluntary prepayment of Term Loans*) or Clause 8.8 (*Voluntary Prepayment of Facility D Loans*) shall be applied *pro rata* to each Lender's participation in each Loan.

## **SECTION 5 COSTS OF UTILISATION**

### **9. INTEREST**

#### **9.1 Calculation of interest**

- (a) The rate of interest on each Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:
  - (i) Margin; and
  - (ii) Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for a Loan is not an RFR Banking Day, the rate of interest on that Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

#### **9.2 Payment of interest**

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period.

#### **9.3 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 is 2 (two) per centage point per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 9.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### **9.4 Notifications**

- (a) The Agent shall promptly upon an Interest Payment being determinable notify:
  - (i) the relevant Borrower of that Interest Payment;

- (ii) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the relevant Loan; and
- (iii) the relevant Lenders and the relevant Borrower of:
  - (A) each applicable rate of interest relating to the determination of that Interest Payment; and
  - (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the relevant Loan.

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 11.3 (*Cost of funds*).

- (b) The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.
- (c) The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest relating to a Loan to which Clause 11.3 (*Cost of funds*) applies.
- (d) This Clause 9.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

## 9.5 **Minimum interest**

- (a) By entering into this Agreement, the Parties have assumed in bona fide that the interest payable hereunder is not and will not become subject to any Tax Deduction on account of Swiss Withholding Tax. Nevertheless, if a Tax Deduction is required by Swiss law to be made by any Obligor in respect of any interest payable under a Finance Document and should it be unlawful for that Obligor to comply with paragraph (c) of Clause 13.2 (*Tax gross-up*) for any reason (where this would otherwise be required by the terms of Clause 13 (*Tax gross-up and Indemnities*)) then:
  - (i) the applicable interest rate in relation to that interest payment shall be
    - (A) the interest rate which would have applied to that interest payment (as provided for in Clause 9.1 (*Calculation of interest*)) in the absence of this paragraph (a), divided by
    - (B) one (1) minus the rate at which the relevant Tax Deduction is required to be made (where the rate at which the relevant Tax Deduction is required to be made is for this

purpose expressed as a fraction of (1) rather than as percentage);

(ii) the Obligor shall: (i) pay the relevant interest at the adjusted rate in accordance with paragraph (a) above and (ii) make the Tax Deduction on the interest so recalculated; and

(iii) all references to a rate of interest under such Loan shall be construed accordingly.

(b) To the extent that interest payable by an Obligor under a Finance Document becomes subject to Swiss Withholding Tax, each relevant Lender and each Obligor shall promptly cooperate by completing any procedural formalities (including submitting forms and documents required by the appropriate Tax authority) to the extent possible and necessary for that Obligor i) to obtain authorization to make interest payments without them being subject to Swiss Withholding Tax or to being subject to Swiss Withholding Tax at a rate reduced under applicable double taxation treaties and/or ii) to enable that Lender to receive a full or partial refund of the Swiss Withholding Tax under an applicable double taxation treaty or under Swiss domestic laws. If and to the extent a Lender receives a refund of Swiss Withholding Tax, it shall forward such amount, after deduction of costs, to the Borrower. Nothing in this Clause shall interfere with each Lender's right to arrange its tax affairs in whatever manner it thinks fit and, without limiting the foregoing, no Lender shall be under any obligation to claim any Swiss Withholding Tax refund in priority to any other claims, reliefs, credits or deductions available to it.

## **10. INTEREST PERIODS**

### **10.1 Interest Periods**

(a) A Borrower (or, in the case of the Additional Borrower, the Company on its behalf) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (in case of Term Loan that 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 relevant Borrower (or, in the case of the Additional Borrower, by the Company on its behalf) to which that Term Loan was made not later than the Specified Time.

(c) If a Borrower (or the Company) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest

Period will be the period specified in the applicable Reference Rate Terms.

- (d) Subject to this Clause 9, a Borrower (or the Company) may select an Interest Period of any period specified in the Reference Rate Terms or of any other period agreed between the Company, the Agent and all the Lenders in relation to the relevant Loan.
- (e) 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.
- (f) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
- (g) A Facility D Loan has one Interest Period only.
- (h) All the then current Interest Periods for the Loans under the Term Facilities shall end on the earlier to occur of 30 June and 31 December after the day on which the last of the Availability Periods for the Term Facilities has expired.

## 10.2 **Non-Business Days**

Any rules specified as "Business Day Conventions" in the Reference Rate Terms shall apply to each Interest Period.

## 10.3 **Consolidation and division of Term Loans**

If two or more Interest Periods:

- (a) relate to Term Loans under the same Facility and made to the same Borrower; and
- (b) end on the same date,

those Term Loans will be consolidated into, and treated as, a single Term Loan under that Facility on the last day of the Interest Period.

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

### 11.1 **Interest calculation if no RFR**

If:

- (a) there is no applicable RFR for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Loan; and

- (b) "**Cost of funds will apply as a fallback**" is specified in the applicable Reference Rate Terms,

Clause 11.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

## 11.2 **Market disruption**

If:

- (a) a Market Disruption Rate is specified in the applicable Reference Rate Terms for a Loan; and
- (b) before the Reporting Time for that Loan the Agent receives notifications from a Lender or Lenders (whose participations in that Loan exceed 35 (thirty-five) per cent. of that Loan) that its cost of funds relating to its participation in the relevant Loan would be in excess of that Market Disruption Rate,

then Clause 11.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

## 11.3 **Cost of funds**

- (a) If this Clause 11.3 applies to a Loan for an Interest Period, Clause 9.1 (*Calculation of interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the applicable Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time for that Loan, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this Clause 11.3 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 11.3 applies pursuant to Clause 11.2 (*Market disruption*) and:

- (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
- (ii) a Lender does not notify a rate to the Agent by the relevant Reporting Time,

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

- (e) Subject to paragraph (d) above, if this Clause 11.3 applies but any Lender does not notify a rate to the Agent by the Reporting Time for the relevant Loan the rate of interest shall be calculated on the basis of the rates notified by the remaining Lenders.
- (f) If this Clause 11.3 applies the Agent shall, as soon as is practicable, notify the Company.

#### **11.4 Break Costs**

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

### **12. FEES**

#### **12.1 Ticking fee**

- (a) The Company shall pay to the Agent (for the account of each Lender) a ticking fee computed at the rate of:
  - (i) zero per cent. (0%) of the applicable Margin on each Lender's Available Commitment for the period from (and including) the date of this Agreement until (excluding) the date falling 2 (two) Months after the date of this Agreement;
  - (ii) twenty per cent. (20%) of the applicable Margin on each Lender's Available Commitment for the period from (and including) the

day falling 2 (two) Months after the date of this Agreement until (excluding) the date falling 6 (six) Months after the date of this Agreement; and

- (iii) thirty-five per cent. (35%) of the applicable Margin on each Lender's Available Commitment for the period from (and including) the day falling 6 (six) Months after the date of this Agreement,

**provided that**, from (and including) the first Utilisation Date under Facility D, the ticking fee applicable to a Lender's Available Commitment under Facility D will be computed at a rate of thirty-five per cent. (35%) of the applicable Margin on each Lender's Available Commitment under Facility D.

- (b) Accrued ticking 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(s) at the time the cancellation is effective.

## 12.2 **Upfront fee**

The Company shall pay to the Agent (for the account of the Arrangers) an upfront fee in the amount and at the times agreed in a Fee Letter.

## 12.3 **Agency fee**

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

## 12.4 **Security Agent fee**

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

## 12.5 **Extension Fee**

The Company exercises the extension option pursuant to Clause 2.5 (*Extension Option*). the Company shall pay to the Agent for the account of each Lender a fee calculated at a rate of 0.15 per cent. of the amount of the Commitments of that Lender at the time of the Extension Notice.

## 12.6 **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**

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

**13.1 Definitions**

In this Agreement:

**"Borrower DTTP Filing"** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the Borrower, which:

- (a) 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 is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (b) 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 is filed with HM Revenue & Customs within 30 days of that Transfer Date.

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

**"Qualifying Lender"** means:

- (d) 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 Lender:
    - (A) 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) 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) a Lender which is:
  - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (B) a partnership each member of which is:
    - (1) a company so resident in the United Kingdom; or
    - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
  - (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; or
- (iii) a Treaty Lender; or
- (e) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.

**"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) 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.

**"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 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

**"Treaty Lender"** means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (b) 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
- (c) fulfils any other conditions which must be fulfilled under the Treaty by residents of that Treaty State for such residents to obtain full exemption from taxation on interest imposed by the United Kingdom, subject to the completion of procedural formalities..

**"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 Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.

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

## 13.2 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 Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Company and that Obligor.
- (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.
- (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 (d)(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 Company 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 (d)(ii) of the definition of "Qualifying Lender" and:
  - (A) the relevant Lender has not given a Tax Confirmation to the Company; 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 Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
- (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) A payment to a specific Lender shall not be increased under paragraph (c) above or under Clause 9.5 (*Minimum interest*) by reason of a Tax Deduction for Swiss Withholding Tax if such Tax Deduction is caused by such specific Lender by having:
  - (i) incorrectly declared its status as a Qualifying Bank, as required pursuant to this Agreement; or
  - (ii) breached the transfer, assignment, security over Lenders' rights or exposure transfer provisions pursuant to Clause 24 (*Changes to the Lenders*) or such specific Lender became a Lender as a result of a breach of the transfer, assignment, security over Lenders' rights or exposure transfer provisions pursuant to Clause 24 (*Changes to the Lenders*); or
  - (iii) having lost its status as Qualifying Bank for the purposes of the Swiss Non-Bank Rules other than as a result of any change after the date it became a Lender in (or in the interpretation, administration or application of) any law or any published practice or published concession of any relevant Tax authority; or

- (iv) incorrectly declared its status as to whether it qualifies as one Lender or not for purposes of the Swiss Non-Bank Rules, or if such Lender had qualified as one Lender for purposes of the Swiss Non-Bank Rules but on the date on which the payment falls due that Lender is not or has ceased to qualify as one 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 any published practice of any relevant Tax authority).
  
- (f) 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.
  
- (g) 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.
  - (i) 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) 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 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;
    - (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 Filing; 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 Loan 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 shall notify the Borrower and the Agent if there is any change in the position from that set out in the Tax Confirmation as soon as practicable.

### 13.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (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 9.5 (*Minimum interest*) or Clause 13.2 (*Tax gross-up*);
    - (B) would have been compensated for by an increased payment under Clause 9.5 (*Minimum interest*) or Clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 9.5 (*Minimum interest*) or paragraph (d) of Clause 13.2 (*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 Company.

- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Agent.

#### 13.4 **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.

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

#### 13.6 **Lender status confirmation – Qualifying Bank**

- (a) Each Original Lender represents that it is, as at the date of this Agreement, a Qualifying Bank.
- (b) 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 any Obligor, which of the following categories it falls in:

- (i) a Qualifying Bank; or
  - (ii) not a Qualifying Bank (but counting as one (1) Lender only for purposes of the Swiss Non-Bank Rules).
- (c) Each Lender will notify the Obligors' Agent and the Agent if it ceases to be a Qualifying Bank or no longer counts as one (1) Lender only for purposes of the Swiss Non-Bank Rules.

### 13.7 **Stamp taxes**

The Company 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.

### 13.8 **VAT**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply 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).
- (b) 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.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 13.8 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).
- (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.

### 13.9 **FATCA information**

- (a) Subject to paragraph (c) below, each Party shall, within 10 (ten) Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;

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

### 13.10 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the

payment and, in addition, shall notify the Company and the Agent and the Agent shall notify the other Finance Parties.

## **14. INCREASED COSTS**

### **14.1 Increased Costs**

- (a) Subject to Clause 14.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (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,

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.

### **14.2 Increased Cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (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, including a reasonably detailed description of the nature and the calculation of the Increased Costs, except that no Finance Party shall be required to disclose any information that is confidential or proprietary (as determined by the relevant Finance Party at its discretion).

### 14.3 Exceptions

- (a) Clause 14.1 (*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;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 14.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 13.1 (*Definitions*).

## 15. OTHER INDEMNITIES

### 15.1 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;
  - (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.

## 15.2 Other indemnities

- (a) The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by that Secured Party 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 30 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
  - (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
- (b) The Company 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 15.2, subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act (as defined in that Clause).

## 15.3 Indemnity to the Agent

The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

#### 15.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall indemnify the Security Agent and every Receiver and Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them as a result of:
  - (i) any failure by the Company to comply with its obligations under Clause 17 (*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) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
  - (vii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 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.

## **16. MITIGATION BY THE LENDERS**

### **16.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 9.5 (*Minimum interest*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### **16.2 Limitation of liability**

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **17. COSTS AND EXPENSES**

### **17.1 Transaction expenses**

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

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

### **17.2 Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (*Change of currency*) or Clause 37.4 (*Changes to reference rates*),

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

### **17.3 Enforcement and preservation costs**

The Company shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

## **SECTION 7 GUARANTEE**

### **18. GUARANTEE AND INDEMNITY**

#### **18.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Obligor of all the 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 18 if the amount claimed had been recoverable on the basis of a guarantee.

#### **18.2 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. Each Obligor acknowledges the potential extension of the Facilities pursuant to Clause 2.5 (*Extension Option*), in particular.

#### **18.3 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 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 18.4 **Waiver of defences**

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

- (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 any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (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.

#### 18.5 **Guarantor intent**

Without prejudice to the generality of Clause 18.4 (*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 purpose 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 indebtedness; making facilities available to new borrowers; any other variation or extension of the purpose 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.

#### 18.6 **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 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### 18.7 **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 18.

#### 18.8 **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 18:

- (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 18.1 (*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 31 (*Payment mechanics*).

#### 18.9 **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.

#### 18.10 **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.

#### 18.11 **Guarantee limitations – England & Wales**

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 and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Letter applicable to such Additional Guarantor.

#### 18.12 **Guarantee limitations – Switzerland**

- (a) If and to the extent an Obligor incorporated in Switzerland becomes (the "**Swiss Obligor**") liable under this Agreement or any other Finance Document for obligations of any other member of the Group (other than the wholly owned direct or indirect Subsidiaries of such Swiss Obligor) (the "**Restricted Obligations**") and if complying with such obligations would constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*Gewinnausschüttung*) by such Swiss Obligor, a (constructive) repayment of statutory capital reserves (*Rückzahlung der gesetzlichen Kapitalreserve*) or would otherwise be restricted under Swiss law and practice then applicable, such Swiss Obligor's aggregate liability for Restricted Obligations shall not exceed the amount of that Swiss Obligor's freely disposable equity at the time it becomes liable including, without limitation, any statutory reserves which can be transferred into unrestricted, distributable reserves, in accordance with Swiss law (the "**Freely Disposable Amount**").
- (b) This limitation shall only apply to the extent it is a requirement under applicable law at the time the Swiss Obligor is required to perform Restricted Obligations under the Finance Documents. Such limitation shall not free the Swiss Obligor from its obligations in excess of the Freely Disposable Amount, but merely postpone the performance date thereof until such times when the Swiss Obligor has again freely disposable equity.
- (c) If the enforcement of the obligations of the Swiss Obligor under this Agreement or any other Finance Document would be limited due to the effects referred to in this Clause 18.12, the Swiss Obligor shall further, to the extent permitted by applicable law and the Swiss Code of Obligations and upon request by the Agent, (i) write up or sell any of its assets that

are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of sale, however, only if such assets are not necessary for the Swiss Obligor's business (*nicht betriebsnotwendig*) and (ii) reduce its share capital to the minimum allowed under then applicable law, provided that such steps are permitted under the Finance Documents

- (d) The respective Swiss Obligor will cause to be taken all and any action as soon as reasonably possible, including, without limitation, (i) the passing of unanimous shareholders' resolutions to approve any payment or other performance under this Agreement or any other Finance Documents, (ii) the provision of an audited interim balance sheet, (iii) the provision of a determination by the Swiss Obligor of the Freely Disposable Amount based on such audited interim balance sheet, (iv) the provision of a confirmation from the auditors of the Swiss Obligor that a payment of the Swiss Obligor under the Finance Documents in an amount corresponding to the Freely Disposable Amount is in compliance with the provisions of Swiss corporate law which are aimed at protecting the share capital and legal reserves, and (v) the obtaining of any other confirmations which may be required as a matter of Swiss mandatory law in force at the time the Swiss Obligor is required to make a payment or perform other obligations under this Agreement or any other Finance Document, in order to allow a prompt payment in relation to Restricted Obligations with a minimum of limitations.
- (e) If so required under applicable law (including tax treaties) at the time it is required to make a payment under this Agreement or any other Finance Document, the Swiss Obligor:
- (i) shall use its best efforts to ensure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including tax treaties) rather than payment of the tax;
  - (ii) shall deduct the Swiss Withholding Tax at such rate (being 35% on the date hereof) as in force from time to time if the notification procedure pursuant to paragraph (i) above does not apply, or shall deduct the Swiss Withholding Tax at the reduced rate resulting after discharge of part of such tax by notification if the notification procedure pursuant to paragraph (i) applies for a part of the Swiss Withholding Tax only, and shall pay within the time allowed any such taxes deducted to the Swiss Federal Tax Administration; and

- (iii) shall promptly notify the Agent that such notification or, as the case may be, deduction has been made, and provide the Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such taxes deducted have been paid to the Swiss Federal Tax Administration.
- (f) In the case of a deduction of Swiss Withholding Tax, the Swiss Obligor shall use its best efforts to ensure that any person that is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment under this Agreement or any other Finance Document, will, as soon as possible after such deduction:
  - (i) request a refund of the Swiss Withholding Tax under applicable law (including tax treaties); and
  - (ii) pay to the Agent upon receipt any amount so refunded.
- (g) The Agent shall use commercially reasonable endeavors to co-operate with the Swiss Obligor to secure such refund.

To the extent the Swiss Obligor is required to deduct Swiss Withholding Tax pursuant to this Agreement or any other Finance Document, and if the Freely Disposable Amount is not fully utilised, the Swiss Obligor will be required to pay an additional amount so that after making any required deduction of Swiss Withholding Tax the aggregate net amount paid to the Agent is equal to the amount which would have been paid if no deduction of Swiss Withholding Tax had been required, provided that the aggregate amount paid (including the additional amount) shall in any event be limited to the Freely Disposable Amount. If a refund is made to a Finance Party, such Finance Party shall transfer the refund so received to the Swiss Obligor, subject to any right of set-off of such Finance Party pursuant to the Finance Documents.

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

**19. REPRESENTATIONS**

**19.1 General**

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

**19.2 Status**

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (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.

**19.3 Binding obligations**

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Finance 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 Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid.

**19.4 Non-conflict with other obligations**

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

- (a) any law, regulation or governmental or judicial decision applicable to it to an extent or in a manner which would have a Material Adverse Effect;
- (b) its or any of the other Material Companies' constitutional documents; or
- (c) any agreement or instrument binding on it, other than the Existing Syndicated Facilities Agreement and the 'Finance Documents' as defined

under the Existing Syndicated Facilities Agreement, binding upon it to an extent or in a manner which would have a Material Adverse Effect.

#### 19.5 **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 Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents and the Offer 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 Finance Documents to which it is a party and the Offer Documents.

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

- (a) All Authorisations required:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
  - (ii) to make the Finance 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 (or, in each case, will be as and when required).

- (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.

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

- (a) Subject to the Legal Reservations, the choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment 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.

## 19.8 Environmental laws

No Environmental Claim is current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any Material Company which, is reasonably likely to be adversely determined, and, if so determined, would have a Material Adverse Effect.

## 19.9 Deduction of Tax

Subject to Clause 19.26 (*Swiss non-Bank Rules*) and Clause 18.12 (*Guarantee limitations – Switzerland*), it is not required to make any Tax Deduction (as defined in Clause 13.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is:

- (a) a Qualifying Lender:
  - (i) falling within paragraph (d)(i) of the definition of "Qualifying Lender";
  - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (d)(ii) of the definition of "Qualifying Lender"; or
  - (iii) falling within paragraph (e) 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).
- (c) It is not required to deduct any Swiss Withholding Taxes from any payment it may make under any Finance Document, except in case of any payments made towards Restricted Obligations or if the Swiss Non-Bank Rules are breached as a result of:
  - (i) a Lender incorrectly declaring its status as a Qualifying Bank or whether or not it qualifies as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (ii) a Lender ceasing to be a Qualifying Bank or ceasing to qualify as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (iii) a Lender's non-compliance with the assignment, transfer, security over Lenders' rights or exposure transfer restriction in Clause 24 (*Changes to the Lenders*); or

- (iv) any transfers to New Lenders which are not Qualifying Banks after the occurrence of an Event of Default.

#### 19.10 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 23.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 23.8 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a Material Company and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to a Material Company.

#### 19.11 **No filing or stamp taxes**

- (a) Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents be registered, filed, recorded, notarised or enrolled with any court or other authority in those jurisdictions 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 registration of particulars of the Security Documents at Companies House under the Companies Act 2006 and payment of associated fees; and which registrations, filings, Taxes and fees will be made and paid promptly after the date of the relevant Security Document.
- (b) Any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable on any transactions contemplated by or being financed by the Finance Documents has been made.

#### 19.12 **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, or the performance of, or any transaction contemplated by, any Finance Document or Offer Document.
- (b) Other than pursuant to the Existing Syndicated Facilities Agreement and/or the 'Finance Documents' as defined under the Existing Syndicated Facilities Agreement, 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 a 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.

#### 19.13 **No misleading information**

- (a) Any written factual information provided by the Company for the purposes of the Finance Documents was true and accurate in all material respects as at the date at which it was stated to be given.
- (b) Any financial projection or forecast provided by the Company for the purposes of the Finance Documents 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 document containing the projection or forecast) and arrived at after careful consideration.
- (c) The Company is not aware of any event or circumstances that has occurred or arisen and no information of which the Company is aware has been omitted and no such information has been given or withheld that results in the information, opinions, intentions, forecast or projections provided by it for the purposes of the Finance Documents to become untrue or misleading in any material respect.

#### 19.14 **Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its Original Financial Statements fairly present (but with regard to its unconsolidated statutory financial statements, correctly represent) its financial condition and its results of operations (including on a consolidated basis) at the end of, and for, the relevant accounting period.
- (c) 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) since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 20.1 (*Financial statements*):
  - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; 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.

#### 19.15 **Security and Financial Indebtedness**

- (a) No 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.

#### 19.16 **No proceedings**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency 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 which are reasonably expected to be adversely determined and, if so determined, would have a Material Adverse Effect.

#### 19.17 **Anti-Corruption and Anti-Money Laundering**

- (a) The Company has implemented appropriate measures to ensure compliance with any applicable Anti-Money Laundering Regulations and Anti-Corruption Laws by the Group.
- (b) To the best of its knowledge, no proceedings are pending or specifically threatened against the Company and against any other Group Companies for violations of Anti-Money Laundering Regulations and Anti-Corruption Laws applicable to them.

#### 19.18 **Ranking of Security**

Subject to the Legal Reservations and Perfection Requirements, the security conferred by each Security Document constitutes a first priority security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or *pari passu* Security.

#### 19.19 **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.

## 19.20 **Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Transaction Security (subject to, as regards the Target Shares, (i) any liens resulting from the Target Shares being held indirectly, as book-entry securities through the global custody chain until such time as the Target Shares are converted into certificated shares, and (ii) completion of stamping by HMRC of the stock transfer forms to transfer such Target Shares to the Company and updating of the relevant register of members (it being acknowledged that prior to such time, it is the absolute beneficial owner of the Target Shares on and from the Closing Date).

## 19.21 **Group Structure Chart**

The Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions precedent*) is true, complete and accurate in all material respects.

## 19.22 **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 its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

## 19.23 **Distributions and upstreaming of free cash**

No member of the Group has entered into any agreement or arrangement preventing such member of the Group to (now or in the future):

- (a) 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);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of the Company; or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so,

nor will any such obligation arise as a consequence of any member of the Group entering into the Finance Documents.

#### 19.24 **Insurances**

It and each of its Subsidiaries which are Material Companies maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

#### 19.25 **Intellectual Property**

It and each of its Subsidiaries is the sole legal and beneficial owner of or has licensed to it 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.

#### 19.26 **Swiss Non-Bank Rules**

- (a) Each Obligor represents that it is in compliance with the Swiss Non-Bank Rules.
- (b) An Obligor shall not be in breach of its obligations under paragraph (a) above, if the Swiss Non-Bank Rules are breached as a result of:
  - (i) a Lender incorrectly declaring its status as a Qualifying Bank or whether or not it qualifies as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (ii) a Lender ceasing to be a Qualifying Bank or ceasing to qualify as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (iii) a Lender's non-compliance with the assignment, transfer, security over Lenders' rights or exposure transfer restriction in Clause 24 (*Changes to the Lenders*); or
  - (iv) any transfers to New Lenders which are not Qualifying Banks after the occurrence of an Event of Default.
- (c) For the purpose of its compliance with the Swiss Non-Bank Rules under this Clause 19.30, each Borrower shall assume that the number of Lenders under this Agreement which are not Qualifying Banks shall be deemed to be seven (irrespective of whether or not there are, at any time, any such Lenders), provided, for the avoidance of doubt, that, if there are to the knowledge of the respective Borrower more than seven Lenders that are not Qualifying Banks under this Agreement, each Borrower shall take such greater number into account.

## 19.27 **The Offer**

The Offer Documents:

- (a) reflect, or when issued will reflect, all the material terms relating to the Acquisition as at the date of publication; and
- (b) are (or will be when issued) in compliance with the Takeover Code and any other applicable laws and regulations (subject to any waiver or dispensation granted by the Panel or the Court).

## 19.28 **Sanctions**

- (a) Neither the Company nor any of its Subsidiaries or joint ventures, nor, to the best of their knowledge, any of their respective directors or officers:
  - (i) is a Restricted Party;
  - (ii) is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party; or
  - (iii) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.
- (b) The Company has established and maintains policies and procedures designed to fully comply with Sanctions.
- (c) The representations under this Clause 19.28 shall only be made by the Company (also in respect of its Subsidiaries) if and to the extent that making such representation does not result in a violation by the Company of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung-AWV*) and/or any other applicable anti-boycott laws or regulations.
- (d) The representations under this Clause 19.28 shall only apply for the benefit of a Finance Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under) the provision does not result in a violation by that Finance Party of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a

third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung-AWV*) and/or any other applicable anti-boycott laws or regulations.

#### 19.29 Repetition

- (a) All the representations and warranties in this Clause 19 are made by the Company on the date of this Agreement.
- (b) All the Repeating Representations are deemed to be made by each Additional Obligor on the day on which it becomes (or is proposed that it becomes) an Additional Obligor.
- (d) The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the Closing Date, the date of an Extension Notice, the date of each Utilisation Request and the first day of each Interest Period, except that the representations contained in paragraphs (a) to (c) of Clause 19.14 (*Financial statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement.

## 20. INFORMATION UNDERTAKINGS

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

In this Clause 20:

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

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

### 20.1 Financial statements

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

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its financial years:
  - (i) the audited consolidated financial statements for the Group for that financial year; and

- (ii) the audited financial statements of each Borrower and each Material Company for that financial year; and
- (b) as soon as the same are available, but in any event within 30 days after the end of each financial quarter of each of its financial years (or, in relation to the final financial quarter of each of its financial years, within 90 days thereof):
  - (i) the consolidated financial statements of the Group for that financial quarter;
  - (ii) the profit and loss accounts and balance sheets of each Material Company for that financial quarter; and
  - (iii) the consolidated financial reports for each business division (consisting of income statement and balance sheet).

## 20.2 Compliance Certificate

- (a) The Company shall supply to the Agent, with each set of Annual Financial Statements and each set of Quarterly Financial Statements (other than the Quarterly Financial Statements produced in respect of the Testing Date falling on 31 December), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by one director of the Company with sole power of representation or two authorised signatories with joint power of representation (one of which shall, in either case, be the CEO or the CFO of the Group) and, if required to be delivered with the Annual Financial Statements of the Group it shall, if the first Utilisation Date has occurred and the Compliance Certificate is delivered after the period set out in paragraph (a)(i) of Clause 22.27 (*Conditions Subsequent*) has elapsed, shall include a confirmation (based on calculations which are provided in reasonable details) which of its Subsidiaries are Material Companies and that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Guarantors (calculated on an unconsolidated basis and excluding all intra-CHARDONNAY Group items) exceeds 75% of EBITDA of the CHARDONNAY Group.

### 20.3 Requirements as to financial statements

- (a) The Company shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and, in relation to the audited consolidated financial statements for the Group, cashflow statement. In addition the Company shall procure that each set of its Annual Financial Statements shall be audited by the Company's auditors and be accompanied by the relevant auditor statement (e.g. *Revisionsstellenbericht*)
- (b) Each set of financial statements delivered by the Company pursuant to Clause 20.1 (*Financial statements*) (other than under paragraph (b)(ii) of Clause 20.1 (*Financial statements*)) shall be certified by a director of the relevant company as fairly presenting its financial condition as at the date at which those financial statements were drawn up.
- (c) Each set of financial statements delivered by the Company pursuant to Clause 20.1 (*Financial statements*), in the case of its consolidated financial statements, shall be accompanied by a statement by the directors of the Company comparing actual performance, for the period to which the financial statements relate, to:
  - (i) the projected performance for that period set out in the budget; and
  - (ii) the actual performance for the corresponding period in the preceding financial year of the Company.
- (d) The Company shall procure that each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*) is prepared using the Accounting Principles.
- (e) The Company shall authorise its auditors to provide such information and discuss such matters as are requested by any Finance Party (through the Agent) in relation to the auditors' audit of the Group's (or of any Material Company's) annual financial statements as required to be delivered pursuant to paragraph (a) of Clause 20.1 (*Financial statements*).

### 20.4 Year-end

The Company shall procure that the Accounting Reference Date falls on 31 December of each calendar year.

## 20.5 Information: miscellaneous

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

- (a) all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company or any Material Company, the value of which exceeds CHF 500,000;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group, and which is reasonably likely to have a Material Adverse Effect;
- (d) promptly upon becoming aware of the relevant claim, details of any disposal or insurance claim which will require a prepayment under Clause 8.2 (*Change of Control*) or Clause 8.3 (*Mandatory prepayment – Relevant Proceeds*);
- (e) promptly, such information as the Security Agent may reasonably require about the Security Assets and compliance of the Obligors with the terms of any Security Document;
- (f) promptly, such further information regarding the financial condition, business, assets and operations of 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 and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation) as any Finance Party (through the Agent) may reasonably request;
- (g) promptly, information as to any change in the ownership of any member of the Group, together with an updated Group Structure Chart reflecting any such change; and
- (h) promptly upon becoming aware of any judicial or regulatory proceedings alleging a violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws commenced, or notified in writing by a relevant authority in an applicable jurisdiction, by any member of the

Group or any board member or other officer of any member of the Group, information regarding such proceedings (in reasonable detail) subject to any restrictions on such disclosure due to applicable law or regulation which the Company (acting reasonably and in good faith) consider apply.

## 20.6 **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 Company shall supply to the Agent a certificate signed by two of its directors or senior officers (or one director or senior officer who, in either case, has sole power to represent the Company) on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## 20.7 **Direct electronic delivery by Company**

The Company may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 33.6 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

## 20.8 **"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) after the date of this Agreement;
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly

upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (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 Company shall, by not less than 15 (fifteen) 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 Guarantor pursuant to Clause 26.3 (*Additional Guarantors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

## 20.9 **Acquisition related information**

- (a) The Company shall provide the Agent (in sufficient copies for all the Lenders, if the Agent so requests) with such information as it may

reasonably request in relation to the status and progress of the Acquisition and shall use reasonable efforts to provide the Agent with such information in relation to the Acquisition as the Agent may reasonably request in writing (including, without limitation, the current level of acceptances in respect of any Takeover Offer) and shall notify the Agent promptly after becoming aware that:

- (i) each Offer Document has been published and/or sent to the Target Shareholders;
  - (ii) if the Acquisition is effected by means of a Scheme, the Scheme Court Order has been issued, and a copy has been delivered to the Registrar; or
  - (iii) if the Acquisition is effected by means of a Takeover Offer:
    - (A) the Takeover Offer has become, or been declared, unconditional in all respects; and
    - (B) the Compulsory Acquisition Process has been completed.
- (b) The Company shall deliver to the Agent copies of the Press Release, each Conversion Press Release and any other Offer Document (including any related material documents, certificates and notices).
- (c) The Company shall promptly and in any event not later than within one Business Day of such event, notify the Agent if the Scheme or Takeover Offer (as applicable) lapses or is withdrawn.
- (d) Notwithstanding the foregoing, nothing in this Clause 20.9 shall require the Company to deliver to the Agent any information (i) in respect of which disclosure to the Agent or any Lender (or their respective representatives) is prohibited by any applicable law, regulation, stock exchange requirement or duty of confidentiality or would trigger an obligation for ad hoc disclosure, or (ii) in respect of which to do so would result in a breach of any agreement or arrangement with governmental authorities.

## **21. FINANCIAL COVENANTS**

### **21.1 Financial Definitions**

**"Adjusted EBITDA"** means EBITDA as adjusted by paragraph (d) of Clause 21.3 (*Financial Testing*).

**"Borrowings"** means, at any time, the aggregate indebtedness of members of the Group outstanding towards credit institutions *plus*:

- (a) liabilities resulting from any Capital Markets Issue;
- (b) any liabilities to shareholders, subordinated loans received from third parties, silent participations, liabilities to right-holders in any profit sharing arrangement and other mezzanine capital;
- (c) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (d) any Finance Lease;
- (e) other interest-bearing balance sheet liabilities; and
- (f) liabilities under any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account).

**"Cash or Cash Equivalents"** means, at any time, cash and cash equivalents (i.e. cash on hand, cheques, balances with credit institutions and securities that can be liquidated in short term).

**"EBITDA"** means, without double counting, in relation to any Relevant Period, the total consolidated "net profit" of the Group (as set out in the consolidated financial statements of the Company) for that Relevant Period before taking into account:

- (a) financial expenses and financial income;
- (b) taxes on income and other taxes (including, for the avoidance of doubt any deferred taxes) on profits, gains or income paid or payable by the Group and any amount of any rebate or credit in respect of Tax on profits, gains or income received or receivable by the Group;
- (c) all amounts provided for depreciation, amortisation and impairment; and
- (d) any extraordinary exceptional or non-recurring costs, losses or charges or gains or income (including as a result of accounting effects from the first accounting of acquired businesses) ("**Exceptional Items**"), provided that the amount of Exceptional Items may not exceed 15 per cent. of

Adjusted EBITDA (determined before taking into account Exceptional Items).

**"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) **excluding** any upfront fees or costs;
- (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;
- (d) **excluding** any Acquisition Costs; and
- (e) **excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes

so that no amount shall be added (or deducted) more than once.

**"Interest Cover"** means the ratio of EBITDA to Net Finance Charges in respect of any Relevant Period.

**"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.

**"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 deducting Cash and Cash Equivalents.

**"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 member of the Group (other than by another member of the Group) on any Cash or Cash Equivalents.

**"Net Leverage Ratio"** means, in respect of any Relevant Period, the ratio of Net Debt to EBITDA.

**"Relevant Period"** means each period of twelve months ending on a Testing Date.

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

## 21.2 **Financial Condition**

The Company shall ensure that:

- (a) *Net Leverage Ratio*: The Net Leverage Ratio in respect of any Relevant Period ending on or after the first Testing Date after the first Utilisation Date shall not:
  - (i) for any Relevant Period ending prior to the first Utilisation Date under Facility A, exceed 3.00:1.00; and
  - (ii) thereafter, exceed 4.00:1.00.
- (b) *Interest Cover*: Interest Cover in respect of any Relevant Period shall not be less than 4.00:1.00.

## 21.3 **Financial Testing**

- (a) The financial covenants set out in Clause 21.2 (*Financial Condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the consolidated financial statements delivered pursuant to paragraphs (a) and (b) of Clause 20.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 20.2 (*Compliance Certificate*).
- (b) All calculations will be as determined in good faith by a responsible financial or chief accounting officer of the Group.
- (c) In calculating any Financial Covenant, no item shall be included or excluded more than once where to do so would result in double counting of that item.
- (d) In respect of any Testing Date:
  - (i) falling less than 12 Months after the acquisition of a member of the Group or a business or asset (including, for the avoidance of doubt, the Acquisition), the EBITDA of a member of the Group or business or assets acquired during that 12 Month period for that part of the 12 Months when it was not a member of the Group and/or the business or assets were not owned by a member of the Group shall be added to EBITDA (including, for the avoidance of doubt, if the EBITDA of the acquired business or asset is negative, reducing EBITDA by the amount

equal to the negative EBITDA directly attributable to such business or asset); and

(ii) the EBITDA attributable to any member of the Group or to any business or assets sold during the 12 Month period prior to that Testing Date shall be excluded (including, for the avoidance of doubt, if the EBITDA of the sold business or asset is negative, increasing EBITDA by the amount equal to the negative EBITDA directly attributable to such business or asset).

## **22. GENERAL UNDERTAKINGS**

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **22.1 Authorisations**

Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of any Relevant Jurisdiction to:

- (a) enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; or
- (b) own its own assets and carry on its business as it is being conducted.

### **22.2 Compliance with laws**

Each Obligor shall (and the Company 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.

### **22.3 Negative pledge**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) Paragraph (a) above does not apply to any Security which is:
  - (i) Permitted Security; or
  - (ii) a Permitted Transaction.

## 22.4 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of all or any part of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal of any asset subject to the floating charge created under any Security Document which is:
  - (i) a Permitted Disposal; or
  - (ii) a Permitted Transaction.

## 22.5 Arm's length basis

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any transaction with any person that is not a member of the Group except on arm's length terms and for full market value.

## 22.6 Loans or credit

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness extended to any person not being a member of the Group.
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Loan; or
  - (ii) a Permitted Transaction.

## 22.7 No guarantees or indemnities

- (a) No Obligor shall (and the Company 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 not being a member of the Group.
- (b) Paragraph (a) above does not apply to a guarantee which is:
  - (i) a Permitted Guarantee; or
  - (ii) a Permitted Transaction.

## 22.8 Financial Indebtedness

- (a) No Obligor shall (and the Company 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 Permitted Financial Indebtedness,

## 22.9 Merger

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger or merger (each a "**Merger**").
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Transaction;
  - (ii) any sale, lease, transfer or other disposal permitted pursuant to Clause 22.4 (*Disposals*); or
  - (iii) where the Merger is between or solely involves members of the Group, provided that, if the Merger involves an Obligor, the surviving entity is an Obligor, and if the Merger involves the Company, the surviving entity is the Company.

## 22.10 Acquisitions

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them).
- (b) Paragraph **Error! Reference source not found.** above does not apply to an acquisition of a company or shares or securities or a business or undertaking (or, in each case, any interest in any of them) which is:
  - (i) a Permitted Acquisition; or
  - (ii) a Permitted Transaction.
- (c) The undertakings under this Clause 22.10 (including by way of application of the definition of "Permitted Acquisition") shall only apply to any Obligor or any of its Subsidiaries if and to the extent that agreeing to or complying with such undertaking does not result in a violation by such Obligor (or other member of the Group) of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended

from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung* - AWW) and/or any other applicable anti-boycott laws or regulations.

- (d) The undertakings under this Clause 22.10 (including by way of application of the definition of "Permitted Acquisition") shall only apply for the benefit of a Finance Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under) the provision does not result in a violation by that Finance Party of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung* - AWW) and/or any other applicable anti-boycott laws or regulations.

#### 22.11 **Joint Ventures**

- (a) Except as permitted under paragraph (b) below, no Obligor shall:
  - (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) does not apply to any Permitted Joint Venture.
- (c) The undertakings under this Clause 22.11 (including by way of application of the definition of "Permitted Joint Venture") shall only apply to any Obligor or any of its Subsidiaries if and to the extent that agreeing to or complying with such undertaking does not result in a violation by such Obligor (or other member of the Group) of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung* - AWW) and/or any other applicable anti-boycott laws or regulations.

- (d) The undertakings under this Clause 22.11 (including by way of application of the definition of "Permitted Joint Venture") shall only apply for the benefit of a Finance Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under) the provision does not result in a violation by that Finance Party of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung - AWW*) and/or any other applicable anti-boycott laws or regulations.

#### **22.12 Environmental compliance**

Each Obligor shall (and the Company shall ensure that each member of the Group will) implement procedures to monitor compliance with and to prevent liability under any Environmental Law where a failure to implement such procedures would be reasonably likely to have a Material Adverse Effect.

#### **22.13 Environmental Claims**

Each Obligor shall (through the Company), 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.

#### **22.14 Anti-corruption laws and anti-money laundering laws**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would any Anti-Corruption Laws or Anti-Money Laundering Laws.
- (b) Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain policies and procedures designed to promote

and achieve compliance with applicable Anti-Corruption Laws and Anti-Money Laundering Laws.

#### 22.15 **Insurance**

Each Obligor shall (and the Company shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or a substantially similar business.

#### 22.16 **Change of business**

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

#### 22.17 **People with significant control regime**

Each Obligor shall:

- (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.

#### 22.18 **Intellectual Property**

Each Obligor shall (and the Company shall procure that each other member of the Group will):

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) 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;
- (d) not use the Intellectual Property to be used in a way or take any step or omit to take any step in respect of the 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 the Intellectual Property; and

(e) not discontinue the use of the Intellectual Property,

in each case where a failure to do so would be reasonably likely to have a Material Adverse Effect.

#### 22.19 **Financial assistance**

Each Obligor shall (and the Company shall procure that 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 Security Documents and the payment of amounts due under this Agreement.

#### 22.20 **Guarantors**

The Company shall ensure that, at all times after the date falling 45 (forty-five) after the first Utilisation Date, the aggregate of the EBITDA 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 75% of the aggregate EBITDA of all members of the CHARDONNAY Group, to be determined by reference to the most recent Annual Financial Statements of the Group (or, if no Annual Financial Statements have been delivered under this Agreement at that time, the Original Financial Statements of the Group).

#### 22.21 **Distributions and upstreaming of free cash**

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any agreement or arrangement preventing such member of the Group to:

- (a) 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);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of the Company; or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so,

in each case within the Group.

## 22.22 Derivatives

No Obligor shall (and the Company will procure that no other member of the Group will) enter into any Treasury Transaction, other than those which constitute Permitted Financial Indebtedness.

## 22.23 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.

## 22.24 The Offer

- (a) The Company shall issue the Press Release within 2 Business Days of the date of this Agreement in the form agreed with the Arranger or with such amendments that would otherwise be permitted under paragraph (f) below.
- (b) The Company shall not, and shall procure that none of its Controlled Concert Parties will, take any action or omit to take any action which will result in the Company becoming obliged to make a mandatory offer under Rule 9 of the Takeover Code.
- (c) The Company shall, where any announcement, press release or publicity material refers to the Agent or any other Finance Party or the Facilities, not release or permit such announcement, press release or publicity material to be released until the Agent has had reasonable opportunity to review and comment on such references (acting on the instructions of all Lenders, acting reasonably and without undue delay) and the Company has reflected such comments to the extent reasonably practicable.
- (d) If the Acquisition proceeds by way of a Takeover Offer, upon becoming entitled to do so, the Company shall as soon as reasonably practicable send Compulsory Acquisition Notices to non-accepting Target Shareholders and shall as soon as reasonably practicable complete the Compulsory Acquisition Procedure.
- (e) Subject to the Companies Act and any applicable listing rules, the Company shall procure that the Target Shares are removed from the equity shares (commercial companies) category of the official list of the UK Financial Conduct Authority, and that admission to trading in the

shares in Target on the main market for listed securities of the London Stock Exchange is cancelled:

- (i) if the Acquisition proceeds by way of a Scheme, as soon as reasonably practicable and in any event, by no later than five Business Days after the Scheme Effective Date; and
- (ii) if the Acquisition proceeds by way of a Takeover Offer, as soon as reasonably practicable after the later of the date the Takeover Offer becomes or is declared unconditional and the date on which the Company acquires beneficial ownership in the Target Shares representing not less than 75 per cent. of the voting rights of the Target Shares which are then exercisable at a general meeting of the Target and, in any case, by no later than 25 Business Days after such date,

and the Company shall procure that the Target is re-registered as a private limited company as soon as reasonably practicable after such delisting.

- (f) The Company shall not waive, amend or treat as satisfied (including, without limitation, in connection with any Switch) any term or condition relating to the Acquisition in a manner that, or to an extent as, would be materially prejudicial to the interests of the Lenders (taken as a whole). The foregoing restriction shall not apply to any such amendment or waiver:
  - (i) made with the consent of all the Lenders (such consent not to be unreasonably withheld, delayed or conditioned);
  - (ii) required by the Panel or the Court, or reasonably determined by the Company (acting on the advice of its legal advisers) as being necessary to comply with the requirements or requests of the Takeover Code, the Takeover Panel or the Court or any other applicable law, regulation or regulatory body (including, without limitation, in connection with any Switch);
  - (iii) extending the period in which holders of the Target Shares may accept the terms of the Scheme or Takeover Offer, including: (i) by way of an extension to any date for any meeting or court hearing, and/or (ii) by reason of the adjournment of any meeting or court hearing, in each case in connection with the Acquisition but, for the avoidance of doubt, without prejudice to the length of the Certain Funds Period or to the requirements of clause 4.4 (Utilisations during the Certain Funds Period) or paragraph (h) below;

(iv) to the extent that it is required (in the Company's reasonable opinion, having taken professional advice) to facilitate a Switch, **provided that** (A) any Switch from a Scheme to a Takeover Offer includes an Acceptance Condition which states that the Takeover Offer is conditional upon the Company having acquired or agreed to acquire (either pursuant to the Takeover Offer or otherwise) not less than 75 per cent. of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target (excluding any shares held in treasury) (the "**Minimum Acceptance Condition**"); and (B) the terms and conditions of the new Scheme or Takeover Offer following the Switch, as set out in the relevant Conversion Press Release and any subsequent Offer Document, are substantially similar to the terms of and conditions of the original Scheme as set out in the Press Release (other than, on a Switch to a Takeover Offer, in relation to the Minimum Acceptance Condition and any other amendments as are necessary to reflect the change in method of effecting the Acquisition following a Switch, and any changes which would otherwise be permitted under this Agreement); or

(v) to the extent that it relates to a condition to the Acquisition which the Company reasonably considers, having taken professional advice, it would not be entitled in accordance with Rule 13.5(a) of the Takeover Code to invoke so as to cause the Acquisition not to proceed, to lapse or to be withdrawn provided that the other conditions to the Acquisition have been, or will contemporaneously be satisfied or waived.

Notwithstanding the foregoing, any waiver, amendment or confirmation that a term or condition is satisfied shall be considered to be materially prejudicial to the interests of the Lenders (taken as a whole) and may only be made with the consent of all the Lenders if it relates to an increase to the amount of cash consideration payable by the Company to the holders of Target Shares pursuant to the Offer for each Target Share except to the extent funded from the issuance of new equity instruments by the Company.

- (g) The Company shall consult with the Agent in relation to any proposed Switch.
- (h) If the Acquisition is effected by way of a Takeover Offer, the Company shall not, without the consent of the Lenders (such consent not to be unreasonably withheld, delayed or conditioned):

- (i) specify an Acceptance Condition of less than the Minimum Acceptance Condition or otherwise amend or reduce the Acceptance Condition such that it falls to a level which is below the Minimum Acceptance Condition; or
  - (ii) declare the Takeover Offer unconditional until the Company has acquired or unconditionally contracted to acquire not less than, 75 per cent. of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target (excluding any shares held in treasury).
- (i) The Company shall ensure that the terms and conditions of the Offer Documents (other than those documents applicable to any Compulsory Acquisition Process) are not materially inconsistent with the terms and conditions of the Scheme as contained in the Press Release (as applicable) or, in the event of a Switch to a Takeover Offer, the Takeover Offer as contained in the relevant Conversion Press Release, save for any amendments: (i) required by the Panel or any regulatory or governmental authority or as required in order to satisfy the terms of the Takeover Code; or (ii) which would otherwise be permitted under this Agreement.
- (j) The Company shall not take any action and will procure that none of its Controlled Concert Parties take any action which would require the Company to make the Offer wholly in cash or to make a full cash alternative available to holders of Target Shares.
- (k) The Company shall comply in all respects with the Takeover Code and in all material respects with any other applicable laws or regulations relating to the Acquisition (subject to any consent, waiver or dispensations granted by the Panel or any other applicable regulator or the requirements of the Court), unless any such non-compliance could not reasonably be expected to be materially adverse to the Lenders (taken as a whole).
- (l) For the avoidance of doubt, subject to the terms of this Agreement, nothing shall prevent the Company being entitled to Switch.

#### 22.25 **Compliance with Swiss Non-Bank Rules**

- (a) Each Obligor shall be in compliance with the Swiss Non-Bank Rules.
- (b) An Obligor shall not be in breach of its obligations under paragraph (a) above, if the Swiss Non-Bank Rules are breached as a result of:

- (i) a Lender incorrectly declaring its status as a Qualifying Bank or whether or not it qualifies as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (ii) a Lender ceasing to be a Qualifying Bank or ceasing to qualify as one Lender for purposes of the Swiss Non-Bank Rules; or
  - (iii) a Lender's non-compliance with the assignment, transfer, security over Lenders' rights or exposure transfer restriction in Clause 24 (*Changes to the Lenders*); or
  - (iv) any transfers to New Lenders which are not Qualifying Banks after the occurrence of an Event of Default.
- (c) For the purpose of its compliance with the Swiss Non-Bank Rules under this Clause 22.25, each Borrower shall assume that the number of Lenders under this Agreement which are not Qualifying Banks shall be deemed to be seven (irrespective of whether or not there are, at any time, any such Lenders), provided, for the avoidance of doubt, that, if there are to the knowledge of the respective Borrower more than seven Lenders that are not Qualifying Banks under this Agreement, each Borrower shall take such greater number into account.

#### 22.26 Sanctions

- (a) No Borrower shall (i) contribute or otherwise make available all or any part of the proceeds of the Facilities, directly or indirectly to, or for the benefit of, any person or entity (whether or not related to any member of the Group) for the purpose of financing the activities of, or business or transactions with, any person identified on any Sanctions List or in relation to a Sanctioned Country.
- (b) The Company will not fund any part of any payment or repayment in connection with this agreement out of proceeds derived in whole or in part from activity that is or would cause a breach of any Sanctions.
- (c) The undertakings under this Clause 22.26 shall only apply to the to any Obligor or any of its Subsidiaries if and to the extent that agreeing to or complying with such undertaking does not result in a violation by such Obligor (or other member of the Group) of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade

Regulation (*Außenwirtschaftsverordnung* - *AWV*) and/or any other applicable anti-boycott laws or regulations.

- (d) The undertakings under this Clause 22.26 shall only apply for the benefit of a Finance Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under) the provision does not result in a violation by that Finance Party of or conflict with the Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended from time to time) protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung* - *AWV*) and/or any other applicable anti-boycott laws or regulations.

## 22.27 **Conditions subsequent**

- (a) The Company shall:
- (i) procure that, by no later than the day falling 45 (forty-five) days after the first Utilisation Date, each of the Initial Material Companies and additional members of the Group required to satisfy the test under Clause 22.20 (*Guarantors*) accede as an Additional Guarantor in accordance with Clause 26.3 (*Additional Guarantors*);
  - (ii) by no later than the day falling 45 (forty-five) days after the first Utilisation Date under Facility A:
    - A. grant Transaction Security in the form of a first fixed charge over the Target Shares owned by a member of the Group with all relevant representations in respect of legal ownership of the Target Shares in the relevant Transaction Security Document qualified in respect of the requirement for completion of stamping by HMRC of the stock transfer forms to transfer such Target Shares to the Company and updating of the relevant register of members, and otherwise in form and substance satisfactory to the Security Agent (acting reasonably); and
    - B. procure the delivery of market standard enforceability and capacity legal opinions (each in form and substance satisfactory to the Lenders (acting reasonably)) in relation to the Transaction Security over the Target Shares; and

- (iii) procure that, by no later than the day falling 10 (ten) days after the date on which the Target is re-registered as a private company in accordance with paragraph (e) of Clause 22.24 (*The Offer*), the Target accedes as Additional Guarantor in accordance with Clause 26.3 (*Additional Guarantors*).
- (b) Each Additional Guarantor must use all reasonable endeavours lawfully available to avoid or mitigate the constraints on the provision of the guarantee and indemnity set out in this Agreement.

## **23. EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clause 23 is an Event of Default (save for Clause 23.18 (*Acceleration*) and Clause 23.19 (*Clean-up Period*)).

### **23.1 Non-payment**

An Obligor (including, for the avoidance of doubt, any Ancillary Borrower) does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within 5 (five) Business Days of its due date.

### **23.2 Financial covenants**

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

### **23.3 Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) and Clause 23.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 30 (thirty) days of the earlier of (A) the Agent giving notice to the Company and (B) the Company becoming aware of the failure to comply.

#### 23.4 **Misrepresentation**

- (a) 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 (including, for the avoidance of doubt, for the purposes of any Finance Party's decision to participate in the Facilities) is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default will occur under paragraph (a) above if the facts or circumstances giving rise to that misrepresentation are capable of remedy and are remedied within 30 (thirty) days of the earlier of (i) any Obligor or the Company becoming aware of such misrepresentation and (ii) the giving of notice by the Agent to the Company or any Obligor in respect of such misrepresentation.

#### 23.5 **Cross default**

- (a) Any Financial Indebtedness of any Material Company is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Material Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Material Company is cancelled or suspended by a creditor of such Material Company as a result of an event of default (however described).
- (d) Any creditor of any Material Company becomes entitled to declare any Financial Indebtedness of any Material Company due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than CHF 2,000,000 (or its equivalent in any other currency or currencies) or to the extent that the relevant Financial Indebtedness is incurred under the Existing Syndicated Facilities Agreement.

#### 23.6 **Insolvency**

- (a) A Material Company:

- (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 any 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) Any Material Company incorporated in Switzerland is over-indebted (*überschuldet*) within the meaning of article 725b of the Swiss Code of Obligations, unless creditors of such Material Company have subordinated their claims in accordance with article 725b of the Swiss Code of Obligations (*Rangrücktritt*) in an amount sufficient to eliminate the over-indebtedness.
- (c) A moratorium is declared in respect of any indebtedness of any Material Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

### 23.7 **Insolvency proceedings**

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

- (a) 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 Material Company;
- (b) a composition, compromise, assignment or arrangement with any creditor of any Material Company to solve actual or anticipated financial difficulties;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Material Company or any of its assets (other than a wholly insubstantial part thereof); or

- (d) enforcement of any Security over any assets of any Material Company with a value in excess of EUR 1,000,000 which is not discharged within 10 (ten) Business Days,

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

This Clause 23.7 shall not apply to:

- (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 20 (twenty) Business Days of commencement; or
- (ii) any step or procedure contemplated by paragraph (c) of the definition of "Permitted Transaction".

### **23.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or analogous process in any jurisdiction affects any asset or assets of a Material Company and is not discharged within 20 (twenty) Business Days.

### **23.9 Change of ownership**

- (a) After the Closing Date, an Obligor (other than the Company) ceases to be a wholly-owned Subsidiary of the Company; 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.

### **23.10 Unlawfulness and invalidity**

- (a) It becomes unlawful for an Obligor (including, for the avoidance of doubt, any Ancillary Borrower) to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective.
- (b) Any obligation or obligations of any Obligor (including, for the avoidance of doubt, any Ancillary Borrower) under any Finance Document 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 Finance Parties under the Finance Documents.

- (c) Subject to Reservations, any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid and binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

### **23.11 Repudiation and rescission of agreements**

An Obligor (including, for the avoidance of doubt, any Ancillary Borrower) (or 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.

### **23.12 Cessation of business**

Any Material Company or the AS Division or the EMS Division suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or is liquidated (except as a result of a Permitted Disposal or a Permitted Transaction).

### **23.13 Audit qualification**

The auditors of the Company qualify the consolidated or unconsolidated annual financial statements of the Company in any respect which, in the determination of the Agent (acting on the instructions of the Majority Lenders, acting reasonably), raises doubts as to the Company's ability to perform its obligations under the Finance Documents (other than any obligations to provide unqualified audited financial statements).

### **23.14 Expropriation**

The authority or ability of any Material Company 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 such Material Company or any of its assets in a way which has or would reasonably be expected to have a Material Adverse Effect, taking into account any compensation on termination.

### **23.15 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.

#### 23.16 **Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

#### 23.17 **Distributions**

The Company:

- (a) declares, makes or pays 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);
- (b) repays or distributes any dividend or share premium reserve;
- (c) pays or allows any member of the Group to pay any management, advisory or other fee to or to the order of the shareholders of the Company; or
- (d) redeems, repurchases, defeases, retires or repays any of its share capital or resolves to do so,

except for a Permitted Distribution

#### 23.18 **Acceleration**

Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*), on and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Company:
  - (i) cancel each Available Commitment of each Lender and/or each Ancillary Commitment of each Ancillary Lender at which time each such Available Commitment and/or Ancillary Commitment shall immediately be cancelled and each Facility shall immediately cease to be available for further utilisation; and/or
  - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

- (iii) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
  - (iv) 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
  - (v) 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.

#### 23.19 **Clean-Up Period**

- (a) Notwithstanding any other provision of any Finance Document:
- (i) any breach of a Clean-Up Representation or a Clean-Up Undertaking; or
  - (ii) any Event of Default constituting a Clean-Up Default,
- which occurs during the 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:
- (iii) it would have been (if it were not for this Clause 23.19) a breach of representation or warranty, a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group):
  - (iv) it is capable of remedy and reasonable steps are being taken to remedy it;
  - (v) the circumstances giving rise to it have not been procured by or approved by the Company; and
  - (vi) it is not reasonably likely to have a Material Adverse Effect.

- (b) If the relevant circumstances are continuing on or after the end of the 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

### 24. CHANGES TO THE LENDERS

#### 24.1 Assignments and transfers by the Lenders

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

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

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

#### 24.2 Company consent

- (a) The consent of the Company is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of any Lender, provided that such Affiliate is a Qualifying Bank (but if to an Affiliate, provided that where such assignment or transfer occurs prior to the end of the applicable Availability Period, the transferring Lender shall fund the assigned or transferred Commitments in respect of any related Loan on the applicable Utilisation Date if any such assignee or transferee has failed to so fund); or
  - (ii) made at a time when:
    - (A) during the Certain Funds Period, a Major Default is continuing; or
    - (B) at any time thereafter, an Event of Default is continuing.
- (b) During the Certain Funds Period, the consent of the Company to an assignment or transfer shall be at its sole and absolute discretion. On and following the expiry of the Certain Funds Period, the consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed.
- (c) On and following the expiry of the Certain Funds Period, the Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.

### 24.3 Other conditions of assignment or transfer

- (a) An assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and
  - (ii) 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.
- (b) A transfer will only be effective if the procedure set out in Clause 24.6 (*Procedure for transfer*) is complied with.
- (c) 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 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),  
  
then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply:
  - (iii) in respect of an assignment or transfer made in the circumstances set out in paragraph (a)(ii) of Clause 24.2 (*Company consent*); or
  - (iv) in relation to Clause 13.2 (*Tax gross-up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 13.2 (*Tax gross-up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.

- (d) 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.

#### 24.4 **Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of GBP 4,000.

#### 24.5 **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 Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance 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 in connection with any Finance Document; 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 24; 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 Finance Documents or otherwise.

#### 24.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (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 24.10 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (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 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 New Lender, the other Lenders and any relevant Ancillary Lender shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, 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".

#### 24.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (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 24.10 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and

(iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this Clause 24.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 24.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 24.2 (*Company consent*) and Clause 24.3 (*Other conditions of assignment or transfer*).

#### 24.8 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company**

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

#### 24.9 **Security over Lenders' rights**

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

- (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;
- (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; or

(iii) be made if, as a result of such charge, assignment or Security, the Swiss Non-Bank Rules would no longer be complied with, and further provided that any such charge, assignment, or other Security shall provide that, upon any enforcement of such charge, assignment or Security, and resulting in any assignment, transfer or sub-participation of any such rights under the Finance Documents shall be made in accordance with, paragraph (a) of Clause 24.2 (*Company consent*).

#### 24.10 **Pro rata interest settlement**

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 24.6 (*Procedure for transfer*) or any assignment pursuant to Clause 24.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
- (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; 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 to 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 24.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 24.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 24.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been

obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

#### 24.11 **Exposure transfers (including sub-participations)**

- (a) Other than permitted transfers under Clause 24.2 (*Company consent*), no Lender shall enter into any arrangement with another person under which such Lender substantially transfers its exposure under this Agreement to that other person, unless under such arrangement throughout the life of such arrangement:
- (i) the relationship between that Lender and that other person is that of a debtor and creditor (including in the bankruptcy or similar event of the Lender or an Obligor);
  - (ii) the other person will have no proprietary interest in the benefit of this Agreement or in any monies received by the Lender under or in relation to this Agreement; and
  - (iii) the other person will under no circumstances:
    - (A) be subrogated to, or substituted in respect of, the Lender's claims under this Agreement; and
    - (B) have otherwise any contractual relationship with, or rights against, the Obligor under or in relation to this Agreement,
- provided that any sub-participation arrangement entered into by any Lender by reference to this Agreement shall not qualify as such arrangement for the purpose of this Clause 24.11 (*Exposure transfers (including sub-participations)*) (i) if the relevant sub-participation arrangement does not have any of the effects set out in any of paragraphs (a) to (c) above before the occurrence of an Event of Default or (ii) while an Event of Default is continuing.
- (b) During the Certain Funds Period, a Lender which has entered into a sub-participation arrangement shall remain liable for funding its participation in a Loan on the applicable Utilisation Date in accordance with the other provisions under this Agreement notwithstanding any provision to the contrary under the relevant sub-participation agreement and/or if the relevant sub-participant has failed to fund the relevant Lender.

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

The Company may not, and must procure that each other member of the Group does not, enter into any Debt Purchase Transaction or beneficially own all or

any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

## **26. CHANGES TO THE OBLIGORS**

### **26.1 Assignments and transfer by Obligors**

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

### **26.2 Additional Borrower**

- (a) Subject to compliance with the provisions of Clause 20.8 ("*Know your customer*" checks), the Target shall become an Additional Borrower if:
  - (i) the Company delivers to the Agent a duly completed and executed Accession Letter;
  - (ii) the Company confirms that no Major Default (or, in case the Target accedes after Facility B has been utilised, no Default) is continuing or would occur as a result of the Target becoming an Additional Borrower; and
  - (iii) the Agent has received all of the documents and other evidence listed in Part V of Schedule 2 (*Conditions precedent*), each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part V 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.
- (d) For the avoidance of doubt, no person other than the Target may become an Additional Borrower.

### 26.3 **Additional Guarantors**

- (a) Subject to compliance with the provisions of Clause 20.8 ("*Know your customer*" checks), the Company may request that any of its Subsidiaries become an Additional Guarantor.
- (b) A member of the Group shall become an Additional Guarantor if:
  - (i) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed Accession Letter; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (c) The Agent shall notify the Company promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent*).
- (d) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives 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 damages, costs or losses whatsoever as a result of giving any such notification.

### 26.4 **Repetition of Representations**

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

## SECTION 10 THE FINANCE PARTIES

### 27. ROLE OF THE AGENT, THE SECURITY AGENT AND THE ARRANGERS

#### 27.1 Appointment of the Agent and the Security Agent

- (a) Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (c) Each of the Arrangers and the Lenders authorises the Agent and the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent and the Security Agent (as applicable) under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (d) Each of the Arranger and the Lenders hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which cannot grant such exemption shall notify the Agent accordingly.
- (e) In relation to each of the Swiss law governed Security Documents pursuant to which security of an accessory (*akzessorische*) nature is granted (each a "**Swiss Accessory Security Document**") each present and future Secured Party hereby appoints and authorises the Security Agent to do all acts in the name and for the account of such Secured Party as its direct representative (*direkter Stellvertreter*), including, without limitation, (i) to accept and execute and hold, administer and, if necessary, enforce the security granted under any of the Swiss Accessory Security Documents, (ii) to agree to amendments, restatements and other alterations of the Swiss Accessory Security Documents, (iii) to effect any release of the security under, and the termination of, any Swiss Accessory Security Document, and (iv) to exercise such other rights powers, authorities and discretions granted to the Security Agent hereunder or under the relevant Swiss Accessory Security Document.

## 27.2 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

## 27.3 Instructions

- (a) Each of the Agent and the Security 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 or Security Agent (as applicable) in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).
- (b) Each of the Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent or the Security Agent (as applicable) 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 or the Security Agent (as applicable) by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;

- (ii) where a Finance Document requires the Agent or the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Agent's or the Security Agent's own position in its personal capacity as opposed to its role of Agent or Security Agent for the relevant Finance Parties or Secured Parties (as applicable) including, without limitation, Clause 27.6 (*No fiduciary duties*) to Clause 27.11 (*Exclusion of liability*), Clause 27.14 (*Confidentiality*) to Clause 27.22 (*Custodians and nominees*) and Clause 27.25 (*Acceptance of title*) to Clause 27.28 (*Disapplication of Trustee Acts*);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 28.1 (*Order of application*);
    - (B) Clause 28.2 (*Prospective liabilities*); and
    - (C) Clause 28.5 (*Permitted deductions*).
- (e) If giving effect to instructions given by the Majority Lenders would (in the Agent's or (as applicable) the Security Agent's opinion) have an effect equivalent to an amendment or waiver referred to in Clause 37 (*Amendments and waivers*), the Agent or (as applicable) the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Agent or the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,the Agent or the Security Agent shall do so having regard to the interests of (in the case of the Agent) all the Finance Parties and (in the case of the Security Agent) all the Secured Parties.
- (g) The Agent may or the Security Agent (as applicable) 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.

- (h) Without prejudice to the remainder of this Clause 27.3(*Instructions*), in the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) the Lenders and (in the case of the Security Agent) the Secured Parties.
- (i) Neither the Agent nor the Security Agent is 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 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

#### 27.4 **Duties of the Agent and Security Agent**

- (a) The Agent's and the Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or the Security Agent (as applicable) for that Party by any other Party.
- (c) Without prejudice to Clause 24.8 (*Copy of Transfer Certificate Assignment Agreement or Increase Confirmation to Company*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent or the Security 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) Each of the Agent and the Security 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).

#### 27.5 **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.

#### 27.6 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes:
  - (i) the Agent, the Arranger or any Ancillary Lender as a trustee or fiduciary of any other person; or
  - (ii) the Security Agent as an agent, trustee or fiduciary of any Obligor.
- (b) None of the Agent, the Security Agent or the Arranger shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party for any sum or the profit element of any sum received by it for its own account.

#### 27.7 **Business with the Group**

The Agent, the Security Agent, the Arranger 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.

#### 27.8 **Rights and discretions**

- (a) Each of the Agent and the Security Agent, may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

- (B) unless it has received notice of revocation, that those instructions have not been revoked; 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) Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or security trustee for the Lenders or Secured Parties) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
  - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligor.
- (c) Each of the Agent and the Security 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, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or the Security Agent (as applicable) (and so separate from any lawyers instructed by the Lenders) if the Agent or the Security Agent (as applicable) in its reasonable opinion deems this to be desirable.
- (e) Each of the Agent and the Security 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 the Security 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) Each of the Agent and the Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and 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 or the Security Agent's (as applicable) gross negligence or wilful misconduct.

(g) Unless a Finance Document expressly provides otherwise each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or security trustee 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 Company or the Majority Lenders shall, as soon as reasonably practicable, disclose,

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

(i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Security Agent or the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(j) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is 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.

## 27.9 **Responsibility for documentation**

None of the Agent, the Security Agent, the Arranger 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 Security Agent, the Arranger, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document or the Offer Documents or the transactions contemplated in the Finance Documents, the Offer Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, Offer Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, any Offer Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured 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.

## 27.10 **No duty to monitor**

Neither the Agent nor the Security Agent shall be bound to enquire:

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

## 27.11 **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, any Ancillary Lender, the Security Agent or any Receiver or Delegate), none of the Agent, any Ancillary Lender, the Security Agent, nor any Receiver or Delegate will be liable (including without limitation, for negligence or any other category or liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property, 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 Security Property 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 Security Property; or
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) 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 Security Agent, any Ancillary Lender, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, any Ancillary Lender, a Receiver or a Delegate, in respect of any claim it might have against the Agent, the Security Agent, any Ancillary Lender, a Receiver or a Delegate, 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 Security Property and any officer, employee or agent of the Agent, the Security Agent, any Ancillary Lender, a Receiver or a Delegate, may

rely on this paragraph (b) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) Neither the Agent nor the Security Agent will 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 or the Security Agent (as applicable) if the Agent or Security Agent (as applicable) 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 or the Security Agent (as applicable) for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent, the Security 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, the Security Agent or 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, the Security Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or Delegate, any liability of the Agent, the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property 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, the Security Agent, Receiver or Delegate 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, the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or Delegate 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, the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

## 27.12 **Lenders' indemnity to the Agent and Security 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, the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the Agent's, the Security Agent's or the Receiver's or the Delegate's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to payment systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent in acting as Agent, Security Agent, Receiver or Delegate under the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security 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 or the Security Agent to an Obligor.

## 27.13 **Resignation of the Agent and the Security Agent**

- (a) Each of the Agent and the Security Agent may resign and appoint one of its Affiliates acting through an office in England, Germany, Luxembourg or Switzerland as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent or the Security Agent may resign by giving 30 days' notice (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent or Security Agent (as applicable).
- (c) If the Majority Lenders have not appointed a successor Agent or the Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent or Security Agent (as applicable) (after consultation with the Company) may appoint a

successor Agent or Security Agent (as applicable) (acting through an office in England, Germany, Luxembourg or Switzerland).

- (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 27 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 or Security Agent (as applicable) shall, at its own cost, if it is an Impaired Agent make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents. The Company shall, within three Business Days of demand, reimburse the retiring Agent or Security Agent (as applicable) for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's resignation notice or the Security Agent's resignation notice (as applicable) shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) (in the case of the Security Agent) the transfer of the Security Property to that successor.
- (g) Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 27.26 (*Winding up of trust*)) and paragraph (e) above but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*), Clause (*Indemnity to the Security Agent*) and this Clause 27 (and any fees for the account of the retiring Agent or Security Agent (as applicable) 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) After consultation with the Company, the Majority Lenders may, by notice to the Agent or the Security Agent (as applicable), require it to resign in accordance with paragraph (b) above. In this event, the Agent or the Security Agent (as applicable) shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Company.
- (i) 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 13.9 (*FATCA information*) and 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 13.9 (*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 Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) 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 that Lender, by notice to the Agent, requires it to resign.

#### 27.14 **Confidentiality**

- (a) In acting as agent or trustee for the Finance Parties, the Agent or the Security Agent (as applicable) 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 or the Security Agent, it may be treated as confidential to that division

or department and the Agent or the Security Agent (as applicable) shall not be deemed to have notice of it.

#### 27.15 Relationship with the Lenders

(a) Subject to Clause 24.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

(i) entitled to or liable for any payment due under any Finance Document on that day; and

(ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

(b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 33.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and paragraph (a)(ii) of Clause 33.6 (*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.

(c) Each Finance Party shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

## 27.16 **Credit appraisal by the Lenders 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 or any Offer Document, each Lender and Ancillary Lender confirms to the Agent, the Security Agent, the Arranger and 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 Security Property 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 Security Property;
- (c) whether that Finance Party 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 Security Property, 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 Security Property; and
- (d) the adequacy, accuracy or completeness of the Offer Documents and any other information provided by the Agent the Security Agent, any other 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.
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

## 27.17 **Agent and Security Agent's management time**

- (a) Any amount payable to the Agent or the Security Agent under Clause 15.3 (*Indemnity to the Agent*), Clause (*Indemnity to the Security Agent*), Clause 17 (*Cost and expenses*) and Clause 27.12 (*Lenders' indemnity to the Agent and the Security Agent*) shall include the cost of utilising the management time or other resources of Agent or the Security Agent (as

applicable) and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or Security Agent may notify to the Company and the other Finance Parties, and is in addition to any other fee paid or payable to the Agent of the Security Agent under Clause 12 (*Fees*).

- (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 Company 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 Company agreeing that it is otherwise appropriate in the circumstances,

the Company 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 Company 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 Company 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 Company) and the determination of any investment bank shall be final and binding upon the Parties.

#### **27.18 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.

### 27.19 **Reliance and engagement letters**

Each Finance Party and each Secured Party confirms that each of the Arranger, the Agent and the Security 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, the Agent or the Security Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### 27.20 **No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

### 27.21 **Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Security Assets;
  - (ii) to require any other person to maintain any insurance; or

(iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

#### **27.22 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

#### **27.23 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### **27.24 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:

- (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,
- and the Security Agent shall give prior notice to the Company and the Finance Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

#### **27.25 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Security Assets and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

#### **27.26 Winding up of trust**

If the Security Agent, with the approval of the Agent, determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the

Transaction Security and the rights of the Security Agent under each of the Security Documents; and

- (ii) any Security Agent which has resigned pursuant to Clause 27.13 (*Resignation of the Agent and the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### **27.27 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

#### **27.28 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### **28. APPLICATION OF PROCEEDS**

#### **28.1 Order of application**

Subject to Clause 28.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 28, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 28), in the following order:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and

- (c) in payment to the Agent for application in accordance with Clause 31.6 (*Partial payments*).

## 28.2 **Prospective liabilities**

Following acceleration the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 28.1 (*Order of application*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

## 28.3 **Investment of proceeds**

Prior to the application of the proceeds of the Recoveries in accordance with Clause 28.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 28.3.

## 28.4 **Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

## 28.5 **Permitted deductions**

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

## 28.6 **Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

## 29. **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.

## 30. **SHARING AMONG THE FINANCE PARTIES**

### 30.1 **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 31 (*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 31 (*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 31.6 (*Partial payments*).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Ancillary Lender in respect of any cash cover provided for the benefit of that Ancillary Lender.

### 30.2 **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 31.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 30.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 30.2 (*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.

### 30.4 **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.

### 30.5 **Exceptions**

- (a) This Clause 30 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 that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

### 30.6 **Ancillary Lenders**

- (a) This Clause 30 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 23.18 (*Acceleration*).
- (b) Following the exercise by the Agent of any of its rights under Clause 23.18 (*Acceleration*), this Clause 30 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

## **SECTION 11 ADMINISTRATION**

### **31. PAYMENT MECHANICS**

#### **31.1 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 and with such bank as the Agent, in each case, specifies.

#### **31.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (*Distributions to an Obligor*) and Clause 31.4 (*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.

#### **31.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 32 (*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.

#### **31.4 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 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.

### 31.5 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 31.1 (*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", 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 31.5 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 27.13 (*Resignation 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 31.2 (*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.

### 31.6 **Partial payments**

- (a) If the Agent or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent or the Security Agent (as applicable) 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 Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;

- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; 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 or instruct the Security Agent to vary (as applicable) 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.

### 31.7 **No set-off by Obligors**

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

### 31.8 **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.

### 31.9 **Currency of account**

- (a) Subject to paragraphs (c) and (d) below, sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document in relation to Facility A and Facility B.
- (b) Subject to paragraphs (c) and (e) below, Swiss francs is the currency of account and payment for any sum due from an Obligor under any Finance Document in relation to Facility C and Facility D.
- (c) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

### 31.10 **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 Company); 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 Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

### 31.11 **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 Company that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (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 Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the

case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (*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 31.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### 31.12 **Amounts paid in error**

- (a) If the Agent pays an amount to another Finance Party and the Agent notifies that Party that such payment was an Erroneous Payment, then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent.
- (b) Neither:
  - (i) the obligations of any Party to the Agent; nor
  - (ii) the remedies of the Agent,(whether arising under this Clause 27.18 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).
- (c) All payments to be made by a Party to the Agent (whether made pursuant to this Clause 27.18 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Finance Party which the Agent determines (in its sole discretion) was made in error.

## 32. **SET-OFF**

- (a) Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*), at any time when an Event of Default is continuing, 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.

### **33. NOTICES**

#### **33.1 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 letter.

#### **33.2 Addresses**

The address (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 Company, that identified with its name below;
- (b) in the case of each Arranger and Original Lender, that identified with its name below;
- (c) in the case of the each Lender (other than any Original Lender), 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
- (d) in the case of the Agent and the Security Agent, that identified with its name below,

or any substitute address 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.

### 33.3 **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 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 33.2 (*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 the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or the 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 Company in accordance with this Clause 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.

### 33.4 **Notification of address**

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

### 33.5 **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.

### 33.6 **Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including,

without limitation, by way of posting to a secure website) if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between 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 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 the 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 33.6.

### 33.7 **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.

## **34. CALCULATIONS AND CERTIFICATES**

### **34.1 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.

### **34.2 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.

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

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) 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); and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

## **35. 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.

## **36. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver

of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

## **37. AMENDMENTS AND WAIVERS**

### **37.1 Required consents**

- (a) Subject to Clause 37.2 (*All Lender matters*) and Clause 37.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company 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 37.
- (c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.
- (d) Paragraph (c) of Clause 24.10 (*Pro rata interest settlement*) shall apply to this Clause 37.

### **37.2 All Lender matters**

Subject to Clause 37.4 (*Changes to reference rates*) an amendment, waiver or (in the case of a Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*) and the definition of "Minimum Acceptance Condition" in paragraph (e)(iv) of Clause 22.24 (*The Offer*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (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 the length of an Interest Period (other than, for the avoidance of doubt, as already contemplated in Clause 9.1 (*Interest Periods*));
- (e) a change in currency of payment of any amount under the Finance Documents;
- (f) an increase in any Commitment, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (g) a change to the Borrowers or Guarantors other than in accordance with Clause 26 (*Changes to the Obligors*);
- (h) any condition precedent referred to in Part IV (*Initial conditions precedent – Facility C and Facility D*) of Schedule 2 (*Initial conditions precedent*), including, for the avoidance of doubt, its satisfaction;
- (i) any provision which expressly requires the consent of all the Lenders;
- (j) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 2.5 (*Extension Option*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 8.1 (*Illegality*), Clause 8.2 (*Change of control*), Clause 8.3 (*Mandatory prepayment – Relevant Proceeds*), Clause 8.11 (*Application of prepayments*), Clause 22.27 (*Conditions subsequent*), Clause 24 (*Changes to the Lenders*), Clause 26 (*Changes to the Obligors*), Clause 30 (*Sharing among the Finance Parties*), this Clause 37, Clause 42 (*Governing law*) or Clause 43.1 (*Jurisdiction*);
- (k) the nature or scope of:
  - (i) the guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*)
  - (ii) the Security Assets; 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);
- (l) the release of any guarantee and indemnity granted under Clause 18 (*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 expressly permitted under this Agreement or any other Finance Document; or

- (m) any waiver relating to the obligations of the Company pursuant to Clause 22.20 (*Guarantors*),

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

### 37.3 **Other exceptions**

An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent, any Ancillary Lender or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent, any Ancillary Lender or the Arranger as the case may be.

### 37.4 **Changes to reference rates**

- (a) Subject to Clause 37.3 (*Other exceptions*), if an RFR Replacement Event has occurred any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Reference Rate;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; 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 Reference Rate (and if any adjustment or

method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

(b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

(i) relates to the use of the RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and

(ii) is issued on or after the date of this Agreement,

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

In this Clause 37.4:

**"RFR Replacement Event"** means:

(a) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders and the Company, materially changed;

(b)

(i)

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

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

provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;

- (ii) the administrator of the RFR publicly announces that it has ceased or will cease to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
  - (iii) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of the RFR or its supervisor announces that the RFR may no longer be used;
- (c) the administrator of the RFR determines that the RFR 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 Company) temporary; or
  - (ii) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the "RFR Contingency Period" in the Reference Rate Terms; or
- (d) in the opinion of the Majority Lenders and the Company, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

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

**"Replacement Reference Rate"** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for the RFR by:
  - (i) the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); 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 Reference Rate" will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or
- (c) in the opinion of the Majority Lenders and the Company, an appropriate successor to the RFR.

### 37.5 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
  - (i) the Majority Lenders; or
  - (ii) whether:
    - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; 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 will be reduced by the amount of its Available Commitments 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 37.5, the Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
  - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the

Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

### 37.6 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 5 (five) 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 24 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 24 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:
  - (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 24.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company 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 37.6 shall be subject to the following conditions:
  - (i) the Company 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 Company to find a Replacement Lender;
  - (iii) 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
  - (iv) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph 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)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

## **38. CONFIDENTIAL INFORMATION**

### **38.1 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 38.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **38.2 Disclosure of Confidential Information**

Any Finance Party may disclose (and, to this effect and subject to the terms of this Clause 38, the Company hereby releases each Finance Party and its Affiliates, and each Finance Party hereby releases each other Finance Party and its Affiliates, from all banking secrecy and further domestic and international confidentiality obligations, including with respect to any data transfer to and from abroad):

- (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 (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 27.15 (*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 24.9 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Company;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality

Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.

### 38.3 Entire agreement

This Clause 37.5 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.

#### **38.4 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **38.5 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 37.5.

#### **38.6 Continuing obligations**

The obligations in this Clause 37.5 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 this Agreement 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.

## 39. CONFIDENTIALITY OF FUNDING RATES

### 39.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate to the relevant Borrower pursuant to Clause 9.4 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent 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 is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the 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 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.

## 39.2 **Related obligations**

(a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.

(b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 39.1 (*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 39.

## 39.3 **No Event of Default**

No Event of Default will occur under Clause 23.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 39.

## 40. **BAIL-IN**

### 40.1 **Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

#### 40.2 **Bail-in definitions**

In this Clause 40:

**"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

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

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

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

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

**"EU Bail-In Legislation Schedule"** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

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

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
- (c) in relation to any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation.

#### **41. 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**

### **42. GOVERNING LAW**

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

### **43. ENFORCEMENT**

#### **43.1 Jurisdiction**

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England sitting in London have exclusive jurisdiction to decide any dispute arising out of or in connection with any Finance Document (including a dispute relating to the existence, validity or termination of any Finance Document or the consequences of its nullity or any non-contractual obligations arising out of or in connection with any Finance Document) (a "**Dispute**").
- (b) The Parties agree that the courts of England sitting in London are the most appropriate and convenient courts to decide Disputes and accordingly no Party will argue to the contrary.

#### **43.2 Service of process**

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

- (a) irrevocably appoints Cicor UK Ltd. as its agent for service of process in relation to any proceedings before the English courts sitting in London in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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

**SCHEDULE 1  
THE ORIGINAL LENDERS**

<b>Name of Original Lender</b>	<b>Facility A Commitment (in GBP)</b>	<b>Facility B Commitment (in GBP)</b>	<b>Facility C Commitment (in CHF)</b>	<b>Facility D Commitment (in CHF)</b>
Commerzbank Aktiengesellschaft	97,500,000	75,000,000	25,000,000	60,000,000
UBS Switzerland AG	97,500,000	75,000,000	25,000,000	60,000,000
<b>Total:</b>	195,000,000	150,000,000	50,000,000	120,000,000

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**PART I**  
**INITIAL CONDITIONS PRECEDENT – ALL FACILITIES**

**1. The Company**

- (a) A copy of the constitutional documents of the Company.
- (b) A copy of a resolution of the board of directors of the Company:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (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.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate (signed by the chief executive officer and a director of the Company), dated on or after the date of this Agreement, confirming and certifying:
  - (i) that borrowing, guaranteeing, or securing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or securing or similar limit binding on the Company to be exceeded; and
  - (ii) that each copy document relating to the Company specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the certificate.

**2. Finance Documents**

- (a) This Agreement executed by all parties to it.
- (b) The Fee Letters executed by the parties to it.

3. **Legal opinions**

- (a) A legal opinion of Clifford Chance, legal advisers to the Finance Parties with respect to English law, substantially in the form distributed to the Agent prior to signing this Agreement.
- (b) A capacity opinion of Baker McKenzie, legal advisers to the Company with respect to Swiss law, substantially in the form distributed to the Agent prior to signing this Agreement.

4. **Other documents and evidence**

- (a) Evidence that any process agent referred to in Clause 43.2 (*Service of process*) has accepted its appointment.
- (b) The Group Structure Chart which shows the Group, assuming the Acquisition has completed.
- (c) The Original Financial Statements of the Company (provided that the Original Financial Statements shall not require the approval of, or be required to be in form and substance satisfactory to, the Agent or any of the Finance Parties).

**PART II**  
**INITIAL CONDITIONS PRECEDENT – FACILITY A**

1. **Closing Certificate**

A certificate in the agreed form (signed by the chief financial officer and a director of the Company), dated the date of the first Utilisation Request with respect to Facility A, confirming and certifying:

- (a) that no material term or condition of the Scheme or Takeover Offer (as applicable) has been waived or amended in any respect in breach of the terms of this Agreement;
- (b) if the Acquisition proceeds by way of a Scheme, that the Scheme Effective Date has occurred or, where the Acquisition has proceeded by way of Takeover Offer, confirming that the Unconditional Date has occurred;
- (c) if the Acquisition proceeds by way of a Takeover Offer, that by virtue of valid acceptances of the Takeover Offer (which have not been withdrawn) the Company has acquired or unconditionally contracted to acquire not less than 75 per cent. of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target (excluding any shares held in treasury); and
- (d) that each copy document relating to the Company specified in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the certificate,

**provided that** this condition precedent shall be satisfied by the delivery of the executed certificate in the agreed form and shall otherwise not be required to be in a form and substance satisfactory to any Finance Party nor subject to any other approval requirement.

2. **The Offer Documents**

- (a) A copy of the Press Release substantially in the agreed form or each Conversion Press Release if relevant **provided that** such document is provided for information only and shall not be required to be in a form and substance satisfactory to any Finance Party nor subject to any other approval requirement other than where the terms of this Agreement (including, for the avoidance of doubt, Clause 22.24 (*The Offer*)) are not complied with).
- (b) A copy of the Offer Documents **provided that** such document is provided for information only and shall not be required to be in a form

and substance satisfactory to any Finance Party nor subject to any other approval requirement other than where the terms of this Agreement (including, for the avoidance of doubt, Clause 22.24 (*The Offer*) are not complied with).

**Other documents and evidence**

Evidence that the ticking fee and upfront fee then due from the Company pursuant to Clause 12.1 (*Ticking Fee*) and Clause 12.2 (*Upfront Fee*) relating to Facility A have been paid or will be paid on or before the first Utilisation Date relating to Facility A (and this condition may be satisfied by confirmation to the Agent that such amounts may be deducted from the proceeds of any Utilisation).

**PART III**  
**INITIAL CONDITIONS PRECEDENT – FACILITY B**

1. The first Utilisation Date with respect to Facility A has occurred.
2. Evidence that the ticking fee and upfront fee then due from the Company pursuant to Clause 12.1 (*Ticking fee*) and Clause 12.2 (*Upfront Fee*) relating to Facility B have been paid or will be paid on or before the first Utilisation Date relating to Facility B (and this condition may be satisfied by confirmation to the Agent that such amounts may be deducted from the proceeds of any Utilisation).

**PART IV**  
**INITIAL CONDITIONS PRECEDENT – FACILITY C AND FACILITY D**

1. Evidence that the agreed form waiver request in respect of defaults arising under the Existing Syndicated Facilities Agreement caused by the Press Release and/or the Company having resolved to make the Offer has been submitted to the agent of the Existing Syndicated Facilities Agreement (the "**Agreed Waiver Request**").
2. In the event that the first Utilisation Date of Facility C or Facility D falls prior to the first Utilisation Date with respect to Facility A, the Company must confirm in the relevant Utilisation Request(s) relating to Facility C or Facility D that either:
  - (a) the Agreed Waiver Request has been rejected by the agent (on behalf of the relevant quorum of lenders) under the Existing Syndicated Facilities Agreement or, otherwise, not approved by the relevant longstop date set out in the Agreed Waiver Request;
  - (b) a breach of the Existing Syndicated Facilities Agreement other than as identified in the Agreed Waiver Request has occurred (or a lender under the Existing Syndicated Facilities Agreement asserts such a breach has occurred and that, therefore, they are not under an obligation to make utilisations under the Existing Syndicated Facilities Agreement) and a related waiver request by the Company has been rejected by the agent (on behalf of the relevant quorum of lenders) under the Existing Syndicated Facilities Agreement or, otherwise, not approved by the relevant longstop date set out in that waiver request, **provided that** such breach is caused by or relates to the Company's actions in respect of the Acquisition or the Finance Documents; or
  - (c) the agent (on behalf of the relevant quorum of lenders) under the Existing Syndicated Facilities Agreement has taken any action under clause 14.3 (*Consequences of a breach of contract*) pursuant to a breach of the Existing Syndicated Facilities Agreement caused by or relating to the Company's actions in respect of the Acquisition or the Finance Documents.
3. Evidence that all liabilities under or in connection with the Existing Syndicated Facilities Agreement (including, for the avoidance of doubt, any ancillary facility thereunder) will be (or have been) discharged, and all Security granted under and in connection with the Existing Syndicated Facilities Agreement will be (or has been) irrevocably released in full on (or prior to) the first Utilisation Date under Facility C and Facility D **provided that** such evidence will be satisfied by

the Company providing a copy of a notice of prepayment and cancellation in full of the Existing Syndicated Facilities Agreement and ancillary facilities related thereto (other than the Existing Ancillary Facilities).

4. Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 12 (*Fees*) have been paid or will be paid by the first Utilisation Date to occur under this Agreement (and this condition may be satisfied by confirmation to the Agent that such amounts may be deducted from the proceeds of any Utilisation).

**PART V**  
**CONDITIONS PRECEDENT REQUIRED TO BE**  
**DELIVERED BY AN ADDITIONAL OBLIGOR**

1. An Accession Letter, duly executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board of directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
  - (b) authorising a specified person or persons to execute the Accession Letter 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 the Additional Borrower, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents; and
  - (d) authorising the Company to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Guarantor (signed by a director) confirming that guaranteeing the Total Commitments would not cause any guaranteeing or similar limit binding on it to be exceeded.
7. A certificate of the Additional Borrower (signed by a director) confirming that borrowing Facility B would not cause any borrowing or similar limit binding on it to be exceeded.
8. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part V of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.

9. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter and the Security Agreement or for the validity and enforceability of any Finance Document.
10. If available, the latest audited financial statements of the Additional Obligor.
11. A legal opinion of the legal advisers to the Finance Parties in England.
12. If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Parties in the jurisdiction in which the Additional Obligor is incorporated.
13. A capacity opinion with respect to the Additional Obligor from its counsel in its jurisdiction of incorporation.
14. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 43.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
15. All necessary "know your customer" or other similar checks under all applicable laws and regulations have been completed in relation the proposed Additional Obligor.
16. In relation to an Additional Obligor 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, re-registering as a private limited 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.
17. In relation to an Additional Obligor 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 of incorporation in relation to financial assistance or any analogous process.
18. 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 Additional Obligor certifying:

- (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 Additional Obligor to be correct, complete and not amended or superseded as at a date no earlier than the date of the Accession Letter; or

- (ii) a certificate of an authorised signatory of the Additional Obligor certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

## SCHEDULE 3 REQUESTS

### PART I – UTILISATION REQUEST

From: [Borrower]

[Copy to: [other Borrower]]<sup>1</sup>

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

Dated:

#### [•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement dated [ ] (the "Agreement")

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)

Facility to be utilised: [Facility A]/[Facility B]/[Facility C]/[Facility D]

Currency of Loan: [GBP/CHF]

Amount: [ ] or, if less, the Available Facility

Interest Period [ ]

3. We confirm that each condition specified in Clause 4.4 (*Further conditions precedent*) of the Agreement or, to the extent applicable, Clause 4.5 (*Utilisations during the Certain Funds Period*) is satisfied on the date of this Utilisation Request and will be satisfied on the proposed Utilisation Date.

4. [We confirm that [ ] (the "**Relevant Existing Target Debt**") will be discharged in full out of the proceeds of this Utilisation and we enclose evidence that the Relevant Existing Target Debt will be (or has been) discharged in full, and all

---

<sup>1</sup> Add in the Utilisation Request for Facility B.

Security granted under and in connection with such Existing Target Debt will be (or has been) irrevocably released in full on (or prior to) the Utilisation Date with respect to this Utilisation.]

5. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify maturing Facility D Loan*]/[The proceeds of this Loan should be credited to [*account*].]<sup>23</sup>
6. This Utilisation Request is irrevocable.
7. This Utilisation Request and any non-contractual obligations arising out of or in connection with it are governed by English law.

.....  
authorised signatory for  
[*name of relevant Borrower*]

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<sup>2</sup> Include if the optional paragraph (b) to Clause 6.2 (*Repayment of Facility D Loans*) is included.

<sup>3</sup> The proceeds of Facility C Loans and Facility D Loans made for refinancing purposes shall be paid directly to the bank account of the outgoing facility agent.

**PART II – SELECTION NOTICE**

**[Applicable to a Term Loan]**

From: [Borrower]/[Company]

[Copy to: [other Borrower]]<sup>4</sup>

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement  
dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility [A]/[B]/[C] Loan[s] with an Interest Period ending on [ ].
3. We request that the next Interest Period for the above Facility [A]/[B]/[C] Loan[s] is [ ].
4. This Selection Notice is irrevocable.
5. This Selection Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

.....  
authorised signatory for  
[name of relevant Borrower] / [name of Company] on behalf of [name of Additional  
Borrower]

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<sup>4</sup> Add if the Selection Notice is delivered by the Company on behalf of the Additional Borrower.

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

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

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

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 24.6 (*Procedure for transfer*) of the Agreement:
  - (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 24.6 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].

5. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) a Qualifying Bank; or
  - (b) not a Qualifying Bank (but counting as one (1) Lender only for purposes of the Swiss Non-Bank Rules).
  
6. [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.]
  
7. [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 Company notify:
  - (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,that it wishes that scheme to apply to the Agreement.]

8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
9. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

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

## THE SCHEDULE

### Commitment/rights and obligations to be transferred

*[Insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

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

COMMERZBANK AKTIENGESELLSCHAFT

By:

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

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

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

Dated:

**[●] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 24.7 (*Procedure for assignment*) of the Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [ ].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) of the Agreement are set out in the Schedule.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].
8. The New Lender confirms, for the benefit of the Agent and any Obligor, that it is:
  - (a) a Qualifying Bank; or
  - (b) not a Qualifying Bank (but counting as one (1) Lender only for purposes of the Swiss Non-Bank Rules).
9. [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.]
10. [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 Company notify:

- (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
- (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,

that it wishes that scheme to apply to the Agreement.]

11. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 24.8 (Copy of Transfer Certificate or Assignment Agreement to Company) of the Agreement, to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
12. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
13. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
14. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

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

## THE SCHEDULE

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

*[Insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

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

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

COMMERZBANK AKTIENGESELLSCHAFT

By

**SCHEDULE 6  
FORM OF ACCESSION LETTER**

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

From: [*Subsidiary*] and [CHARDONNAY] LTD.

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement  
dated [     ] (the "Agreement")**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Subsidiary*] agrees to become Additional [Borrower]/[Guarantor] and to be bound by the terms of the Agreement as an Additional [Borrower]/[Guarantor] pursuant to [Clause 26.2 (*Additional Borrower*)]/[Clause (*Additional Guarantors*)] of the Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [The Company confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional Borrower.]
4. [*Subsidiary's*] administrative details are as follows:  
  
Address:  
  
Email:  
  
Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. The provisions of Clause 43.1 (*Jurisdiction*) of the Agreement shall be incorporated into this Accession Letter as if set out in full in this Accession Letter and as if references in those clauses to "this Agreement" or "the Finance Documents" are references to this Accession Letter.

[This Accession Letter is entered into by deed.]

\_\_\_\_\_  
authorised signatory for

\_\_\_\_\_  
authorised signatory for

[CHARDONNAY] LTD.

*[name of Subsidiary]*

**SCHEDULE 7  
FORM OF COMPLIANCE CERTIFICATE**

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

From: [CHARDONNAY] LTD.

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement  
dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:  
  
*[Insert details of covenants to be certified]*
3. We confirm that the following companies constitute Material Companies for the purposes of the Agreement:  
  
*[Details of Material Subsidiaries]*
4. We confirm that the aggregate of the EBITDA 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 75% of the aggregate EBITDA of all members of the [CHARDONNAY] Group.
5. *[We confirm that no Default is continuing.]*\*

Signed: .....

Director  
of [CHARDONNAY] LTD.

.....

Director  
of [CHARDONNAY] LTD.

\* \* \*

*[insert applicable certification language]\*\**

.....

[for and on behalf of  
[name of auditors of the Company]]\*\*\*

**SCHEDULE 8  
TIMETABLES**

Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) in relation to any Utilisation under Facility A, the first Utilisation under Facility C and the first Utilisation under Facility D.	U-1 9.30 a.m.
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) in relation to any Utilisation under Facility B and Facility C (other than the first Utilisation under Facility C).	U-2 9.30 a.m.
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) in relation to any Utilisation under Facility D (other than the first Utilisation under Facility D).	U-3 9.30 a.m.
Delivery of a duly completed Selection Notice (Clause 10.1 ( <i>Interest Periods</i> ))	U-3 9.30 a.m.
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	Noon on the date on which the duly completed Utilisation Request is delivered in compliance with the applicable timetable set out above.

"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 Loan.

"U-X" = Business Days prior to date of utilisation.

**SCHEDULE 9**  
**FORM OF INCREASE CONFIRMATION**

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent and [CHARDONNAY] LTD. as Company, for and on behalf of each Obligor

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

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement**  
**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment** ") as if it had been an Original Lender under the Agreement in respect of the Relevant Commitment.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].
5. On the Increase Date, the Increase Lender becomes party to the Finance Documents as a Lender.
6. The Facility Office and address and attention details for notices to the Increase Lender for the purposes of Clause 33.2 (*Addresses*) of the Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (h) of Clause 2.2 (*Increase*) of the Agreement.
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]

- (c) [not a Qualifying Lender].<sup>5</sup>
9. The Increase Lender confirms, for the benefit of the Agent and to any Obligor, that it is:
- (a) a Qualifying Bank; or
  - (b) not a Qualifying Bank (but counting as one (1) Lender only for purposes of the Swiss Non-Bank Rules).
10. [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.]<sup>6</sup>
  - (d) [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

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<sup>5</sup> Delete as applicable. Each Increase Lender is required to confirm which of these three categories it falls within.

<sup>6</sup> Include only if Increase Lender is a UK Non-Bank Lender i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause [ ] (*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 Agreement.

full exemption from UK withholding tax and requests that the Company notify:

- (e) each Borrower which is a Party as a Borrower as at the Increase Date; and
- (f) each Additional Borrower which becomes an Additional Borrower after the Increase Date,

that it wishes the scheme to apply to the Agreement.]

11. This Increase Confirmation may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Increase Confirmation.
12. This Increase Confirmation and any non-contractual obligations arising out of or in connection with it is governed by English law.
13. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

**SCHEDULE 10  
REFERENCE RATE TERMS**

**PART I  
STERLING**

**CURRENCY:** Sterling.

***Cost of funds as a fallback***

Cost of funds will not apply as a fallback.

***Definitions***

**Additional Business Days:** An RFR Banking Day.

**Baseline CAS:** None specified

**Break Costs:** None specified

**Business Day Conventions (a) (definition of "Month" and Clause 10.2 (*Non-Business Days*)):** If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:

- (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;
- (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.

- (b) 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).

**Central Bank Rate:** The Bank of England's Bank Rate as published by the Bank of England from time to time.

**Central Bank Rate Adjustment:** The Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Agent) of the spread of the RFR to the Central Bank Rate for the five most immediately preceding RFR Banking Days for which the RFR is available.

**Daily Rate:** The "**Daily Rate**" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and

(ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

**Lookback Period:** Five RFR Banking Days.

**Margin:** With respect to any period (or part thereof) set out in column 1 below, the percentage p.a. set out in column 2 below:

<b>Column 1</b>	<b>Column 2 (in % p.a.)</b>
for the period from (and including) the date of this Agreement until (but excluding) the date falling 2 (two) Months after the date of this Agreement	2.50
for the period from (and including) the day falling 2 (two) Months after the date of this Agreement until (excluding) the date falling 6 (six) Months after the date of this Agreement	3.75
for the period from (and including) the day falling 6 (six) Months after the date of this Agreement until (including) the Termination Date	4.25

**Market Disruption Rate:** None specified.

**Relevant Market:** The sterling wholesale market.

**Reporting Day:** The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

**RFR:** The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

**RFR Banking Day:** A day (other than a Saturday or Sunday) on which banks are open for general business in London.

**Published Rate Contingency Period** 1 Month

### **Interest Periods**

Length of Interest Period in [3] Months (or, if an Interest Period commences during absence of selection the last three Months prior to the Termination Date, a (paragraph (d) of Clause 10.1 period equal in length to the number of days from (and *Interest Periods*)): including) the first day of that Interest Period to (but excluding) the Termination Date)

Periods capable of selection as 1 Month, 3 Months or 6 Months  
Interest Periods (paragraph (b) of Clause 10.1 (*Interest Periods*)):

### **Reporting Times**

Deadline for Lenders to report Close of business in London on the Reporting Day for market disruption in the relevant Loan.  
accordance with Clause 11.2  
(*Market disruption*)

Deadline for Lenders to report Close of business on the date falling one Business Day their cost of funds in after the Reporting Day for the relevant Loan (or, if accordance with Clause 11.3 earlier, on the date falling one Business Day before the date on which interest is due to be paid in respect of the Interest Period for that Loan).  
(*Cost of funds*)

**PART II  
SWISS FRANCS**

<b>CURRENCY:</b>	Swiss francs.	
<b><i>Cost of funds as a fallback</i></b>		
Cost of funds will not apply as a fallback.		
<b><i>Definitions</i></b>		
<b>Additional Business Days:</b>	An RFR Banking Day.	
<b>Baseline CAS:</b>	None specified	
<b>Break Costs:</b>	None specified	
<b>Business Day Conventions (definition of "Month" and Clause 10.2 (Non-Business Days)):</b>	(a)	If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:
	(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;
	(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.
	(b)	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>Central Bank Rate:</b>	The policy rate of the Swiss National Bank as published by the Swiss National Bank from time to time.
<b>Central Bank Rate Adjustment:</b>	The Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Agent) of the spread of the RFR to the Central Bank Rate for the five most immediately preceding RFR Banking Days for which the RFR is available.
<b>Daily Rate:</b>	The " <b>Daily Rate</b> " for any RFR Banking Day is:
	(a) the RFR for that RFR Banking Day; or
	(b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of: <ul style="list-style-type: none"> <li>(i) the Central Bank Rate for that RFR Banking Day; and</li> <li>(ii) the applicable Central Bank Rate Adjustment; or</li> </ul>
	(c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of: <ul style="list-style-type: none"> <li>(i) the most recent Central Bank Rate for a day which is no more than 5 (five) RFR Banking Days before that RFR Banking Day; and</li> <li>(ii) the applicable Central Bank Rate Adjustment,</li> </ul> rounded, in either case, to four decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

<b>Lookback Period:</b>	Five RFR Banking Days.								
<b>Margin:</b>	<p>With respect to any period (or part thereof) set out in column 1 below, the percentage p.a. set out in column 2 below:</p> <table border="1"> <thead> <tr> <th><b>Column 1</b></th> <th><b>Column 2 (in % p.a.)</b></th> </tr> </thead> <tbody> <tr> <td>for the period from (and including) the date of this Agreement until (but excluding) the date falling 2 (two) Months after the date of this Agreement</td> <td>2.50</td> </tr> <tr> <td>for the period from (and including) the day falling 2 (two) Months after the date of this Agreement until (excluding) the date falling 6 (six) Months after the date of this Agreement</td> <td>3.75</td> </tr> <tr> <td>for the period from (and including) the day falling 6 (six) Months after the date of this Agreement until (including) the Termination Date</td> <td>4.25</td> </tr> </tbody> </table>	<b>Column 1</b>	<b>Column 2 (in % p.a.)</b>	for the period from (and including) the date of this Agreement until (but excluding) the date falling 2 (two) Months after the date of this Agreement	2.50	for the period from (and including) the day falling 2 (two) Months after the date of this Agreement until (excluding) the date falling 6 (six) Months after the date of this Agreement	3.75	for the period from (and including) the day falling 6 (six) Months after the date of this Agreement until (including) the Termination Date	4.25
<b>Column 1</b>	<b>Column 2 (in % p.a.)</b>								
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for the period from (and including) the day falling 6 (six) Months after the date of this Agreement until (including) the Termination Date	4.25								
<b>Market Disruption Rate:</b>	None specified.								
<b>Relevant Market:</b>	The Swiss francs overnight repo market.								
<b>Reporting Day:</b>	The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.								
<b>RFR:</b>	The SARON (Swiss Average Rate Overnight) reference rate administered by SIX (or any other person which								

	takes over the administration of that rate) as at the close of trading on the SIX Swiss Exchange on the relevant day displayed on page SARON.S of the Thomson Reuters screen under the heading CLSFIX.
<b>RFR Banking Day:</b>	A day (other than a Saturday or Sunday) on which banks are open for the settlement of payments and foreign exchange transactions in Zurich.
<b>Published Rate Contingency Period</b>	1 month
<b>Interest Periods</b>	
Length of Interest Period in absence of selection (paragraph of Clause 10.1 ( <i>Selection of Interest Periods</i> )):	3 Months (or, if an Interest Period commences during the last three Months prior to the Termination Date, a period equal in length to the number of days from (and including) the first day of that Interest Period to (but excluding) the Termination Date)
Periods capable of selection as Interest Periods (paragraph of Clause 10.1 ( <i>Selection of Interest Periods</i> )):	1 Month or 3 Months
<b>Reporting Times</b>	
Deadline for Lenders to report market disruption in accordance with Clause 11.2 ( <i>Market disruption</i> )	Close of business in London on the Reporting Day for the relevant Loan.
[Deadline for Lenders to report their cost of funds in accordance with Clause 11.3 ( <i>Cost of funds</i> )	Close of business on the date falling 1 Business Day after the Reporting Day for the relevant Loan (or, if earlier, on the date falling 1 Business Day before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

**SCHEDULE 11**  
**DAILY NON-CUMULATIVE COMPOUNDED RFR RATE**

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

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

"**UCCDR<sub>i</sub>**" means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day "i";

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

"**dcc**" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

"**n<sub>i</sub>**" means the number of calendar days from, and including, that RFR Banking Day "i" up to, but excluding, the following RFR Banking Day; and

the "**Unannualised Cumulative Compounded Daily Rate**" for any RFR Banking Day (the "**Cumulated RFR Banking Day**") during that Interest Period is the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

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

"**tn<sub>i</sub>**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

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

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

the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to five decimal places) calculated as set out below:

$$\left( \int_{=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{dcc} \right) - 1 \right) \times \frac{dcc}{tn_i}$$

where:

"**d0**" means the number of RFR Banking Days in the Cumulation Period;

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

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

"**DailyRate<sub>i-LP</sub>**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day "**i**";

"**ni**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;

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

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

**SCHEDULE 12**  
**CUMULATIVE COMPOUNDED RFR RATE**

The "**Cumulative Compounded RFR Rate**" for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of "**Annualised Cumulative Compounded Daily Rate**" in Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

$$\left( \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{dcc} \right) - 1 \right) \times \frac{dcc}{d}$$

where:

"**d0**" means the number of RFR Banking Days during the Interest Period;

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

"**DailyRate<sub>i-LP</sub>**" means for any RFR Banking Day "**i**" during the Interest Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day "**i**";

"**ni**" means, for any RFR Banking Day "**i**", the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;

"**dcc**" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number; and

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

## SCHEDULE 13 EXISTING FINANCIAL INDEBTEDNESS AND EXISTING SECURITY

Borrower	Lender	Loan Purpose	Currency	per 30/09/2025		per 30/09/2025		Security	Termination
				Limit/k in Local Currency	Limit CHF/k	Usage CHF/k			
Ocor Vietnam Company Ltd.	BIDV	Overdraft	USD	1.500		1.197	600	Factory	
Ocor Deutschland	Commerzbank	Leasing	EUR	42		39	40	Underlying Asset	Various
Ocor Romania SRL	Raiffeissen Bank Romania	Leasing	RON	377		69	70	Underlying Asset	Various
Ocor Romania SRL	Raiffeissen Bank Romania	Term Loan for Photovoltaic panels	RON	123		23	23	Photovoltaic Panels	20.12.2025
Ocor Romania SRL	Raiffeissen Bank Romania	Overdraft	EUR	3.000		2.801	-	Technological Equipment and Inventory	30.04.2026
Ocor Medtec Bucharest SRL	Impuls Leasing	Leasing	EUR	20		19	19	Underlying Asset	30.09.2030
Ocor Protectus Electronic GmbH	SüdLeasing, Comco, Postbank, TARCO Leasing	Leasing	EUR	709		662	663	Underlying Asset	Various
Ocor Suhl Immobilien	Commerzbank	Term Loan for Extension of Production and Office	EUR	413		385	385	Grundschild - Real estate Lien	30.06.2028
Ocor Suhl Immobilien	Commerzbank	Term Loan for Land for the first part of the Plant	EUR	791		738	738	Grundschild - Real estate Lien	30.03.2031
Ocor Ombrée	Altair Echo	Sale and Leaseback	EUR	1.603		1.497	1.497	Underlying Asset	19.12.2029
Ocor Angers	Altair Echo	Sale and Leaseback	EUR	3.021		2.821	2.821	Underlying Asset	19.12.2029
Ocor Saint Agrève	La Banque Postale	Recourse Factoring	EUR	n/a	n/a		1.488	Receivables	n/a
Ocor Douarnenez	La Banque Postale	Recourse Factoring	EUR	n/a	n/a		2.051	Receivables	n/a
Ocor Neuilly	La Banque Postale	Recourse Factoring	EUR	n/a	n/a		457	Receivables	n/a
Ocor Maroc SARL	Bank of Africa	Overdraft	MAD	4.000		351	343		
Ocor Maroc SARL	Bank of Africa	Finix Financing - Short term loan (repayment within 120 days)	MAD	6.000		527	473	Nantissement de fonds de commerce - MAD 1M Delegation d'assurance - MAD 1M Hypothèque - MAD 10M Contrat de credit - MAD 10M Aval COG Damane Atassyr - MAD 6M	
Ocor Maroc SARL	Bank of Africa	ACNEE - (Avance sur Créances Nées à l'Etranger) - Advances on customer invoices - repayment within 180 days	MAD	3.500		307	-		

**SCHEDULE 14  
FORM OF EXTENSION NOTICE**

From: [Company]

To: COMMERZBANK AKTIENGESELLSCHAFT as Agent

Dated:

**[•] - GBP 345,000,000 and CHF 170,000,000 Facilities Agreement  
dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is an Extension Notice. Terms defined in the Agreement have the same meaning in this Extension Notice unless given a different meaning in this Extension Notice.
2. We refer to Clause 2.5 (*Extension Option*) of the Agreement.
3. We wish to request through you that each Lender extends the Facilities to the Extended Termination Date.
4. We confirm that no Default is continuing at the date hereof or would be reasonably likely to arise as a result of the extension of the Facilities to the Extended Termination Date.
5. We confirm that at the date hereof each Repeated Representation contained in the Agreement is correct in all material respects by reference to the facts and circumstances existing on the date of this Extension Notice.
6. This Extension Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

.....  
authorised signatory for  
[name of Company]

**SIGNATORIES**

**Company**

CICOR TECHNOLOGIES LTD

By: [Redacted]

Name: [Redacted]

Title: [Redacted]

Address: [Redacted]

Email: [Redacted]  
[Redacted]

[Redacted]

CICOR TECHNOLOGIES LTD

By:

Name:

Title:

Address:

Email:

Attention:

**Original Borrower**

**Company**

CICOR TECHNOLOGIES LTD

By: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]  
[REDACTED]

Attention: [REDACTED]

CICOR TECHNOLOGIES LTD

By:

Name:

Title:

Address:

Email:

Attention:

**Original Guarantor**

CICOR TECHNOLOGIES LTD

By: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]  
[REDACTED]

Attention: [REDACTED]

CICOR TECHNOLOGIES LTD

By:

Name:

Title:

Address:

Email:

Attention:

**Arrangers**

COMMERZBANK AKTIENGESELLSCHAFT By:

[Redacted]

[Redacted]

Name: [Redacted]

Title: [Redacted]

UBS SWITZERLAND AG

By: 

Name: 

Title: 



**Original Lenders**

COMMERZBANK AKTIENGESELLSCHAFT

By:

Name:

Title:



UBS SWITZERLAND AG

By: 

Name: 

Title: 

**Agent**

COMMERZBANK AKTIENGESELLSCHAFT

By: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

**Security Agent**

COMMERZBANK AKTIENGESELLSCHAFT

By: \_\_\_\_\_

Name:

Title:

Address:

Email:

Attention: