

DATED 19 MARCH 2014

FOR

EXOVA 2014 LIMITED

ARRANGED BY

BARCLAYS BANK PLC  
CREDIT SUISSE AG, LONDON BRANCH  
GOLDMAN SACHS BANK USA  
HSBC BANK PLC  
ING BANK NV, LONDON BRANCH  
NATIXIS  
THE ROYAL BANK OF SCOTLAND PLC  
AND  
SANTANDER UK PLC  
AS MANDATED LEAD ARRANGERS

WITH

THE ROYAL BANK OF SCOTLAND PLC  
ACTING AS AGENT

---

FACILITIES AGREEMENT

---

## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. The Facilities .....	47
3. Purpose .....	54
4. Conditions of Utilisation .....	55
5. Utilisation - Loans .....	57
6. Utilisation - Letters of Credit .....	59
7. Letters of Credit.....	62
8. Optional Currencies.....	68
9. Ancillary Facilities .....	70
10. Repayment.....	77
11. Illegality, Voluntary Prepayment and Cancellation .....	79
12. Mandatory Prepayment .....	81
13. Restrictions .....	86
14. Interest .....	89
15. Interest Periods .....	90
16. Changes to the Calculation of Interest .....	92
17. Fees.....	93
18. Tax Gross Up and Indemnities .....	96
19. Increased Costs .....	112
20. Other Indemnities .....	114
21. Mitigation by the Lenders .....	115
22. Costs and Expenses .....	116
23. Guarantee and Indemnity .....	117
24. Representations .....	122
25. Information Undertakings .....	127
26. Financial Covenants .....	132
27. General Undertakings.....	140
28. Events of Default.....	146
29. Changes to the Lenders .....	154
30. Debt Purchase Transactions by Sponsor Affiliates .....	161
31. Changes to the Obligors .....	162
32. Role of the Agent, the Arrangers, the Issuing Bank and Others .....	166
33. Conduct of Business by the Finance Parties .....	174
34. Sharing among the Finance Parties .....	174

35. Payment Mechanics.....	177
36. Set-Off.....	181
37. Notices.....	181
38. Calculations and Certificates.....	184
39. Partial Invalidity .....	185
40. Remedies and Waivers .....	185
41. Amendments and Waivers.....	185
42. Confidentiality.....	192
43. Counterparts .....	198
44. USA Patriot Act.....	198
45. Governing Law.....	199
46. Enforcement .....	199
47. Waiver of Jury Trial .....	199
Schedule 1 The Original Parties .....	201
Part I The Original Obligors .....	201
Part II The Original Lenders .....	203
Schedule 2 Conditions Precedent.....	204
Part I Conditions Precedent to Initial Utilisation.....	204
Part II Conditions Precedent required to be delivered by an Additional Obligor.....	207
Schedule 3 Requests .....	209
Part I Utilisation Request - Loans.....	209
Part II Utilisation Request - Letters of Credit.....	211
Part III Selection Notice.....	213
Schedule 4 Form of Transfer Certificate and Lender Accession Undertaking.....	214
Schedule 5 Form of Assignment Agreement and Lender Accession Undertaking .....	218
Schedule 6 Form of Accession Letter.....	222
Schedule 7 Form of Resignation Letter .....	223
Schedule 8 Form of Compliance Certificate.....	224
Schedule 9 Timetables .....	226
Part I Loans .....	226
Part II Letters of Credit.....	228
Schedule 10 Form of Letter of Credit.....	229
Schedule 11 Agreed Guarantee Principles.....	233
Schedule 12 Form of Affiliate Ancillary Lender Accession Undertaking .....	235
Schedule 13 Form of Increase Confirmation.....	236
Schedule 14 Form of IPO Notice.....	240
Schedule 15 Permitted Form of Incremental Facility Notice .....	241

**THIS AGREEMENT** is dated **19** March 2014 and made

**BETWEEN:**

- (1) **EXOVA 2014 LIMITED**, a limited company (as at the date of this Agreement) incorporated in England and Wales with registered number 08907086 (the "**Company**");
- (2) **THE COMPANY AND THE SUBSIDIARIES** of the Company listed in Part I (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as original borrowers (together with the Company, the "**Original Borrowers**");
- (3) **THE COMPANY AND THE SUBSIDIARIES** of the Company listed in Part I (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as original guarantors (together with the Company, the "**Original Guarantors**");
- (4) **BARCLAYS BANK PLC, CREDIT SUISSE AG, LONDON BRANCH, GOLDMAN SACHS BANK USA, HSBC BANK PLC, ING BANK NV, LONDON BRANCH, NATIXIS, THE ROYAL BANK OF SCOTLAND PLC** and **SANTANDER UK PLC** as mandated lead arrangers (the "**Arrangers**");
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**"); and
- (6) **THE ROYAL BANK OF SCOTLAND PLC** as agent of the other Finance Parties (the "**Agent**").

**IT IS AGREED** as follows:

**SECTION 1  
INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**Acceleration Event**" means, following the occurrence of an Event of Default which is then continuing, the Agent delivering a notice pursuant to, and in accordance with, Clause 28.16 (*Acceleration*).

"**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 Baa1 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Agent.

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

"**Accounting Principles**" means, as applicable, (a) IFRS or (b) generally accepted accounting principles, standards and practices in the jurisdiction of incorporation of the relevant member of the Group (which may include IFRS).

"**Additional Borrower**" means a company which becomes a Borrower in accordance with Clause 31 (*Changes to the Obligors*).

"**Additional Guarantor**" means a company which becomes a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

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

"**Adjusted EBITDA**" has the meaning given to such term in Clause 26.2 (*Financial definitions*).

"**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. Notwithstanding the foregoing, in relation to The Royal Bank of Scotland plc, the term "Affiliate" shall not include (i) the UK government or any member or instrumentality thereof, including Her Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof) or (ii) any persons or entities controlled by or under common control with the UK government or any member or instrumentality thereof (including Her Majesty's Treasury and UK Financial Investments Limited) and which are not part of The Royal Bank of Scotland Group plc and its subsidiaries or subsidiary undertakings.

"**Affiliate Ancillary Lender Accession Undertaking**" means a document substantially in the form set out in Schedule 12 (*Form of Affiliate Ancillary Lender Accession Undertaking*).

"**Agent's Spot Rate of Exchange**" means the Agent's spot rate of exchange 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.

"**Agreed Guarantee Principles**" means the principles set out in Schedule 11 (*Agreed Guarantee Principles*).

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

"**Ancillary Commitment**" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 9 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

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

**"Ancillary Facility"** means:

- (a) any Original Ancillary Facility; and
- (b) any other ancillary facility made available by an Ancillary Lender in accordance with Clause 9 (*Ancillary Facilities*).

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

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

- (a) the principal amount under each overdraft facility and on demand short term loan facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that the 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);
- (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, in consultation with the relevant Borrower, and in accordance with the relevant Ancillary Document.

**"Annual Financial Statements"** has the meaning given to that term in Clause 25 (*Information Undertakings*).

**"Anti-Terrorism Law"** means each of the following to the extent that it relates to terrorism, financing of terrorism or money laundering in connection with terrorism:

- (a) the USA Patriot Act;
- (b) the Money Laundering Control Act of 1986, Public Law 99-570;
- (c) the International Emergency Economic Powers Act, 50 USC. §§ 1701 *et seq*, the Trading with the Enemy Act, 50 USC. App. §§ 1 *et seq*, any Executive Order or regulation promulgated thereunder and administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, including but not limited to the Executive Order No 13224 of September 23, 2001 –

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the "**Executive Order**");

- (d) the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada); and
- (e) any similar law enacted in the United States of America subsequent to the date of this Agreement.

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

"**Auditors**" means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche (or any amalgamation of the same or any of their successors) or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed) or any other firm of independent auditors having the relevant capabilities and expertise to perform a high quality audit of a group of companies such as the Group.

"**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 earlier of:
  - (i) 30 June 2014; and
  - (ii) the Closing Date;
- (b) in relation to the Revolving Facility, the period from and including the earlier of the Closing Date to and including the date falling one Month prior to the Termination Date for the Revolving Facility; and
- (c) in relation to any Incremental Facility Commitments, such period as may be agreed to by all the Incremental Facility Lenders in respect of those Incremental Facility Commitments and specified in the notice delivered by the Company in accordance with Clause 2.3 (*Incremental Facility*) in respect of those Incremental Facility Commitments).

"**Available Commitment**" means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject to Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*)) and as set out below):

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

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

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

- (i) that Lender's participation in any Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) that Lender's (or its Affiliate's) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

**"Available 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 sterling.

**"Base Currency Amount"** means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is denominated in an Optional Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Letter of Credit, as adjusted under Clause 6.8 (*Revaluation of Letters of Credit*) at six-monthly intervals; and
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Company pursuant to Clause 9.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement),

as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility.

**"Basel II"** has the meaning given to that term in paragraph (e) of Clause 19.3 (*Exceptions*).

**"Basel III"** has the meaning given to that term in paragraph 19.1(b)(iii) of Clause 19.1 (*Increased Costs*).



**"Borrower"** means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 31 (*Changes to the Obligors*) and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower under that Ancillary Facility with the approval of the relevant Lender pursuant to the provisions of Clause 9.9 (*Affiliates of Borrowers*).

**"Break Costs"** means the amount (if any) by which:

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

exceeds:

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

**"Business Competitor"** means a person a material part of whose business is substantially similar to that carried out by the Group, or an Affiliate of such person.

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

- (a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of euro) any TARGET Day.

**"Canadian Obligor"** means any Obligor incorporated or otherwise organised under the laws of Canada or any province or territory thereof.

**"Cash"** means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank (or any banks or institutions authorised to operate as banks in the Middle East provided that the amount of any such cash shall not, when aggregated with any Cash Equivalents described under paragraph (c) of the definition of "Cash Equivalents" in Clause 26.2 (*Financial definitions*) exceed an amount equal to £15,000,000 (or its equivalent)) and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and includes cheques which are in the process of being cleared and any cash collateral for so long as:

- (a) such member of the Group is capable of requiring that repayment of that cash is made within 90 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person;

- (c) there is no Security over that cash except for any Permitted Encumbrance; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facilities,

except, in each case, where any of the foregoing conditions are not satisfied due to a contingency or security or other restriction arising under the bank or relevant counterparty's standard or usual terms in the ordinary course of the Group's banking or other trading arrangements.

"**Cash Equivalents**" has the meaning given to that term in Clause 26.2 (*Financial definitions*).

"**CD&R**" means Clayton, Dubilier & Rice, LLC and any successor to the investment business thereof.

"**CD&R Investors**" means, collectively, (i) Clayton Dubilier & Rice Fund VII L.P., and any successor in interest thereto, (ii) any other investment fund or vehicle or managed account managed or advised by CD&R, (iii) any other investment fund or vehicle or managed account managed or advised by a Related Person of CD&R or (iv) any Related Person of any of the persons referred to in (i) to (iii) (inclusive).

"**CDOR**" means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,
 the Reference Bank Rate,

as of, in the case of paragraphs (a) to (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

"**CEO**" means the Chief Executive Officer of the Company or, if no chief executive officer is appointed, such other person fulfilling the functions of the chief executive officer of the Company.

"**CFO**" means the Chief Financial Officer of the Company or, if no chief financial officer is appointed, such other person fulfilling the functions of the chief financial officer of the Company.

**"Change of Control"** means any person or persons acting in concert (other than the CD&R Investors or Management Investors or any Relevant Holding Company or any Relevant Holders) beneficially owning (directly or indirectly) issued share capital having the right to cast more than 50 per cent. of the votes capable of being cast in general meetings of the Company.

For the purposes of this definition:

- (i) **"acting in concert"** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate, 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;
- (ii) the term **"Relevant Holders"** shall include any person acting in the capacity of underwriter in relation to a Listing, but shall exclude such person in its capacity as shareholder following the take-up of shares by such person after the completion of the distribution of the shares subject to the relevant underwriting agreement; and
- (iii) the term **"Listing"** means an admission to trading of all or any part of the share capital (or securities giving access to the share capital, whether through conversion or redemption into shares, exchange for shares, or through the exercise of a warrant or other right or option to subscribe for shares) of the Company or of any Holding Company (other than any CD&R Investor) of the Company on any regulated stock exchange or any other sale or issue by way of flotation or public offering of share capital or any equivalent circumstances in relation to the Company or any Holding Company (other than any CD&R Investor) of the Company in any jurisdiction or country.

**"Clean-Up Default"** means an Event of Default.

**"Clean-Up Representation"** means any of the representations and warranties made or deemed to have been made or repeated under Clause 24 (*Representations*).

**"Clean-Up Undertaking"** means any of the undertakings specified in Clause 27 (*General Undertakings*).

**"Closing Date"** means the date on which the Indebtedness for Borrowed Money under the Existing Senior Facilities Agreement and the Existing High Yield Notes is repaid in full from, amongst other proceeds, the first Utilisation of Facility A hereunder.

**"Code"** means the U.S. Internal Revenue Code of 1986 as amended from time to time.

**"Commitment"** means a Facility A Commitment, a Revolving Facility Commitment or an Incremental Facility Commitment.

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

**"Confidential Information"** means all information relating to the Company, any Obligor, the Group, the Finance Documents or a Facility in respect 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 the Finance Documents, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

- (a) CD&R, the CD&R Investors or any member of the Group or any of their respective advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from CD&R, the CD&R Investors or any member of the Group or any of their respective 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 information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party or its Affiliates of Clause 42 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by CD&R, the CD&R Investors or any member of the Group or any of their respective advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware (acting reasonably), unconnected with the Group or CD&R or any of the CD&R Investors and which, in either case, as far as that Finance Party is aware (acting reasonably), has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (iv) any Funding Rate or Reference Bank Quotation.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in the then current recommended form of the LMA (amended to provide for the obligations thereunder to continue for a period of no less than 24 months after the date of such undertaking) or in any other form agreed between the Company and the relevant Lender.

**"Constitutional Documents"** means the memorandum and articles of association of the Company dated 21 February 2014.

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

**"Default"** means an Event of Default or any event or circumstance specified in Clause 28 (*Events of Default*) which would (with the expiry of a grace period, the

giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

- (a) which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*) or which has failed to provide cash collateral (or has notified the Issuing Bank or the Company (which has notified the Agent) that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) which is an Issuing Bank which has failed to issue a Letter of Credit (or has notified the Agent or the Company (which has notified the Agent) that it will not issue a Letter of Credit) in accordance with Clause 6.5 (*Issue of Letters of Credit*) or which has failed to pay a claim (or has notified the Agent or the Company (which has notified the Agent) that it will not pay a claim) in accordance with (and as defined in) Clause 7.2 (*Claims under a Letter of Credit*); or
- (d) with respect to which (or any Holding Company of which) an Insolvency Event has occurred and is continuing,

unless, in the case of paragraphs (a) and (c) above:

- (i) its failure to pay, or to issue a Letter of Credit, is caused by:
  - (A) an administrative or technical error; or
  - (B) a Disruption Event; and
 payment is made within five 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.

**"Designated Gross Amount"** has the meaning given to that term in Clause 9.2 (*Availability*).

**"Designated Net Amount"** has the meaning given to that term in Clause 9.2 (*Availability*).

**"Disposal"** has the meaning given to that term in Clause 12.2 (*Disposal and Insurance Proceeds*).

**"Disposal Proceeds"** has the meaning given to that term in Clause 12.2 (*Disposal and Insurance Proceeds*).

**"Disruption Event"** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**"Dormant Subsidiary"** means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £7,500 or more or its equivalent.

**"EURIBOR"** means, in relation to any Loan in euro:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the Interest Period of that Loan; and
  - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan,
 the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for euro and for a period equal in length to the Interest Period of that Loan.

**"Event of Default"** means any event or circumstance specified as such in Clause 28 (*Events of Default*).

**"Existing High Yield Notes"** means the sterling guaranteed unsecured notes due 2018 issued by the Company on 22 October 2010 in an initial principal amount of £155,000,000.

**"Existing Loan Notes"** means the unsecured loan notes issued by Exova Topco Limited to Exova Group B.V. on 17 October 2008, in an initial principal amount of approximately £207.65 million.

**"Existing Senior Facilities Agreement"** means the multicurrency term and revolving facilities agreement made between, amongst others, Exova Holdings Limited, Exova PLC and the lenders thereunder dated 17 October 2008 (as amended and/or restated on 31 October 2008, 12 December 2008, 10 March 2009, 10 June 2009, 17 December 2009 and 22 October 2010).

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

**"Facility"** means Facility A, an Incremental Facility or the Revolving Facility.

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

**"Facility A Commitment"** means:

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

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

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

**"Facility Office"** means:

- (a) in respect of a Lender or the Issuing Bank, the office or offices notified by that Lender or the Issuing Bank to the Agent in writing on or before the date it becomes a Lender or the Issuing Bank (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the U.S.

and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. 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 U.S.), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the U.S.), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

**"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 made between any Arranger and the Company (or the Agent and the Company) setting out any of the fees referred to in Clause 17 (*Fees*); and
- (b) any agreement to which a member of the Group is a party setting out fees payable to a Finance Party referred to in paragraph (e) of Clause 2.2 (*Increase*), paragraph (j) of Clause 2.3 (*Incremental Facility*), Clause 17.5 (*Fees payable in respect of Letters of Credit*) or Clause 17.6 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

**"Finance Document"** means this Agreement, any Accession Letter, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Resignation Letter, any Selection Notice, any Incremental Facility Notice, any Utilisation Request, any other document designated as a "Finance Document" by the Agent and the Company (as each may be amended, restated, modified, supplemented, renewed or otherwise modified from time to time).



**"Finance Lease"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

**"Finance Party"** means the Agent, any Arranger, a Lender, the Issuing Bank or any Ancillary Lender.

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

- (a) Indebtedness for Borrowed Money; and
- (b) any Hedging Transaction (and, when calculating the value of that Hedging 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 Hedging Transaction, that amount) shall be taken into account).

**"Financial Quarter"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

**"Financial Quarter Date"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

**"Financial Support Direction"** means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004.

**"Financial Year"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

**"Funding Rate"** means any rate notified to the Agent by a Lender pursuant to paragraph (a)(ii) of Clause 16.2 (*Market disruption*).

**"Group"** means the Company and each of its Subsidiaries for the time being.

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

**"Guarantor"** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

**"Hedging Transaction"** means any currency, interest or commodity purchase, cap or collar agreement, forward or spot rate agreement, interest rate or currency future or option contract, futures contract or option on futures, foreign exchange or currency or commodity forward purchase or sale agreement, interest rate swap, currency swap, commodity swap or combined interest rate and currency swap agreement or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

**"Holding Company"** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

**"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 or a Holding Company of the Agent is also a Lender) it or its Holding Company is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent or its Holding Company,

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 five 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.

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

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 13 (*Form of Increase Confirmation*).

**"Increase Lender"** has the meaning given to it in Clause 2.2 (*Increase*).

**"Incremental Facility"** means any uncommitted facility which may be granted to an Incremental Facility Borrower as described in paragraph (a)(iii) of Clause 2.1 (*The Facilities*).

**"Incremental Facility Borrower"** means the Company and any other Borrower under the Facilities which accedes as an Additional Borrower under an Incremental Facility in accordance with Clause 31 (*Changes to the Obligors*) unless it has ceased to be an Incremental Facility Borrower in accordance with Clause 31 (*Changes to the Obligors*).

**"Incremental Facility Commitments"** means, in relation to any Incremental Facility Commitment identified in an Incremental Facility Notice:

- (a) in relation to any Incremental Facility Lender, the amount identified in that Incremental Facility Notice and the amount of any of those Incremental Facility Commitments transferred to it under this Agreement; and

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

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

**"Incremental Facility Lender"** means any Lender under the Incremental Facility.

**"Incremental Facility Loan"** means, in respect of any Incremental Facility Commitments, a Loan made by an Incremental Facility Lender in respect of those Incremental Facility Commitments.

**"Incremental Facility Notice"** means a notice substantially in the form set out in Schedule 15 (*Permitted Form of Incremental Facility Notice*) delivered by the Company to the Agent in accordance with Clause 2.3 (*Incremental Facility*).

**"Indebtedness for Borrowed Money"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

**"Insolvency Event"** in relation to a Finance Party means that the Finance Party:

- (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, Irish law examiner, 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 in The Netherlands not to be publicly disclosed, any such appointment which is made under an undisclosed administration (*stille curatele*) applicable to a Lender imposed by the The Dutch Central Bank (De Nederlandsche Bank N.V.) (the “**DCB**”) under or based on section 1:76 of the The Dutch Financial Supervision Act (*Wet op het financieel toezicht*) and all rules promulgated thereunder and pursuant thereto as well as communications and published guidelines of the DCB and the The Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) (the “**DFSA**”), as to Lenders which are the subject of home jurisdiction supervision by the DCB under the DFSA and in relation to which the DCB has not publicly disclosed the appointment of a custodian (*curator*) with regard to the relevant Lender);
- (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.

**"Insurance Proceeds"** has the meaning given to that term in Clause 12.2 (*Disposal and Insurance Proceeds*).

**"Intellectual Property"** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Group (which may now or in the future subsist).

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 15 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 14.3 (*Default interest*).

**"Interpolated Screen Rate"** means, in relation to LIBOR, EURIBOR, CDOR or STIBOR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

**"Investment"** means any advance, loan, extension of credit or capital contribution, or any purchase of shares, stock, bonds, notes, debentures or other securities, or any other investment in any person.

**"IPO"** means the admission of certain ordinary shares in the Company to the premium listing segment of the Official List maintained by the Financial Conduct Authority and to trading on the London Stock Exchange plc's main market for listed securities.

**"IPO Notice"** means a notice from the Company to the Agent substantially in the form set out in Schedule 14 (*Form of IPO Notice*).

**"IRS"** means the United States Internal Revenue Service or any successor thereto.

**"Issuing Bank"** means each Lender which has notified the Agent that it has agreed to the Company's request to be an Issuing Bank pursuant to the terms of this Agreement and if more than one Lender has so agreed, such Lenders shall be referred to, whether acting individually or together, as the "Issuing Bank" **provided that**, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the "Issuing Bank" shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.

**"ITA"** means the Income Tax Act 2007.

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

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

**"Legal Opinion"** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 31 (*Changes to the Obligors*).

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to

insolvency, bankruptcy, liquidation, administration, examinership, moratorium, reorganisation and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences to those principles, rights and defences referred to in (a) and/or (b) above under the laws of any Relevant Jurisdiction; and
- (d) general principles of equity and any other matters which are set out as qualifications or reservations as to matters of law of general application or of general application to companies, corporations or other persons in the Legal Opinions.

**"Lender"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*), Clause 2.3 (*Incremental Facility*) or Clause 29 (*Changes to the Lenders*),

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

**"Letter of Credit"** means:

- (a) a letter of credit, substantially in the form set out in Schedule 10 (*Form of Letter of Credit*) or in any other form requested by the Company and agreed by the Issuing Bank; or
- (b) any guarantee, indemnity or other instrument in a form requested by a Borrower (or the Company on its behalf) and agreed by the Agent and the Issuing Bank.

**"LIBOR"** means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

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

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

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

**"Local Facility"** means a facility made available to a member of the Group by a bank in the country in which that member of the Group is incorporated or operates **provided that** (a) no Borrower is incorporated or operates in that country and (b) no security, guarantee, indemnity or other support for financial loss is given in respect of that facility by a member of the Group incorporated in a jurisdiction other than the jurisdiction in which the member of the Group to whom the facility is made available is incorporated or operates.

**"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 that reduction).

**"Management Investors"** means, collectively, the managing directors, directors, officers, employees and managers of, or consultants to, the Company or any Parent Company or any Subsidiary of the Company or family members or relatives thereof or trusts for the benefit of any of the foregoing or any entity through which such persons may hold equity in the Company or any Parent Company or any Subsidiary of the Company, or any of their heirs, executors, successors or legal representatives who, at any particular date, shall beneficially own or have the right to acquire, directly or indirectly, equity of the Company or any Parent Company or any Subsidiary of the Company.

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

- (a) held in the United Kingdom by a Borrower with the Agent;
- (b) identified in a letter between the Company and the Agent as a Mandatory Prepayment Account; and
- (c) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

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

**"Margin"** means:

- (a) in relation to any Facility A Loan, 2.25 per cent. per annum;
- (b) in relation to any Incremental Facility Loan, the percentage rate per annum specified by the Company in the relevant Incremental Facility Notice;

- (c) in relation to any Revolving Facility Loan, 2.00 per cent. per annum;
- (d) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
- (e) in relation to any other Unpaid Sum, the highest rate per annum specified above,

but if:

- (i) no Event of Default has occurred and is continuing; and
- (ii) the Net Leverage Ratio in respect of the most recently completed Relevant Period is within a range set out below,

the Margin for each Utilisation under Facility A and the Revolving Facility will be the percentage rate per annum set out below in the column for that Facility opposite that range (and, in relation to any Incremental Facility Loan, the Margin ratchet (if any) shall be as specified by the Company in the relevant Incremental Facility Notice):

Net Leverage Ratio	Facility A Margin % p.a.	Revolving Facility Margin % p.a.
Greater than or equal to 3.0:1	2.50	2.25
Less than 3.0:1 but greater than or equal to 2.50:1	2.25	2.00
Less than 2.50:1 but greater than or equal to 2.00:1	2.00	1.75
Less than 2.00:1	1.75	1.50

However:

- (i) any increase or decrease in the Margin for a Loan shall take effect on the date (the "**reset date**") which is three Business Days after receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 25.3 (*Compliance Certificates*);
- (ii) if, following receipt by the Agent of the annual audited financial statements of the Group and related Compliance Certificate, those statements and Compliance Certificate do not confirm the basis for a reduced Margin or alternatively show that a reduced Margin should have applied, then the provisions of Clause 14.2 (*Payment of interest*) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised Net Leverage Ratio calculated using the figures in the Compliance Certificate;



- (iii) while an Event of Default is continuing, the Margin for each Loan under Facility A, the Revolving Facility and the Incremental Facility shall be the highest percentage per annum set out above (or, in relation to any Incremental Facility Loan, in the relevant Incremental Facility Notice) for a Loan under that Facility. Once such Event of Default ceases to be continuing, the Margin will be recalculated by reference to the Semi-Annual Financial Statements most recently delivered to the Agent on the assumption that as at the date such Semi-Annual Financial Statements were delivered no such Event of Default had occurred and was continuing with effect from the date such Event of Default ceases to be continuing; and
- (iv) for the purpose of determining the Margin, the Net Leverage Ratio and Relevant Period shall be determined in accordance with Clause 26.2 (*Financial definitions*).

For the avoidance of doubt, there is no limit (subject to the maximum and minimum applicable Margin) on the amount by which the applicable Margin may decrease or increase at any reset date.

**"Margin Stock"** means margin stock or "margin security" within the meaning of Regulations T, U and X.

**"Material Adverse Effect"** means, taking into account all relevant circumstances:

- (a) a material adverse effect on the consolidated business, assets or financial condition of the Group taken as a whole; or
- (b) a material adverse effect on the ability of the Obligors taken as a whole to perform their payment obligations under the Finance Documents; or
- (c) an event or circumstance which, subject to the Legal Reservations, adversely affects the validity or enforceability of any Finance Document to an extent which is materially adverse to the interests of the Finance Parties under the Finance Documents taken as a whole.

**"Material Company"** means a member of the Group which:

- (a) is an Obligor; or
- (b) holds shares in an Obligor or any person referred to in paragraph (c) below; or
- (c) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as Adjusted EBITDA (as defined in Clause 26.2 (*Financial definitions*)) (and, for the avoidance of doubt, calculated on an unconsolidated basis and excluding intra-Group items) representing 7.5 per cent. or more of Adjusted EBITDA calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c) above shall be determined by reference to the latest audited financial statements of that Subsidiary and the latest audited consolidated financial statements of the Group. However, if a Subsidiary meeting the test set out in paragraph (c) above has been acquired since the date as at

which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Group's Auditors as representing an accurate reflection of the revised Adjusted EBITDA (as defined in Clause 26.2 (*Financial definitions*) of the Group)).

A report by the Auditors of the Company that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.

**"Material Intellectual Property"** means any Intellectual Property which is required or otherwise material for the conduct of the business of any member of the Group.

**"Middle East"** means each and any of Bahrain, Oman, Qatar, Saudi Arabia, Dubai and Abu Dhabi.

**"Middle East Entity"** means any entity incorporated in, or with its principal place of business in, any country in the Middle East that is consolidated in the consolidated financial statements of the Company under the Accounting Principles applicable as at the date of this Agreement.

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

- (a) (subject to paragraph (c) 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;
- (b) 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
- (c) 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.

The above rules will only apply to the last Month of any period. **"Monthly"** shall be construed accordingly.

**"Net Leverage Ratio"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

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

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

- (c) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 32.10 (*Lenders' indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (d)(i) and (d)(ii) of the definition of "Defaulting Lender".

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

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

**"Optional Currency"** means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).

**"Original Ancillary Facility"** means, with effect from the Closing Date, an up to £7,000,000 overdraft and credit card facility to be dated on or about the Closing Date, from Barclays Bank PLC to certain members of the Group;

**"Original Financial Statements"** means:

- (a) the audited consolidated accounts of Exova Group Limited and its Subsidiaries for the financial year ending on 31 December 2013; and
- (b) in relation to an Additional Obligor, its audited financial statements delivered to the Agent as required by Clause 31 (*Changes to the Obligors*) (consolidated in the case that Obligor itself has Subsidiaries).

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

**"Parent Company"** means any Holding Company of the Company from time to time but excluding any of the CD&R Investors.

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

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

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

**"Permitted Acquisition"** means:

- (a) the exchange of fixed assets for other fixed assets comparable or superior as to type, value and quality;
- (b) the acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

- (c) the incorporation or formation of a, or the acquisition of a newly formed "off the shelf", limited liability company or limited liability corporation that becomes a member of the Group;
- (d) an acquisition of securities which are Cash Equivalents;
- (e) any acquisition which constitutes a Permitted Transaction;
- (f) any acquisition of shares issued by a member of the Group; and
- (g) an acquisition (an "**Approved Acquisition**") by any member of the Group of (A) shares (or other securities or any interest therein) in a limited liability company or limited liability corporation or (B) the assets of a business or undertaking (or any interest therein) **provided that**:
  - (i) where the aggregate of (without double counting):
    - (A) all amounts paid or to be paid as consideration for such acquisition (including all related fees, costs, commissions and expenses);
    - (B) the liabilities assumed (and not repaid or discharged) in respect of Financial Indebtedness by any member of the Group as part of the consideration for such acquisition; and
    - (C) all Financial Indebtedness of the target acquired (and not repaid) in connection with such acquisition,

(the "**total consideration**") exceeds £50,000,000 (or its equivalent in other currencies), the Group is in compliance with the Net Leverage Ratio and Interest Cover Ratio financial covenants set out in Clause 26 (*Financial Covenants*) *pro forma* for the acquisition and any debt incurred to finance the acquisition as at the date for which Annual Financial Statements or Semi-Annual Financial Statements have been most recently delivered to the Agent under Clause 25.1 (*Financial statements*) prior to the date of the Group's entry into a legally binding contract to make the acquisition (taking into *pro forma* account on the same basis and to the same extent as taken into account in calculating Adjusted EBITDA, cost savings and synergies reasonably identifiable and reasonably expected to arise from such acquisition within 12 months of the acquisition) (or if no such Financial Statements have yet been delivered, is forecast to be in compliance as at the next Financial Half Year Date) in each case, such cost savings and synergies being certified by two directors of the Company; and
  - (ii) regardless of the total consideration for the Approved Acquisition, the following conditions must be satisfied:
    - (A) the target is in, or the assets, property or business acquired will be used in connection with the same or a similar or complementary business to that carried on by any member of the Group;

- (B) if the acquisition is a Class 1 Transaction (as defined in the United Kingdom Listing Authority rules, as amended from time to time) (save to the extent that compliance with the requirements of the United Kingdom Listing Authority rules (with respect to the applicable net pre-tax profits test in relation to such Class 1 Transaction) has been waived or dispensed with by the United Kingdom Listing Authority) the Company has obtained the prior written consent of the Agent (acting on the instructions of the Majority Lenders); and
- (C) as at the time a legally binding contract to effect such acquisition is entered into, the target is not, to the knowledge of the Company, organised and does not operate in any jurisdiction which is the subject of Sanctions.

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

- (a) of obsolete or redundant assets (other than shares) for cash, whether now owned or hereafter acquired, in the ordinary course of the day-to-day business of the disposing entity;
- (b) of Cash Equivalents for cash or in exchange for other Cash Equivalents in each case, on arm's length terms;
- (c) of assets in the ordinary course of the day-to-day business of the disposing entity (for the avoidance of doubt, excluding real estate and controlling stakes in Subsidiaries);
- (d) of accounts receivable or notes receivable for cash on arm's length terms if such receivables arise in the ordinary course of day-to-day business (without recourse to any member of the Group or with limited recourse to the extent the level and nature of that recourse to any member of the Group is not unusual for factoring or similar arrangements) **provided that** the aggregate amount of the accounts receivable and notes receivable then subject to such factoring arrangements shall not at any time exceed an amount equal to £15,000,000 and **provided further that** the Available Facility in respect of the Revolving Facility shall be temporarily reduced by an amount equal to the amount by which the amount of the accounts receivable and notes receivable then subject to the factoring arrangements exceeds £5,000,000, but the Available Facility in respect of the Revolving Facility shall revive on receipt by the Agent of a certificate from the Company confirming that the aggregate amount of all accounts receivable and notes receivable then subject to factoring arrangements does not exceed £5,000,000;
- (e) of Intellectual Property for cash which is, in the reasonable judgment of the Company, no longer economically viable to be maintained by a member of the Group or no longer required for the conduct of the business of the Group (taken as a whole);
- (f) of any asset by a member of the Group or a Middle East Entity to another member of the Group or a Middle East Entity;

- (g) of fixed assets in exchange for other fixed assets comparable or superior as to type, value and quality;
- (h) pursuant to any arrangement in respect of any consolidated, combined, affiliated or unitary tax group or any surrender of group relief;
- (i) of assets in accordance with the Steps Paper;
- (j) of assets pursuant to or which constitutes a Permitted Merger;
- (k) of assets pursuant to an enforcement of any Permitted Encumbrance;
- (l) of fixed assets for cash where the Disposal Proceeds are used within 365 days of receipt (or are committed by the board of directors of the Company to be applied within 365 days of receipt of such proceeds and are so applied on or prior to the date falling 6 Months after the end of that 365 day period or, if such reinvestment is in a project authorised by the board of directors of any member of the Group that will take more than 6 Months after the end of that 365 day period to complete, are actually applied within 9 Months of the end of that 365 day period) to purchase replacement fixed assets comparable or superior as to quality, value and type;
- (m) of any laboratory (including by way of a disposal of the shares in a member of the Group whose primary asset(s) is the relevant laboratory or laboratories) the consideration for which does not exceed £10,000,000 (or its equivalent) **provided that** the aggregate consideration for all such disposals does not, (i) in any Financial Year of the Company, exceed £25,000,000 (or its equivalent); and (ii) from the date of this Agreement until the Facility A Termination Date exceed £50,000,000 (or its equivalent); and
- (n) pursuant to or which constitutes a Permitted Transaction, a Permitted Encumbrance, a Permitted Loan, a Permitted Sale and Leaseback or a Hedging Transaction;
- (o) pursuant to the making of a lawful dividend or other distribution;
- (p) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (q) of surplus real estate not required for the business of any member of the Group; and
- (r) of other assets (other than shares or businesses) for cash not otherwise permitted under paragraphs (a) to (q) above **provided that** the aggregate market value of all assets so sold or disposed of does not exceed an amount equal to £10,000,000 (or its equivalent) in any Financial Year of the Company.

**"Permitted Encumbrance"** means:

- (a) any existing Security granted in connection with the Existing Senior Facilities Agreement **provided that** (i) the principal amount secured has not been

increased since the date of this Agreement; and (ii) the Security is removed or discharged on or prior to the Closing Date.

- (b) any Security entered into pursuant to any Finance Document;
- (c) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date **provided that**:
  - (i) such Security or Quasi-Security was not created in contemplation of the acquisition of such asset by a member of the Group;
  - (ii) the principal amount secured has not been increased in contemplation of, or since the date of, the acquisition of such asset by the relevant member of the Group; and
  - (iii) except to the extent the Security or Quasi-Security is otherwise permitted under any of the other paragraphs of this definition of "Permitted Encumbrance", the Security or Quasi-Security is removed or discharged within 6 Months of the date of acquisition of that asset or the aggregate principal amount of any secured indebtedness at any one time outstanding (when aggregated with the amount of any secured indebtedness permitted under paragraph (d)(iii) of this definition) does not exceed £15,000,000 (or its equivalent in other currencies);
- (d) any Security or Quasi-Security over or affecting any asset of any person which becomes a member of the Group after the Closing Date, where such Security or Quasi-Security is created prior to the date on which such person becomes a member of the Group **provided that**:
  - (i) such Security or Quasi-Security was not created in contemplation of the acquisition of such person;
  - (ii) the principal amount secured has not been increased in contemplation of, or since the date of, the acquisition of such person; and
  - (iii) except to the extent the Security or Quasi-Security is otherwise permitted under any of the other paragraphs of this definition of "Permitted Encumbrance", the Security or Quasi-Security is removed or discharged within 6 Months of that company becoming a member of the Group or the aggregate principal amount of any secured indebtedness at any one time outstanding (when aggregated with the amount of any secured indebtedness permitted under paragraph (c)(iii) of this definition) does not exceed £15,000,000 (or its equivalent in other currencies);
- (e) any netting or set-off arrangement entered into by any member of the Group in the normal course of its banking and other trading arrangements for the purpose of cash pooling or other netting debit and credit balances of members of the Group (including, without limitation, an Ancillary Facility which is an overdraft comprising more than one account);

- (f) any Security arising under any retention of title arrangement, conditional sale or hire purchase arrangement in respect of goods supplied to a member of the Group in the ordinary course of day-to-day business on the counterparty's standard or usual terms;
- (g) any Security arising by operation of law for the payment of Taxes not yet overdue or for the payment of Taxes which are due and payable but unpaid and which are being contested in good faith by appropriate proceedings which are being diligently conducted **provided that** adequate reserves with respect thereto are maintained on the books of the relevant member(s) of the Group in accordance with the Accounting Principles;
- (h) carriers', warehousemen's, mechanics', materialmen's or repairmen's liens or other similar liens arising by operation of law and in the ordinary course of day-to-day business which are not overdue for a period of more than 60 days or are being contested in good faith by appropriate proceedings which are being diligently conducted;
- (i) any Security over assets of a member of the Group in favour of landlords or mortgagees of landlords to secure rental payments to be made by that member of the Group and arising by operation of law or pursuant to the terms of the real property leases to the extent such Security is in the nature of pledges or deposits (on normal commercial terms) or otherwise is similar to the Security of landlords and mortgagees of landlords arising by operation of law **provided in each case that** the rental payments secured thereby are not more than 30 days overdue;
- (j) any Security arising by operation of law over any assets of a member of the Group to secure workers' compensation, unemployment insurance, other social security benefits or other insurance related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements) of a member of the Group;
- (k) any Security over any assets of a member of the Group arising by operation of or pursuant to any judgment, decree or order of any court or other governmental authority **provided that** such judgment, decree or proceedings have not been finally determined and appropriate legal proceedings have been or will promptly be duly initiated by that member of the Group for the review of such judgment, decree or order, which proceedings are being diligently conducted or the period within which such proceedings may be initiated has not yet expired;
- (l) any customary Security over assets of a member of the Group to secure the performance of bids, trade contracts (other than Indebtedness for Borrowed Money), leases, statutory obligations, surety and appeal bonds, performance bonds, judgment and like bonds, and other obligations of a similar nature incurred in the ordinary course of day-to-day business;
- (m) any Security or Quasi-Security over any assets of a member of the Group arising pursuant to planning restrictions, rights in the nature of easements, easements, rights-of-way, servitudes and other restrictions on the use of



property, licences, permits, reservations, private deed restrictions, zoning, land use, buildings restrictions, by-laws, regulations, ordinances, other similar Security or Quasi-Security incurred in the ordinary course of day-to-day business and minor title defects or deficiencies or irregularities of title, in each case, which do not materially interfere with the ordinary conduct of the business of the Group taken as a whole;

- (n) any Security over assets of a member of the Group financed pursuant to a Permitted Purchase Money Obligation or a Finance Lease to secure obligations of that member of the Group under that Permitted Purchase Money Obligation or Finance Lease and any related rights and interests of that member of the Group **provided that** the aggregate amount of all Permitted Purchase Money Obligations so secured shall not at any time exceed an amount equal to the greater of £15,000,000 (or its equivalent) and an amount equal to 4 per cent. of Total Assets;
- (o) any Security securing guarantee or indemnity obligations in respect of third-party loans and advances to officers, directors or employees of any member of the Group or any Parent Company: (i) for travel and entertainment or relocation expenses incurred in the ordinary course of business; (ii) for any other purpose provided, in the case of this sub-paragraph (ii), that the aggregate principal amount (as to all such guarantees) at any one time outstanding does not exceed £5,000,000 (or its equivalent in other currencies); or (iii) relating to indemnification or reimbursement of any officers, directors or employees in respect of liabilities relating to their serving in any such capacity or otherwise;
- (p) any Security (including, without limitation, any put and call agreements) with respect to the equity of any Permitted Joint Venture, including any Security pursuant to the shareholders' joint venture or similar agreement with respect to such joint venture or similar arrangement;
- (q) any Security over any assets of (or shares or other equity interests in) any Project Company or Permitted Joint Venture or Middle East Entity to secure Indebtedness for Borrowed Money **provided that** the aggregate amount so secured shall not at any time exceed an amount equal to the greater of £15,000,000 (or its equivalent) and an amount equal to 4 per cent. of Total Assets;
- (r) any Security arising in connection with any transaction or arrangements on customary terms permitted under sub-paragraph (d) of the definition of Permitted Disposal;
- (s) any Security in connection with the financing of deposits for the purchase of assets **provided that** such Security only extends to the assets being acquired;
- (t) any Security to secure Indebtedness for Borrowed Money owing by a member of the Group under a Local Facility over assets of that member of the Group or over assets of a member of the Group incorporated in the same jurisdiction, **provided that** the aggregate amount of all such Indebtedness for Borrowed Money so secured shall not at any time exceed an amount equal to the greater

of £15,000,000 (or its equivalent) and an amount equal to 4 per cent. of Total Assets;

- (u) any Security, Quasi-Security, reservations, limitations, provisos and conditions expressed in any original grant from any governmental authority or other grant from any governmental authority of real or immovable property, or interests therein;
- (v) any right reserved to or vested in any governmental authority by the terms of any lease, license, franchise, grant or permit acquired by that person or by any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (w) any Security or Quasi-Security given to a public utility or any governmental authority when required by such utility or governmental authority in connection with the operations of that person in the ordinary course of its day-to-day business;
- (x) subdivision agreements, site plan contract agreements, development agreements, facilities sharing agreements, cost sharing agreements and other similar agreements in each case, in relation to real property which do not materially impair the use of the real property subject thereto for the purpose for which it is used by that person;
- (y) the rights of any tenant, occupant or licensee under any lease, occupancy agreement or licence which do not materially impair the use of the real property subject thereto for the purpose for which it is currently used by that person;
- (z) any security interest or set-off arrangements entered into by any member of the Group in the ordinary course of its banking arrangements which arise from the general banking conditions (*algemene bankvoorwaarden*); and
- (aa) liens, rights of set-off, retention of title, trust relationships or other Security arising by operation of law, or liens, bailment, rights of set-off, retention of title, conditional sale agreements, trust relationships or other similar agreements arising by contract, in each case in the ordinary course of day-to-day business of any member of the Group or under general business conditions of the relevant contracting counterparty;
- (bb) any security arising in relation to any Hedging Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of business activities of a member of the Group and not for speculative purposes;
- (cc) any Security for any Indebtedness for Borrowed Money, **provided that** (a) the obligations under the Finance Documents are secured equally and rateably (save in each case to the extent limited or not otherwise permitted by applicable law, including general statutory limitations, financial assistance, capital maintenance, corporate benefit, fraudulent preference, "thin capitalisation" rules, retention of title claims, exchange control restrictions and

similar principles) with the obligations in respect of such Financial Indebtedness for so long as such obligations in respect of such Financial Indebtedness are so secured and (b) if the Agent (acting on the instructions of the Majority Lenders) so requires, acting reasonably, such Financial Indebtedness is subject to intercreditor arrangements on customary and reasonable terms as agreed with the Agent (acting on the instructions of the Majority Lenders, acting reasonably); and

- (dd) any other Security **provided that** the aggregate market value of the assets secured by members of the Group does not at any time exceed an amount equal to the greater of £5,000,000 (or its equivalent) and an amount equal to 3 per cent. of Total Assets.

"Permitted Investments" means:

- (a) any extension of trade credit in the ordinary course of day-to-day business;
- (b) any Investments in Cash Equivalents;
- (c) any Investments in Permitted Joint Ventures or Project Companies in an aggregate amount not exceeding an amount equal to £20,000,000 (or its equivalent) at any time;
- (d) any Investments by any member of the Group in notes receivable in connection with transactions described in paragraph (d) of the definition of "Permitted Disposals";
- (e) loans or other credit extended by a member of the Group to officers, directors or employees of that member of the Group or any Parent Company: (i) for travel and entertainment or relocation expenses incurred in the ordinary course of business, (ii) for any other purpose provided, in the case of this subparagraph (ii), that the aggregate principal amount (as to all such loans) at any one time outstanding does not exceed £2,000,000 (or its equivalent in other currencies) or (iii) relating to indemnification or reimbursement of any officers, directors or employees in respect of liabilities relating to their serving in any such capacity or otherwise;
- (f) any Investments of any member of the Group which arises pursuant to a Hedging Transaction or arises as a result of the creation of any Permitted Encumbrance;
- (g) Investments representing non cash consideration received by any member of the Group in connection with any asset sale or other disposal permitted under this Agreement;
- (h) any Investments representing evidence of indebtedness, securities or other property received from customers or other persons in the ordinary course of day-to-day business by any member of the Group in connection with any bankruptcy proceeding or other reorganisation of such customer or other person or as a result of foreclosure, perfection or enforcement of any Security

or exchange for evidence of indebtedness, securities or other property of such customer or other person held by such member of the Group;

- (i) loans to Management Investors in an aggregate amount not exceeding £2,000,000 (or its equivalent) at any time in connection with the subscription for or purchase by such Management Investors, directly or indirectly, of share capital of any Parent Company (other than the Company);
- (j) any Investments pursuant to or which constitutes a Permitted Acquisition;
- (k) Investments in any member of the Group or any Middle East Entity;
- (l) any Investments pursuant to or which constitutes a Permitted Transaction;
- (m) any Investments pursuant to an issuance of shares by a member of the Group or any Middle East Entity; and
- (n) any Investments not otherwise permitted by paragraphs (a) to (m) above in an aggregate amount not exceeding an amount equal to the greater of £20,000,000 (or its equivalent) and an amount equal to 4 per cent. of Total Assets at any one time outstanding.

**"Permitted Joint Venture"** means any joint venture or similar arrangement in respect of an entity which is not a Subsidiary (directly or indirectly) of the Company.

**"Permitted Loans"** means:

- (a) any Permitted Investments that are in the nature of loans, advances or extensions of credit by any member of the Group;
- (b) any loan or credit made pursuant to a tax consolidation agreement or any similar arrangement in respect of any consolidated, combined, affiliated or unitary tax group or any surrender of group relief with respect to the Group; and
- (c) any loan or credit made pursuant to or which constitutes a Permitted Transaction.

**"Permitted Merger"** means any merger, amalgamation, consolidation, demerger or corporate reconstruction:

- (a) involving only members of the Group and/or Middle East Entities and which does not involve the Company (or involves the Company and where the Company is the surviving entity and becomes or remains (as applicable) the parent of the Group); or
- (b) approved by the Majority Lenders; or
- (c) carried out in order to effect a Permitted Acquisition.

**"Permitted Purchase Money Obligation"** means any Indebtedness for Borrowed Money of any member of the Group incurred to finance or refinance the acquisition of

fixed or capital assets (including, without limitation, Finance Leases) **provided that** such Indebtedness for Borrowed Money is incurred substantially simultaneously with such acquisition or within six Months after such acquisition or in connection with the refinancing thereof.

**"Permitted Sale and Leaseback"** means a sale and leaseback transaction by any member of the Group involving any asset which such person is permitted pursuant to Clause 27.12 (*Disposals*) to dispose of **provided that** the aggregate disposal proceeds in respect of all assets which are the subject of such sale and leaseback transactions shall not at any time exceed an amount equal to £20,000,000 (or its equivalent).

**"Permitted Transaction"** means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Transaction Documents;
- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group; or
- (c) transactions (other than (i) any sale, lease, licence, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
- (d) any payments, tax elections or other transactions expressly contemplated by the Steps Paper.

**"Project Company"** means a Subsidiary of any member of the Group which is a special purpose company, partnership or other legal person the creditors of which have no recourse to any members of the Group in respect of any Indebtedness for Borrowed Money of that Subsidiary or any of its Subsidiaries (other than to any member of the Group which is the owner of any shares or other equity interests of such Project Company, to the extent that such member of the Group has granted Security over such shares or other equity interests legally or beneficially owned by it).

**"Qualifying Lender"** has the meaning given to that term in Clause 18.1 (*Definitions*).

**"Quasi-Security"** has the meaning given to that term in Clause 27.10 (*Negative pledge*).

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

- (a) (if the currency is sterling) the first day of that period;
- (b) (if the currency is euro) two TARGET Days before the first day of that period; or
- (c) (if the currency is Canadian dollars) three Business Days before the first day of that period (other than in respect of the first Utilisation Date where the

Quotation Day for Canadian dollars will be two Business Days before the first day of that period; or

- (d) (for any other currency) two Business Days before the first day of that period,

unless (other than in relation to the first Utilisation Date) market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

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

**"Reference Bank Rate"** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

- (a) in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market; or
- (b) in relation to EURIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; and

- (c) in relation to CDOR, as the relevant Reference Bank's bid rate for the purchase of Canadian dollar denominated Canadian bankers' acceptances with a term to maturity equal in length to the relevant period; and
- (d) in relation to STIBOR, the rate at which the relevant Reference Bank is willing to lend SEK 100 million for the relevant period without collateral to other banks active on the Swedish money market.

**"Reference Banks"** means: (i) in relation to LIBOR, the principal London offices, (ii) in relation to EURIBOR, the principal London offices, (iii) in relation to CDOR, the principal Toronto offices and (iv) in relation to STIBOR, the principal Stockholm offices, of such banks as may be appointed by the Agent with the consent of the Company (not to be unreasonably withheld or delayed).

**"Regulations T, U and X"** means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System of the United States (or any successor) as now and from time to time in effect from the date of this Agreement.

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

**"Related Person"** of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition only, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise.

**"Relevant Holding Company"** means a person in which no person or persons acting in concert (other than another Relevant Holding Company) directly or indirectly owns or controls beneficially more of the voting issued share capital (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) than that owned or controlled directly or indirectly by the CD&R Investors and/or Management Investors.

**"Relevant Interbank Market"** means, in relation to euro, the European interbank market, in relation to Canadian dollars, the market for Canadian bankers' acceptances, in relation to SEK, the Swedish interbank market and, in relation to any other currency, the London interbank market.

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

- (a) its jurisdiction of incorporation or formation; and
- (b) any jurisdiction where it conducts a material part of its business.

**"Relevant Period"** has the meaning given to that term in Clause 26.2 (*Financial definitions*).

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

**"Repeating Representations"** means each of the representations set out in Clause 24.2 (*Status*) to Clause 24.5 (*Execution of the Transaction Documents*), paragraph (b) of Clause 24.7 (*Financial statements*), Clause 24.8 (*Validity and admissibility in evidence*), Clause 24.9 (*Pari passu ranking*), Clause 24.13 (*No Default*), Clause 24.17 (*Federal Reserve Regulations*) to Clause 24.19 (*Anti-Terrorism Laws*) (inclusive) and Clause 24.20 (*Economic Sanctions*).

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

**"Required Quarterly Information"** means in relation to any Financial Quarter of the Company:

- (a) an unaudited consolidated balance sheet of the Group as at the last day of such Financial Quarter,
- (b) an unaudited consolidated profit and loss account of the Group for such Financial Quarter;

- (c) an unaudited consolidated cash flow statement of the Group for such Financial Quarter;
- (d) a management commentary, in reasonable detail, on each of items (a) to (c) referred to above.

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

**"Restricted Party"** means any individual or entity or vessel that is: (i) listed on, or owned or controlled by a person listed on, a Sanctions List, (ii) a government of a Sanctioned Country, (iii) an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country, (iv) resident or permanently located in, permanently operating from for purposes of the transaction in question, or incorporated under the laws of, a Sanctioned Country or (v) otherwise the subject of Sanctions that generally prohibit imports from, exports to, financial transactions with or investments in the individual, entity or vessel.

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

**"Revolving Facility Commitment"** means:

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

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

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

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

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

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



- (b) the aggregate amount of which is equal to or less than the amount of the maturing Revolving Facility Loan or the relevant claim in respect of that Letter of Credit;
- (c) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)) or the relevant claim in respect of that Letter of Credit; and
- (d) made or to be made to the same Borrower for the purpose of:
  - (i) refinancing that maturing Revolving Facility Loan; or
  - (ii) satisfying the relevant claim in respect of that Letter of Credit.

**"Sanctioned Country"** means any country or other territory subject to a general export, import, financial or investment embargo under any Sanctions (until such time as such country or territory ceases to be the subject of Sanctions), which, as of the date of this Agreement, include Cuba, Iran, North Korea, North Sudan, South Sudan, Myanmar and Syria.

**"Sanctions"** means any trade, economic or financial sanctions or embargoes administered, enacted or enforced from time to time by any Sanctions Authority.

**"Sanctions Authority"** means (i) the United States, (ii) the United Nations Security Council, (iii) the European Union, (iv) the United Kingdom or (v) the respective governmental institutions of any of the foregoing including, without limitation, Her Majesty's Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of Commerce, and the U.S. Department of State.

**"Sanctions List"** means any of the "Specially Designated Nationals and Blocked Persons" list issued by the Office of Foreign Assets Control of the US Department of Treasury or any similar official economic sanctions list of specifically designated nationals or designated or sanctioned individuals or entities issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time.

**"Screen Rate"** means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate);
- (b) in relation to EURIBOR, the euro interbank offered rate administered by the Banking Federation of the European Union (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate);
- (c) in relation to CDOR, the automatic average bid rate for all institutions listed in respect of the relevant interest period for Canadian bankers' acceptances displayed and identified as such (with a period to maturity equal in length to

the relevant period (disregarding any inconsistency arising from the last day of that period being determined pursuant to the terms of this Agreement)) displayed on page CDOR of the "Reuters Screen CDOR Page", as defined in the International Swaps and Derivatives Association, Inc. (or any replacement Reuters page which displays that rate at 10:00 A.M. (Toronto time)); and

- (d) in relation to STIBOR, the Stockholm interbank offered rate administered by the Swedish Bankers' Association (or any other person which takes over the administration of that rate) for the relevant period displayed on the STIBOR, Swap & Treasury Fixing page of the NASDAQ OMX website (or any replacement page of that website which displays that rate),

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Company.

"**Security**" means a mortgage, standard security, charge, pledge, lien, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Selection Notice**" means a notice substantially in the form set out in Part III (*Selection Notice*) of Schedule 3 (*Requests*) given in accordance with Clause 15 (*Interest Periods*) in relation to a Term Facility.

"**Separate Loan**" has the meaning given to it in Clause 10.3 (*Repayment of Revolving Facility Loans*).

"**Specified Time**" means a time determined in accordance with Schedule 9 (*Timetables*).

"**Sponsor Affiliate**" means CD&R, each of its Affiliates, any trust of which CD&R or any of its Affiliates is a trustee, any partnership of which CD&R or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, CD&R or any of its Affiliates **provided that** (a) any such trust, fund or other entity which has been established for at least 6 months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by CD&R or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies and (b) no member of the Group shall constitute a Sponsor Affiliate.

"**Steps Paper**" means the steps paper entitled "Exova Group Steps Paper" dated 28 February 2014 describing the structuring steps in respect of the IPO in the agreed form, together with any amendments, additions, supplements or updates thereto which are not and could not reasonably be expected to be materially adverse to the interests of the Lenders or are otherwise approved by the Majority Lenders (acting reasonably) and, for the avoidance of doubt, should any such amendment, addition, supplement or update be made to the Steps Paper after the date of this Agreement other than in compliance with the foregoing, the following provisions shall cease to apply:

paragraph (i) of the definition of "Permitted Disposal" and paragraph (d) of the definition of "Permitted Transaction".

"**STIBOR**" means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,
 the Reference Bank Rate,

as of, in the case of paragraphs (a) to (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

"**Subsidiary**" means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Super Majority Lenders**" means a Lender or Lenders whose Commitments aggregate more than 75 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 75 per cent. of the Total Commitments immediately prior to that reduction).

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

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

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

"**Taxes Act**" means the Income and Corporation Taxes Act 1988.

"**Term**" means each period determined under this Agreement for which the Issuing Bank is under a liability under a Letter of Credit.

"**Term Facility**" means Facility A or any term Incremental Facility.

"**Term Loan**" means a Facility A Loan or a term Incremental Facility Loan.

"**Termination Date**" means:

- (a) in relation to Facility A, the date falling 60 Months after the Closing Date;
- (b) in relation to the Revolving Facility, the date falling 60 Months after the Closing Date; and
- (c) in respect of the Incremental Facility, the date specified in the relevant Incremental Facility Notice in accordance with Clause 2.3 (*Incremental Facility*).

"**Total Assets**" means the consolidated total assets of the Group (as reflected in the Semi-Annual Financial Statements or Annual Financial Statements most recently delivered to the Agent).

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Revolving Facility Commitments and any Incremental Facility Commitments.

"**Total Facility A Commitments**" means the aggregate of the Facility A Commitments, being £170,000,000 at the date of this Agreement.

"**Total Revolving Facility Commitments**" means the aggregate of the Revolving Facility Commitments, being £90,000,000 at the date of this Agreement.

"**Transaction Documents**" means the Finance Documents and the Constitutional Documents.

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

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

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking; and

- (b) the date on which the Agent executes the relevant Assignment Agreement and Lender Accession Undertaking or Transfer Certificate and Lender Accession Undertaking.

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

**"USA Patriot Act"** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

**"U.S."** and **"United States"** mean the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

**"U.S. Borrower"** means a Borrower that is a U.S. Person.

**"U.S. Guarantor"** means a Guarantor that is a U.S. Person.

**"U.S. Obligor"** means any U.S. Borrower or U.S. Guarantor.

**"U.S. Person"** means a "United States Person" as defined in Section 7701(a)(30) of the Code and includes the sole owner of any entity that is disregarded as being an entity separate from such owner for U.S. federal income tax purposes.

**"U.S. Tax Obligor"** means:

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

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

**"Utilisation Date"** means the date on which a Utilisation is made.

**"Utilisation Request"** means a notice substantially in the relevant form set out in Part I (*Utilisation Request - Loans*), Part II (*Utilisation Request - Letters of Credit*) or Part III (*Selection Notice*) of Schedule 3 (*Requests*).

**"VAT"** means:

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

**"Withdrawal Event"** means the withdrawal of any Participating Member State from the single currency of the Participating Member States and/or the redenomination of

the euro into any other currency by the government of any current or former Participating Member State.

## 1.2 Construction

- (a) Unless a contrary indication appears a reference in this Agreement to:
- (i) the "**Agent**", any "**Arranger**", any "**Finance Party**", any "**Issuing Bank**", any "**Lender**", any "**Obligor**", any "**Party**" or any other person shall be construed so as to include its successors in interest, permitted assigns and permitted transferees;
  - (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;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) the "**European interbank market**" means the interbank market for euro operating in Participating Member States;
  - (v) a "**Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated (in each case, however fundamentally);
  - (vi) "**guarantee**" means (other than in Clause 23 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (viii) a **Lender's "participation"** in relation to a Letter of Credit, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;
  - (ix) an "**Obligor**" in the definitions of "Permitted Disposals", "Permitted Investments", "Permitted Encumbrances" and "Permitted Loans" is a reference to each Obligor;
  - (x) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

- (xi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (xii) a Utilisation made or to be made to a Borrower includes a Letter of Credit issued on its behalf;
  - (xiii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (xiv) a time of day is a reference to London 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 a Letter of Credit or an Ancillary Facility or a prepayment of any Loan means a Borrower paying an amount in the currency of the Letter of Credit (or, as the case may be, Ancillary Facility or Loan) to an interest-bearing account in the name of that Borrower and the following conditions being met:
- (i) the account is with the Agent (if the cash cover is to be provided for all the Lenders) or with the Issuing Bank, a Lender or Ancillary Lender (if the cash cover is to be provided for the Issuing Bank, that Lender or Ancillary Lender); and
  - (ii) subject to paragraph (b) of Clause 7.6 (*Regulation and consequences of cash cover provided by Borrower*) until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility or Loan, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility **provided that** if the Agent, Issuing Bank, Ancillary Lender or Lender (as the case may be) determines that the amount standing to the credit of that account exceeds the amount outstanding under that Letter of Credit, the relevant Ancillary Outstandings or Loan then amounts equal to that excess may be withdrawn from that account.
- (e) A Default is "**continuing**" if it has not been remedied or waived.
- (f) A Borrower "**repaying**" or "**prepaying**" a Letter of Credit or Ancillary Outstandings means:
- (i) that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;

- (ii) the maximum amount payable under the Letter of Credit or Ancillary Facility being reduced or cancelled in accordance with its terms; or
- (iii) the Issuing Bank (acting reasonably) or Ancillary Lender (acting reasonably) being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility,

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

- (g) An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility.
- (h) A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.
- (i) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time.

### 1.3 Currency symbols and definitions

"U.S.\$" and "U.S. dollars" denote lawful currency of the United States of America, "CAN\$" and "Canadian dollars" denote lawful currency of Canada, "£" and "sterling" denote lawful currency of the United Kingdom, "Swedish Kronor" and "SEK" denote the lawful currency of Sweden and "EUR" and "euro" mean the single currency unit of the Participating Member States.

### 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 enjoy the benefit of any term of any Finance Document.
- (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.

### 1.5 Québec Matters

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property", (b) "real property" or "real estate" shall include "immovable property", (c) "tangible property" shall include "corporeal property", (d) "intangible property" shall include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutive clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the Uniform Commercial Code or a Personal Property



Security Act shall include publication under the *Civil Code of Québec*, (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (i) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatory", (k) "construction liens" shall include "legal hypothecs"; (l) "joint and several" shall include "solidary"; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall include "ownership on behalf of another as mandatory"; (o) "easement" shall include "servitude"; (p) "priority" shall include "prior claim"; (q) "survey" shall include "certificate of location and plan"; (r) "state" shall include "province"; (s) "fee simple title" shall include "absolute ownership"; (t) "accounts" shall include "claims". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

## SECTION 2 THE FACILITIES

### 2. THE FACILITIES

#### 2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available:
  - (i) a multicurrency term loan facility in an aggregate amount the Base Currency Amount of which is equal to the Total Facility A Commitments;
  - (ii) a multicurrency revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Revolving Facility Commitments; and
  - (iii) if an Incremental Facility Notice has been duly executed and delivered to the Agent, the Incremental Facility Lenders make available to the Incremental Facility Borrowers a Base Currency loan facility in such maximum amount and on such terms as are specified in the relevant Incremental Facility Notice.
- (b) Facility A will be available to the Company and the Revolving Facility will be available to all the Borrowers.
- (c) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender (or an Affiliate of a Lender in accordance with this Agreement) may make available an Ancillary Facility to any of the Borrowers in place of all or part of its Commitment under the Revolving Facility.

#### 2.2 Increase

- (a) The Company may by giving prior notice to the Agent by no later than the date falling ten Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 11.7 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with Clause 11.1 (*Illegality*),

request that the Total Commitments be increased (and the Total Commitments under that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company (each of which shall not be a member of the Group and which is further acceptable to

the Agent (acting reasonably)) and each of which confirms 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;

- (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
  - (vii) any increase in the Total Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Total Commitments will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, the performance by the Agent of 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, the completion of which the Agent shall promptly notify to the Company, the Increase Lender and the Issuing Bank; and
  - (iii) in the case of an increase in the Total Revolving Facility Commitments, the Issuing Bank consenting to that increase.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that (i) until the date on which the increase becomes effective it shall not be entitled to vote on any matter merely as a result of it being an Increase Lender, (ii) the increased Commitment shall not be used for the purposes of calculating Lender voting percentages until the date on which the increase becomes effective and (iii) 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.

- (d) Unless the Agent otherwise agrees, the Company shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount to be agreed between the Agent and the Company in a Fee Letter and the Company shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.
- (e) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a Fee Letter.
- (f) Clause 29.4 (*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 Incremental Facility

- (a) Subject to this Clause 2.3, the Company may, at any time and from time to time following the Closing Date up to and including the Termination Date for Facility A confirm that one or more Lenders or any other person or persons has agreed to commit Incremental Facility Commitments by delivery to the Agent of an Incremental Facility Notice.
- (b) An Incremental Facility may comprise an increase in, or addition to, the Facility A Commitments or the Revolving Facility Commitments or an extension of the availability of any undrawn Facility A Commitments or the undrawn Revolving Facility Commitments.
- (c) Each Incremental Facility Notice shall be irrevocable and will not be regarded as being duly completed unless it specifies in relation to the proposed Incremental Facility:
  - (i) the type or types of facility to comprise the Incremental Facility which must comply with sub-paragraph (b) above;
  - (ii) the Availability Period;
  - (iii) the purpose of the Incremental Facility Commitments;
  - (iv) the identities of the Borrowers in respect of the Incremental Facility Commitments;
  - (v) the currency and principal amount of that Incremental Facility;

- (vi) the proposed margin (and any applicable margin ratchet) and commitment fee and any other fees payable in respect of that Incremental Facility which are relevant for the purpose of subparagraph (ix) of paragraph (d) below;
  - (vii) the Termination Date;
  - (viii) the date on which the Incremental Facility is proposed to be utilised; and
  - (ix) such other information which the Agent may reasonably require in relation to such Incremental Facility.
- (d) The Agent shall accept an Incremental Facility Notice and notify the Company and the Lenders of its acceptance if the following conditions are fulfilled:
- (i) if the proposed lenders of an Incremental Facility are not Lenders, but only to the extent reasonably practicable, not less than 10 Business Days prior to delivering any Incremental Facility Notice to the Agent, the Company shall offer one or more Lenders the opportunity to participate as Lenders in respect of amounts under the proposed Incremental Facility (but, for the avoidance of doubt, other third parties may provide such proposed Incremental Facility);
  - (ii) no Event of Default is continuing or would result from the incurrence of Indebtedness for Borrowed Money under the proposed Incremental Facility;
  - (iii) the Incremental Facility Notice has been executed by the Company, the relevant Incremental Facility Borrower and each of the relevant Incremental Facility Lenders;
  - (iv) in relation to an Incremental Facility Lender which is not already a Lender:
    - (A) the Incremental Facility Lender acceding as a party to this Agreement; and
    - (B) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the provision of Incremental Facility Commitments by that Incremental Facility Lender, the completion of which the Agent shall promptly notify to the Company and the Incremental Facility Lender;
  - (v) the amount of the Incremental Facility shall not, when aggregated with any Incremental Facility (whether term or revolving) previously accepted by the Agent pursuant to this Clause 2.3, exceed the greater of (A) £100,000,000 and (B) the amount which, on a *pro forma* basis after giving effect to the implementation and full drawdown of such Incremental Facility and assuming that any acquisition financed thereby was consummated concurrently therewith (and after giving

effect to applicable *pro forma* adjustments in relation to such acquisition), and calculated (for the purpose of calculating Indebtedness for Borrowed Money only and not for the purpose of calculating Cash or Cash Equivalents) as if any term and/or revolving Incremental Facility were fully drawn on the effective date thereof (**provided that**, in respect of additional Loans under the Revolving Facility only the amount of such additional revolving Incremental Facility Loans shall be counted for this purpose), would not result in the Net Leverage Ratio being greater than 3.00:1. For the avoidance of doubt, if *pro forma* effect is given to the entire amount of any revolving Incremental Facility, such revolving Incremental Facility may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this sub-paragraph;

- (vi) the Agent having received a certificate executed by the CEO or CFO reasonably acceptable to it and demonstrating the financial covenants in Clause 26 (*Financial Covenants*) would have been met for the Relevant Period most recently preceding the date on which the Incremental Facility is to take effect on a *pro forma* basis taking account of the proposed Incremental Facility as if it had been borrowed in full on the first day of such Relevant Period and remained outstanding during such Relevant Period (**provided that**, in respect of additional Loans under the Revolving Facility, only the amount of such additional revolving Incremental Facility Loans shall be counted for this purpose) and assuming that any acquisition financed thereby was consummated concurrently therewith (and after giving effect to applicable *pro forma* adjustments related to such acquisition). For the avoidance of doubt if *pro forma* effect is given to the entire amount of any revolving Incremental Facility, such revolving Incremental Facility may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this sub-paragraph;
- (vii) the Termination Date of any term Incremental Facility Commitments shall not be earlier than the Termination Date applicable to Facility A and such term Incremental Facility shall require no scheduled amortisation or scheduled mandatory commitment reduction prior to the Termination Date of Facility A;
- (viii) the Termination Date of any revolving Incremental Facility Loans shall not be earlier than the Termination Date applicable to the Revolving Facility and such revolving Incremental Facility Loan shall require no scheduled amortisation or scheduled mandatory commitment reduction prior to the Termination Date of the Revolving Facility; and
- (ix) the Margin applicable to any term Incremental Facility established on or prior to the date that is 18 Months after the Closing Date shall not exceed the Margin applicable to Facility A at that time by more than 0.50 per cent. per annum or, in the event that the Margin applicable to any term Incremental Facility is more than 0.50 per cent. per annum higher than the applicable Margin for Facility A, then the Margin for Facility A shall automatically be increased to an amount equal to the

Margin specified for such Incremental Facility less 0.50 per cent. per annum; **provided that**, in determining the Margin applicable to any term Incremental Facility and Facility A, (A) original issue discount ("**OID**") or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the relevant Borrower to the Lenders under Facility A or any term Incremental Facility (other than OID or upfront fees payable to the underwriters or arrangers in respect of such Incremental Facility) in the initial primary syndication thereof shall be included (with OID being equated to interest based on an assumed 3 year life-to-maturity and assuming such term Incremental Facility and Facility A are fully drawn) and (B) customary arrangement, underwriting or commitment fees payable to the Arranger (or their Affiliates) in connection with the Facilities or to one or more arrangers or underwriters (or their Affiliates) of such Incremental Facility shall be excluded (it being understood that the effects of any and all interest rate floors shall be disregarded in determining whether the foregoing applies).

- (e) By signing an Incremental Facility Notice as an Incremental Facility Lender, each such entity agrees to commit the Incremental Facility Commitments set out against its name in that notice and, in the case of an entity who is not already a party to this Agreement as a Lender, become a Lender and a Party to this Agreement.
- (f) Each Obligor confirms:
  - (i) the authority of the Company to agree, implement and establish Incremental Facility Commitments in accordance with this Agreement; and
  - (ii) that its guarantee and indemnity recorded in Clause 23 (*Guarantee and Indemnity*) (or any applicable Accession Letter or other Finance Document), will, subject only to the Agreed Guarantee Principles and any applicable limitations on such guarantee and indemnity referred to in Clause 23 (*Guarantee and Indemnity*) or any Accession Letter pursuant to which it became an Obligor, extend to include the Incremental Facility Loans and any other obligations arising under or in respect of the Incremental Facility Commitments.
- (g) Each Finance Party agrees and empowers the Agent to execute any necessary amendments to the Finance Documents as may be required (and agreed with the Company) in order to incorporate the appropriate provisions for any Incremental Facility Loans in such Finance Documents.
- (h) In relation to any Incremental Facility Commitments:
  - (i) except as agreed to the contrary by the Company and the relevant Incremental Facility Lenders in accordance with this Clause 2.3, each of the Obligors and any Incremental Facility Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Incremental Facility Lender would

have assumed and/or acquired had the Incremental Facility Lender been an Original Lender; and

- (ii) each Incremental Facility Lender shall become a Party as a "Lender" and any Incremental Facility Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Incremental Facility Lender and those Finance Parties would have assumed and/or acquired had the Incremental Facility Lender been an Original Lender.
- (i) Clause 29.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* to this Clause 2.3 in relation to an Incremental Facility Lender as if references in that Clause to:
  - (i) an Existing Lender were references to all the Lenders immediately prior to the relevant Incremental Facility; and
  - (ii) the New Lender were references to that Incremental Facility Lender.
- (j) The Company may pay (or procure the payment of) a fee to the Incremental Facility Lender in the amount and at the times agreed between the Company and the Incremental Facility Lender in a Fee Letter.
- (k) Nothing in this Clause 2.3 shall oblige any Lender to provide any Incremental Facility Commitment.

#### 2.4 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

#### 2.5 Obligors' Agent

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints (to the maximum extent permitted by applicable law) the Company 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 execute on its behalf any Accession Letter, 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 (including, without limitation, by increasing to the extent permitted by applicable law the obligations of such Obligor howsoever fundamentally, whether by increasing the liabilities guaranteed or otherwise without prejudice to the limitation set out in Clause 23.11 (*Guarantee Limitations*) of this Agreement), 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 or the Assignment Agreement and Lender Accession Undertaking 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.

### 3. PURPOSE

#### 3.1 Purpose

- (a) Each Borrower shall apply all amounts borrowed by it under Facility A (directly or indirectly) towards:
  - (i) refinancing certain Indebtedness for Borrowed Money of the Group (including Indebtedness for Borrowed Money under the Existing Senior Facilities Agreement and the Existing High Yield Notes);
  - (ii) payment of any fees, costs and expenses incurred in connection with the Facilities, the IPO, the refinancing of Indebtedness for Borrowed Money contemplated by paragraph (a)(i) above and any transactions in relation to the foregoing; and
  - (iii) towards the general corporate and working capital purposes of the Group.

- (b) Each Borrower shall apply all amounts borrowed by it under the Revolving Facility, any Letter of Credit and any utilisation of any Ancillary Facility towards the general corporate and working capital purposes of the Group.
- (c) Each Incremental Facility Borrower shall apply all amounts borrowed by it under any Incremental Facility towards the purposes described in the relevant Incremental Facility Notice.

### 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**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if, on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent (acting reasonably). The Agent shall notify the Company and the Lenders promptly upon being so satisfied.

### 4.2 **Further conditions precedent**

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

- (a) in the case of a Rollover Loan, no Acceleration Event is continuing; and
- (b) in the case of any other Utilisation
  - (i) no Default is continuing; and
  - (ii) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 24 (*Representations*) which are made or deemed to be made or repeated on such date or, in relation to any other Utilisation (other than a Rollover Loan), the Repeating Representations to be made by each Obligor are true in all material respects.

### 4.3 **Conditions relating to Optional Currencies**

- (a) A currency will constitute an Optional Currency if:
  - (i) it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market at the Specified Time or, if later, on the date the Agent receives the relevant Utilisation Request and the Utilisation Date for that Utilisation; or

- (ii) it is euro, U.S. dollars, Canadian dollars or Swedish Kronor or any other currency approved by the Agent (acting on the instructions of all Lenders participating in the relevant Utilisation) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation.
- (b) If the Agent has received a written request from the Company for a currency to be approved under sub-paragraph (a)(ii) above, the Agent will confirm to the Company by the Specified Time:
  - (i) whether or not the Lenders have granted their approval; and
  - (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

#### 4.4 **Maximum number of Loans**

- (a) A Borrower (or the Company) may not deliver a Utilisation Request if as a result of the proposed Utilisation:
  - (i) 11 or more Facility A Loans would be outstanding; or
  - (ii) 11 or more Revolving Facility Loans would be outstanding..
- (b) A Borrower (or the Company) may not request that a Facility A Loan be divided if, as a result of the proposed division, 11 or more Facility A Loans would be outstanding.
- (c) Any Loan made by a single Lender under Clause 8.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.
- (d) Any Separate Loan shall not be taken into account in this Clause 4.4.

### SECTION 3 UTILISATION

#### 5. UTILISATION - LOANS

##### 5.1 Delivery of a Utilisation Request

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

##### 5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
  - (iv) the proposed Interest Period complies with Clause 15 (*Interest Periods*).
- (b) Only one Utilisation may be requested in each Utilisation Request.

##### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request for a Loan must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed Utilisation must be:
  - (i) if the currency selected is the Base Currency, a minimum of £5,000,000 for Facility A or, if less, the Available Facility;
  - (ii) if the currency selected is euro, U.S. dollars, Canadian dollars or Swedish Kronor, a minimum respectively of €1,000,000, \$1,000,000, CAD 1,000,000 and SEK 5,000,000 for Facility A or, if less, the Available Facility;
  - (iii) if the currency selected is an Optional Currency other than euro, U.S. dollars, Canadian dollars or Swedish Kronor, the minimum amount specified by the Agent (acting reasonably) or, if less, the Available Facility;
  - (iv) in relation to a proposed Utilisation under the Revolving Facility:
    - (A) if the currency selected is the Base Currency, a minimum of £1,000,000 or, if less, the Available Facility; or

- (B) if the currency selected is euro, U.S. dollars, Canadian dollars or Swedish Kronor, a minimum of respectively €1,000,000, U.S.\$1,000,000, CAN\$1,000,000 and SEK1,000,000 or, if less, the Available Facility; or
- (C) if the currency selected is an Optional Currency other than euro, U.S. dollars, Canadian dollars or Swedish Kronor, the minimum amount specified by the Agent pursuant to subparagraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

#### 5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office by the Specified Time.
- (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 determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan by the Specified Time.

#### 5.5 Limitations on Utilisations

- (a) The Revolving Facility shall not be utilised unless Facility A has been or will on the same date be utilised.
- (b) The first Utilisation Date shall be on the Closing Date.
- (c) The maximum aggregate Base Currency Amount of all Letters of Credit shall not at any time exceed the Total Revolving Facility Commitments.
- (d) The maximum aggregate amount of the Ancillary Commitments of all the Revolving Facility Lenders shall not at any time exceed the Total Revolving Facility Commitments.

#### 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 Revolving Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the Revolving Facility and at the end of the Availability Period for Facility A if Facility A has not been utilised on such date.
- (c) Incremental Facility Commitments which are unutilised at the end of the Availability Period for those Incremental Facility Commitments shall be

immediately cancelled at the end of the Availability Period for those Incremental Facility Commitments.

## 6. UTILISATION - LETTERS OF CREDIT

### 6.1 The Revolving Facility

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

### 6.2 Delivery of a Utilisation Request for Letters of Credit

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

### 6.3 Completion of a Utilisation Request for Letters of Credit

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

- (a) it specifies that it is for a Letter of Credit;
- (b) it identifies the Borrower of the Letter of Credit;
- (c) it identifies the Issuing Bank which has agreed to issue the Letter of Credit;
- (d) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Revolving Facility;
- (e) the currency and amount of the Letter of Credit comply with Clause 6.4 (*Currency and amount*);
- (f) the form of Letter of Credit is attached;
- (g) the Expiry Date of the Letter of Credit falls on or before the Termination Date in relation to the Revolving Facility; and
- (h) the delivery instructions for the Letter of Credit are specified.

### 6.4 Currency and amount

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency applicable in respect of the Revolving Facility.
- (b) Subject to paragraph (d) of Clause 5.5 (*Limitations on Utilisations*), the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the Available Facility and which is:
  - (i) if the currency selected is the Base Currency, a minimum of £500,000 or, if less, the Available Facility; or

- (ii) if the currency selected is euro, U.S. dollars, Canadian dollars or Swedish Kronor, a minimum of respectively €1,000,000, U.S.\$1,000,000, CAN\$1,000,000 and SEK 1,000,000 or, if less, the Available Facility; or
- (iii) if the currency selected is an Optional Currency other than euro, U.S. dollars, Canadian dollars or Swedish Kronor, the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

## 6.5 Issue of Letters of Credit

- (a) If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.
- (b) Subject to Clause 4.1 (*Initial conditions precedent*), the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit, if on the date of the Utilisation Request or Renewal Request and on the proposed Utilisation Date:
  - (i) in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*) no Event of Default is continuing or would result from the proposed Utilisation and, in the case of any other Utilisation, no Acceleration Event is continuing; and
  - (ii) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 24 (*Representations*) which are made or deemed to be made or repeated on such date or, in relation to any other Utilisation (other than a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*)), the Repeating Representations to be made by each Obligor are true in all material respects.
- (c) The amount of each Lender's participation in each Letter of Credit will be equal to the proportion borne by its Available Commitment to the Available Facility (in each case in relation to the Revolving Facility) immediately prior to the issue of the Letter of Credit.
- (d) The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the Issuing Bank and each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.

## 6.6 Renewal of a Letter of Credit

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

- (b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the conditions set out in paragraph (f) of Clause 6.3 (*Completion of a Utilisation Request for Letters of Credit*) shall not apply.
- (c) The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:
  - (i) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and
  - (ii) its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.
- (d) If the conditions set out in this Agreement have been met, the Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.

#### 6.7 Reduction of a Letter of Credit

- (a) If, on the proposed Utilisation Date of a Letter of Credit, any Lender under the Revolving Facility is a Non-Acceptable L/C Lender and:
  - (i) that Lender has failed to provide cash collateral to the Issuing Bank in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*); and
  - (ii) the Borrower of that proposed Letter of Credit has not exercised its right to provide cash cover to the Issuing Bank in accordance with paragraph (g) of Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*),

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

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

#### 6.8 Revaluation of Letters of Credit

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



- (b) The Company shall, if requested by the Agent within 10 days of any calculation under paragraph (a) above, ensure that within three Business Days sufficient Revolving Facility Utilisations are prepaid to prevent the Base Currency Amount of the Revolving Facility Utilisations exceeding the Total Revolving Facility Commitments (after deducting the total Ancillary Commitments) following any adjustment to a Base Currency Amount under paragraph (a) of this Clause 6.8.

## 7. LETTERS OF CREDIT

### 7.1 Immediately payable

If a Letter of Credit or any amount outstanding under a Letter of Credit becomes immediately payable, the Borrower that requested (or on behalf of which the Company requested) the issue of that Letter of Credit shall repay or prepay that amount immediately.

### 7.2 Claims under a Letter of Credit

- (a) Each Borrower irrevocably and unconditionally authorises the Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it (or requested by the Company on its behalf) and which appears on its face to be in order (in this Clause 7, a "**claim**").
- (b) Each Borrower shall immediately on demand or, if such payment is being funded by a Revolving Facility Loan, shall within three Business Days of demand pay to the Agent for the Issuing Bank an amount equal to the amount of any claim.
- (c) Each Borrower acknowledges that the Issuing Bank:
- (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
  - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (d) The obligations of a Borrower under this Clause 7.2 will not be affected by:
- (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
  - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

### 7.3 Indemnities

- (a) Each Borrower shall immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence, wilful misconduct or

material breach of the Finance Documents) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) that Borrower.

- (b) Each Lender shall (according to its L/C Proportion) immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence, wilful misconduct or material breach of the Finance Documents) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).
- (c) If any Lender is not permitted (by its constitutional documents or any applicable law) to comply with paragraph (b) above, then that Lender will not be obliged to comply with paragraph (b) above and shall instead be deemed to have taken, on the date the Letter of Credit is issued (or if later, on the date the Lender's participation in the Letter of Credit is transferred or assigned to the Lender in accordance with the terms of this Agreement), an undivided interest and participation in the Letter of Credit in an amount equal to its L/C Proportion of that Letter of Credit. On receipt of demand from the Agent, that Lender shall pay to the Agent (for the account of the Issuing Bank) an amount equal to its L/C Proportion of the amount demanded.
- (d) The Borrower which requested (or on behalf of which the Company requested) a Letter of Credit shall immediately on demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause 7.3 in respect of that Letter of Credit.
- (e) The obligations of each Lender or Borrower under this Clause 7.3 are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.
- (f) The obligations of any Lender or Borrower under this Clause 7.3 will not be affected by any act, omission, matter or thing which, but for this Clause 7.3, would reduce, release or prejudice any of its obligations under this Clause 7.3 (without limitation and whether or not known to it or any other person) including:
  - (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Letter of Credit or any other person;
  - (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;
  - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, any beneficiary under a Letter of Credit or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any beneficiary under a Letter of Credit or any other person;
- (v) any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security;
- (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security; or
- (vii) any insolvency or similar proceedings.

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

- (a) If, at any time, a Lender under the Revolving Facility is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling five Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion of:

- (i) the outstanding amount of a Letter of Credit; or
- (ii) in the case of a proposed Letter of Credit, the amount of that proposed Letter of Credit,

and in the currency of that Letter of Credit to an interest-bearing account held in the name of that Lender with the Issuing Bank.

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

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

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

- (i) on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase*) or Clause 29 (*Changes to the Lenders*) whether it is a Non-Acceptable L/C Lender; and
- (ii) as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,

and an indication in Schedule 1 (*The Original Parties*), in a Transfer Certificate, in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under sub-paragraph (i) above to the Agent and, upon delivery in accordance with Clause 29.7 (*Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking or Increase Confirmation to Company*), to the Company.

- (e) Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the Issuing Bank of that Lender's status and the Agent shall, upon receiving each such notice, promptly notify the Issuing Bank of that Lender's status as specified in that notice.
- (f) Notwithstanding paragraph (c) above, a Lender which has provided cash collateral in accordance with this Clause 7.4 may, by notice to the Issuing Bank, request that an amount equal to the amount provided by it as collateral in respect of the relevant Letter of Credit (together with any accrued interest) be returned to it:
  - (i) to the extent that such cash collateral has not been applied in satisfaction of any amount due and payable under this Agreement by that Lender to the Issuing Bank in respect of the relevant Letter of Credit;
  - (ii) if:
    - (A) it ceases to be a Non-Acceptable L/C Lender; or
    - (B) its obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; and
  - (iii) if no amount is due and payable by that Lender in respect of a Letter of Credit,

and the Issuing Bank shall pay that amount to the Lender within five Business Days of that Lender's request (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).
- (g) To the extent that a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with this Clause 7.4 in respect of a proposed Letter of Credit, the Issuing Bank shall promptly notify the Company (with a copy to the Agent) and the Borrower of that proposed Letter of Credit may, at any time before the proposed Utilisation Date of that Letter of Credit, provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the amount of that proposed Letter of Credit.

## 7.5 Requirement for cash cover from Borrower

If:

- (a) a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) in respect of a Letter of Credit that has been issued;
- (b) the Issuing Bank notifies the Company (with a copy to the Agent) that it requires (acting reasonably) the Borrower of the relevant Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the outstanding amount of that Letter of Credit and in the currency of that Letter of Credit; and
- (c) that Borrower has not already provided such cash cover which is continuing to stand as collateral,

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

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

- (a) Any cash cover provided by a Borrower pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) may be funded out of a Revolving Facility Loan.
- (b) Notwithstanding paragraph (d) of Clause 1.2 (*Construction*), the relevant Borrower may request that an amount equal to the cash cover (together with any accrued interest) provided by it pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) be returned to it:
  - (i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by that Borrower to the Issuing Bank in respect of a Letter of Credit;
  - (ii) if:
    - (A) the relevant Lender ceases to be a Non-Acceptable L/C Lender; or
    - (B) the relevant Lender's obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; and
  - (iii) if no amount is due and payable by the relevant Lender in respect of the relevant Letter of Credit; or

- (iv) an Increase Lender has agreed to undertake the obligations in respect of the relevant Lenders' L/C Proportion of the Letter of Credit,

and the Issuing Bank shall pay that amount to that Borrower within five Business Days of that Borrower's request.

- (c) To the extent that a Borrower has provided cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*), the relevant Lender's L/C Proportion in respect of that Letter of Credit will remain (but that Lender's obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (d)(ii) of Clause 1.2 (*Construction*)). However, the relevant Borrower's obligation to pay any Letter of Credit fee in relation to the relevant Letter of Credit to the Agent (for the account of that Lender) in accordance with paragraph (b) of Clause 17.5 (*Fees payable in respect of Letters of Credit*) will be reduced proportionately as from the date on which it provides that cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).
- (d) The Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) and of any change in the amount of cash cover so provided.

#### 7.7 **Rights of contribution**

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause 7.

#### 7.8 **Settlement Conditional**

Any settlement or discharge between a Lender and the Issuing Bank shall be conditional upon no security or payment to the Issuing Bank by a Lender or any other person on behalf of a Lender being avoided or reduced by virtue of any laws relating to bankruptcy, insolvency, liquidation or similar laws of general application and, if any such security or payment is so avoided or reduced, the Issuing Bank shall be entitled to recover the value or amount of such security or payment from such Lender subsequently as if such settlement or discharge had not occurred.

#### 7.9 **Exercise of Rights**

The Issuing Bank shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of any Lender by this Agreement or by law:

- (a) to take any action or obtain judgment in any court against any Obligor;
- (b) to make or file any claim or proof in a winding-up or dissolution of any Obligor; or
- (c) to enforce or seek to enforce any other security taken in respect of any of the obligations of any Obligor under this Agreement.

## 8. OPTIONAL CURRENCIES

### 8.1 Selection of currency

- (a) A Borrower (or the Company on its behalf) shall select the currency of a Utilisation:
  - (i) in a Utilisation Request; or
  - (ii) (after the Closing Date in relation to a Facility A Loan made to it) in a Selection Notice.
- (b) If a Borrower (or the Company on behalf of a Borrower) fails to issue a Selection Notice in relation to a Facility A Loan, that Loan will remain denominated for its next Interest Period in the same currency in which it is then outstanding.
- (c) If a Borrower (or the Company on behalf of a Borrower) issues a Selection Notice requesting a change of currency and the first day of the requested Interest Period is not a Business Day for the new currency, the Agent shall promptly notify the Borrower and the Lenders and the Facility A Loan will remain in the existing currency (with Interest Periods running from one Business Day until the next Business Day) until the next day which is a Business Day for both currencies, on which day the requested Interest Period will begin.

### 8.2 Unavailability of a currency

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
- (b) a Lender notifies the Agent that compliance with its obligation to participate in a Utilisation in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the relevant Borrower or Company to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

### 8.3 Change of currency

- (a) If a Facility A Loan is to be denominated in different currencies during two successive Interest Periods:

- (i) if the currency for the second Interest Period is an Optional Currency, the amount of that Loan in that Optional Currency will be calculated by the Agent as the amount of that Optional Currency equal to the Base Currency Amount of that Loan at the Agent's Spot Rate of Exchange at the Specified Time;
  - (ii) if the currency for the second Interest Period is the Base Currency, the amount of that Loan will be equal to the Base Currency Amount;
  - (iii) (unless the Agent and the Borrower agree otherwise in accordance with paragraph (b) below) the Borrower that has borrowed the Loan shall repay it on the last day of the first Interest Period in the currency in which it was denominated for that Interest Period; and
  - (iv) (subject to Clause 4.2 (*Further conditions precedent*)) the Lenders shall re-advance that Loan in the new currency in accordance with Clause 8.4 (*Agent's calculations*).
- (b) If the Agent and the Borrower that has borrowed the Facility A Loan agree, the Agent shall:
- (i) apply the amount paid to it by the Lenders pursuant to paragraph (a)(iv) above (or so much of that amount as is necessary) in or towards purchase of an amount in the currency in which that Facility A Loan is outstanding for the first Interest Period; and
  - (ii) use the amount it purchases in or towards satisfaction of the relevant Borrower's obligations under paragraph (a)(iii) above.
- (c) If the amount purchased by the Agent pursuant to paragraph (b)(i) above is less than the amount required to be repaid by the relevant Borrower, the Agent shall promptly notify that Borrower and that Borrower shall, on the last day of the first Interest Period, pay an amount to the Agent (in the currency of the outstanding Facility A Loan for the first Interest Period) equal to the difference.
- (d) If any part of the amount paid to the Agent by the Lenders pursuant to paragraph (a)(iv) above is not needed to purchase the amount required to be repaid by the relevant Borrower, the Agent shall promptly notify that Borrower and pay that Borrower, on the last day of the first Interest Period that part of that amount (in the new currency).

#### 8.4 **Agent's calculations**

- (a) All calculations made by the Agent pursuant to this Clause 8 will take into account any repayment, prepayment, consolidation or division of Facility A Loans to be made on the last day of the first Interest Period.
- (b) Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).



## 9. ANCILLARY FACILITIES

### 9.1 Type of Facility

An Ancillary Facility may be by way of:

- (a) an overdraft, cheque clearing, credit card, automatic payment or other current account facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Company with an Ancillary Lender.

### 9.2 Availability

- (a) If the Company and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide an Ancillary Facility on a bilateral basis in place of all or part of that Lender's unutilised Revolving Facility Commitment (which shall (except for the purposes of determining the Majority Lenders and of Clause 41.3 (*Replacement of Lender*)) be reduced by the amount of the Ancillary Commitment under that Ancillary Facility).
- (b) An Ancillary Facility (other than any Original Ancillary Facility, unless the total commitments under such Original Ancillary Facility are proposed to be increased after the Closing Date) shall not be made available unless, not later than 5 Business Days prior to the Ancillary Commencement Date for an Ancillary Facility (other than any Original Ancillary Facility), the Agent has received from the Company:
  - (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
    - (A) the proposed Borrower(s) or Affiliate(s) of a Borrower which may use the Ancillary Facility;
    - (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
    - (C) the proposed type of Ancillary Facility to be provided;
    - (D) the proposed Ancillary Lender;
    - (E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account its

maximum gross amount (that amount being the "**Designated Gross Amount**") and its maximum net amount (that amount being the "**Designated Net Amount**"); and

- (F) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency);
- (ii) a copy of the proposed Ancillary Document; and
- (iii) any other information which the Agent may reasonably request in connection with the Ancillary Facility.

The Agent shall promptly notify the Company, the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility (other than any Original Ancillary Facility).

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 9.2). In such a case, the provisions of this Agreement with regard to amendments and waivers will apply.

- (c) Subject to compliance with paragraph (b) above:
  - (i) the Lender concerned will become an Ancillary Lender; and
  - (ii) the Ancillary Facility will be available,
 with effect from the date agreed by the Company and the Ancillary Lender.

### 9.3 Terms of Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Company.
- (b) However, those terms:
  - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
  - (ii) may allow only Borrowers or Affiliates of Borrowers nominated pursuant to Clause 9.9 (*Affiliates of Borrowers*) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment with respect to the Revolving Facility of that Lender; and

- (v) must require that the Ancillary Commitment is reduced to nil, and that all Ancillary Outstandings are repaid (or cash cover provided in respect of all the Ancillary Outstandings) not later than the Termination Date for the Revolving Facility (or such earlier date as the Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (i) Clause 38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility and (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 17.6 (*Interest, commission and fees on Ancillary Facilities*).

#### 9.4 Repayment of Ancillary Facility

- (a) An Ancillary Facility shall cease to be available on the Termination Date in relation to the Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero (and its Revolving Facility Commitment shall be increased accordingly).
- (c) No Ancillary Lender may demand repayment or prepayment of any amounts or demand cash cover for any liabilities made available or incurred by it under its Ancillary Facility (except where the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit) unless:
  - (i) the Total Revolving Facility Commitments have been cancelled in full, or all outstanding Utilisations under the Revolving Facility have become due and payable in accordance with the terms of this Agreement, or the Agent has declared all outstanding Utilisations under the Revolving Facility immediately due and payable, or the expiry date of the Ancillary Facility occurs; or
  - (ii) 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

- (iii) the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a Revolving Facility Utilisation under the Revolving Facility and the Ancillary Lender gives sufficient notice to enable a Utilisation of the Revolving Facility to be made to refinance those Ancillary Outstandings.
- (d) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in paragraph (c)(iii) above can be refinanced by a Utilisation of the Revolving Facility:
  - (i) the Revolving Facility Commitment of the Ancillary Lender will be increased by the amount of its Ancillary Commitment; and
  - (ii) the Utilisation may (so long as paragraph (c)(i) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether Clause 4.4 (*Maximum number of Loans*) or paragraph (a)(iii) of Clause 5.2 (*Completion of a Utilisation Request for Loans*) applies.
- (e) On the making of a Utilisation of the Revolving Facility to refinance Ancillary Outstandings:
  - (i) each Lender will participate in that Utilisation in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments; and
  - (ii) the relevant Ancillary Facility shall be cancelled.
- (f) In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to the Financial Services Authority as netted for capital adequacy purposes.

## 9.5 Ancillary Outstandings

Each Borrower and each Ancillary Lender agrees with and for the benefit of each Lender that:

- (a) the Ancillary Outstandings under any Ancillary Facility provided by that Ancillary Lender shall not exceed the Ancillary Commitment applicable to that Ancillary Facility and where the Ancillary Facility is an overdraft facility comprising more than one account, Ancillary Outstandings under that

Ancillary Facility shall not exceed the Designated Net Amount in respect of that Ancillary Facility; and

- (b) where all or part of the Ancillary Facility is an overdraft facility comprising more than one account, the Ancillary Outstandings (calculated on the basis that the words in brackets in paragraph (a) of the definition of that term were deleted) shall not exceed the Designated Gross Amount applicable to that Ancillary Facility.

#### 9.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 9.6:

**"Revolving Outstandings"** means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of (i) its participation in each Revolving Facility Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Revolving Facility), and (ii) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (together with the aggregate amount of all accrued interest, fees and commission owed to it as an Ancillary Lender in respect of the Ancillary Facility).

**"Total Revolving Outstandings"** means the aggregate of all Revolving Outstandings.

- (b) If a notice is served under Clause 28.16 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall promptly adjust by corresponding transfers (to the extent necessary) their claims in respect of amounts outstanding to them under the Revolving Facility and each Ancillary Facility to ensure that after such transfers the Revolving Outstandings of each Lender bears the same proportion to the Total Revolving Outstandings as such Lender's Revolving Facility Commitment bears to the Total Revolving Facility Commitments, each as at the date the notice is served under Clause 28.16 (*Acceleration*).
- (c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and Ancillary Lender will make a further adjustment by corresponding transfers (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) Prior to the application of the provisions of paragraph (b) of this Clause 9.6, an Ancillary Lender that has provided an overdraft comprising more than one account under an Ancillary Facility shall set-off any liabilities owing to it under such overdraft facility against credit balances on any account comprised in such overdraft facility.

- (e) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders.

## 9.7 Information

Each Borrower and each Ancillary Lender shall, promptly upon request by the Agent, supply the Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Agent and the other Finance Parties.

## 9.8 Affiliates of Lenders as Ancillary Lenders

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in Part II (*The Original Lenders*) of Schedule 1 (*The Original Parties*) and/or the amount of any Revolving Facility Commitment transferred to that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement. For the purposes of calculating the Lender's Available Commitment with respect to the Revolving Facility, the Lender's Commitment shall be reduced to the extent of the aggregate of the Ancillary Commitments of its Affiliates.
- (b) The Company shall specify any relevant Affiliate of a Lender in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) An Affiliate of a Lender which becomes an Ancillary Lender shall accede to this Agreement by delivery to the Agent of a duly completed Affiliate Ancillary Lender Accession Undertaking.
- (d) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in Clause 29 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (e) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary 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.

## 9.9 Affiliates of Borrowers

- (a) Subject to the terms of this Agreement, an Affiliate 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 Affiliate of a Borrower in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 31.3 (*Resignation of a Borrower*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.

#### 9.10 **Revolving Facility Commitment amounts**

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

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

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

**10. REPAYMENT**

**10.1 Repayment of Facility A Loans**

- (a) The Company shall repay the outstanding aggregate Facility A Loans made to it in full on the Termination Date for Facility A.
- (b) The Company may not reborrow any part of Facility A which is repaid.

**10.2 Repayment of Incremental Facility Loans**

- (a) The Borrowers which have borrowed any term Incremental Facility Loans drawn under any term Incremental Facility shall repay the aggregate outstanding term Incremental Facility Loans in respect of such term Incremental Facility in full on the relevant Termination Date in relation to that Incremental Facility.
- (b) The Borrowers may not reborrow any part of any term Incremental Facility which has been repaid.
- (c) The Borrowers which have borrowed any revolving Incremental Facility Loans drawn under any revolving Incremental Facility shall repay that revolving Incremental Facility Loan in accordance with and to the extent required by the terms applicable to a Revolving Facility Loan under Clause 10.3 (*Repayment of Revolving Facility Loans*).

**10.3 Repayment of Revolving Facility Loans**

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Revolving Facility Loan or a revolving Incremental Facility Loan shall repay that Revolving Facility Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Revolving Facility Loans or revolving Incremental Facility Loans are to be made available to a Borrower:
  - (i) on the same day that a maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan is due to be repaid by that Borrower;
  - (ii) in the same currency as the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)); and
  - (iii) in whole or in part for the purpose of refinancing the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan;



the aggregate amount of the new Revolving Facility Loans or new revolving Incremental Facility Loans shall be treated as if applied in or towards repayment of the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan so that:

- (A) if the amount of the maturing Revolving Facility Loan or the maturing revolving Incremental Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans or new revolving Incremental Facility Loan:
  - (1) the relevant Borrower will only be required to pay an amount in cash in the relevant currency equal to that excess; and
  - (2) each Lender's participation (if any) in the new Revolving Facility Loans or new revolving Incremental Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation (if any) in the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan and that Lender will not be required to make its participation in the new Revolving Facility Loans or new revolving Incremental Facility Loans available in cash; and
- (B) if the amount of the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans or new revolving Incremental Facility Loans:
  - (1) the relevant Borrower will not be required to make any payment in cash; and
  - (2) each Lender will be required to make its participation in the new Revolving Facility Loans or new revolving Incremental Facility Loans available in cash only to the extent that its participation (if any) in the new Revolving Facility Loans or new revolving Incremental Facility Loans exceeds that Lender's participation (if any) in the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan and the remainder of that Lender's participation in the new Revolving Facility Loans or new revolving Incremental Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan or maturing revolving Incremental Facility Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Facility Loans or

revolving Incremental Facility Loans then outstanding will be automatically extended to the Termination Date in relation to the Revolving Facility or that revolving Incremental Facility (as applicable) and will be treated as separate Revolving Facility Loans or separate revolving Incremental Facility Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.

- (d) A Revolving Facility Borrower or a revolving Incremental Facility Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving three Business Days' prior notice to the Agent. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.
- (f) The terms of this Agreement relating to Revolving Facility Loans or revolving Incremental Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

## 11. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

### 11.1 Illegality

- (a) Subject to Clause 11.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), if the adoption of or any change in any requirement of law or in the interpretation or application thereof which occurs after the date of this Agreement shall make it unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:
- (b) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (c) upon the Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and
- (d) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the 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).

### 11.2 Illegality in relation to Issuing Bank

Subject to Clause 11.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), if the adoption of or any change in any requirement of law or in the interpretation or application thereof which occurs after the date of this

Agreement shall make it unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit, then:

- (a) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, the Issuing Bank shall not be obliged to issue any Letter of Credit;
- (c) the Company shall procure that each Obligor shall use its best endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time; and
- (d) unless any other Lender has agreed to be an Issuing Bank pursuant to the terms of this Agreement, the Revolving Facility shall cease to be available for the issue of Letters of Credit.

### 11.3 Voluntary cancellation

The Company may, if it gives the Agent not less than 3 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £1,000,000) of an Available Facility. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably under that Facility.

### 11.4 Voluntary prepayment of Term Loans

A Borrower to which a Term Loan has been made may, if it or the Company gives the Agent not less than 3 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, by a minimum amount of £1,000,000 (or its equivalent)).

### 11.5 Voluntary prepayment of Revolving Facility Utilisations

A Borrower to which a Revolving Facility Utilisation has been made may, if it or the Company gives the Agent not less than 3 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the Base Currency Amount of the Revolving Facility Utilisation by a minimum amount of £500,000).

### 11.6 Right of cancellation and repayment in relation to a single Lender or Issuing Bank

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 18.2 (*Tax gross-up*) or required to be repaid in accordance with Clause 11.1 (*Illegality*) or Clause 11.2 (*Illegality in relation to Issuing Bank*); or

- (ii) any Lender or the Issuing Bank claims indemnification from the Company or an Obligor under Clause 18.3 (*Tax indemnity*) or Clause 19.1 (*Increased costs*),

the Company may, whilst the circumstances giving rise to the requirement for that increase or indemnification continues, give the Agent notice:

- (A) (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or
  - (B) (if such circumstances relate to the Issuing Bank) of repayment of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.
  - (c) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

#### 11.7 **Right of cancellation in relation to a Defaulting Lender**

- (a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent five Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall, as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

### 12. **MANDATORY PREPAYMENT**

#### 12.1 **Exit**

Upon the occurrence of:

- (a) a Change of Control; or
- (b) the sale of all or substantially all of the business or assets of the Group whether in a single transaction or a series of related transactions,

the Company shall promptly notify the Agent upon becoming aware of that event (and the Agent shall promptly notify the Lenders) and if a Lender so requires and notifies the Agent within 15 Business Days of the Agent notifying the Lenders of the occurrence of such Change of Control, the Agent shall, by not less than 15 Business Days' notice to the Company, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Utilisations and Ancillary Outstandings of that Lender or Affiliate of that Lender, together with accrued and unpaid interest and all other amounts accrued and outstanding under the Finance Documents, immediately due and payable, at which time the Commitment of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

## 12.2 Disposal and Insurance Proceeds

- (a) For the purposes of this Clause 12.2, Clause 12.3 (*Application of mandatory prepayments*), Clause 12.4 (*Mandatory Prepayment Accounts*) and Clause 12.5 (*Excluded proceeds*):

**"Disposal"** means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

**"Disposal Proceeds"** means the cash consideration received by any member of the Group (including any amount received in repayment of intercompany debt) for any Disposal made by any member of the Group to persons who are not members of the Group and that falls within paragraphs (a), (k), (l) (to the extent there is a balance after the purchase of replacement assets), and (m) of the definition of "Permitted Disposals", except for: (A) Excluded Disposal Proceeds; (B) the proceeds of any Disposal of assets (excluding shares) made in the ordinary course of day to day business of the disposing entity; (C) the proceeds of an individual Disposal which are in an amount less than £5,000,000 (or its equivalent in other currencies); and (D) the proceeds of all Disposals (other than those referred to in (A), (B) and (C) above) during the same Financial Year which do not exceed £10,000,000 (or its equivalent in other currencies) (and the first £10,000,000 (or its equivalent in other currencies) of such proceeds in any Financial Year shall constitute "Excluded Disposal Proceeds") and after deducting:

- (i) any reasonable fees, costs and expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group;
- (ii) any Tax incurred and required to be paid by any member of the Group in connection with that Disposal (as reasonably determined by the relevant member of the Group, on the basis of existing rates and taking account of any available credit, deduction or allowance); and
- (iii) in the case of any Permitted Disposal of an asset subject to a Permitted Encumbrance securing any indebtedness, payments made or required to be made to repay such indebtedness, including payments in respect

of principal and interest and prepayment premiums and penalties as a result of such Disposal.

**"Excluded Disposal Proceeds"** means:

- (i) the proceeds of any Disposal which the Company notifies the Agent are, or are to be, applied within 365 days of receipt of such proceeds for the purpose of making a Permitted Acquisition (or are committed by the board of directors of the Company to be so applied within 365 days of receipt of such proceeds and are so applied on or prior to the date falling 6 Months after the end of that 365 day period or, if such reinvestment is in a project authorised by the board of directors of any member of the Group that will take more than 6 Months after the end of that 365 day period to complete, are actually applied within 9 Months of the end of that 365 day period);
- (ii) the proceeds of any Disposal which the Company notifies the Agent are, or are to be, applied within 365 days of receipt of such proceeds in the purchase of fixed assets comparable or superior as to quality, value and type to be used in the business of the Group (or are committed by the board of directors of the Company to be so applied within 365 days of receipt of such proceeds and are so applied on or prior to the date falling 6 Months after the end of that 365 day period or, if such reinvestment is in a project authorised by the board of directors of any member of the Group that will take more than 6 Months after the end of that 365 day period to complete, are actually applied within 9 Months of the end of that 365 day period); and
- (iii) appropriate amounts provided or to be provided as a reserve against any liabilities associated with any Disposal and retained by the Group after such Disposal and other appropriate amounts to be used to discharge or pay on a current basis any other liabilities associated with such Disposal.

**"Excluded Insurance Proceeds"** means any proceeds of an insurance claim which the Company notifies the Agent are, or are to be, applied:

- (i) to meet a third party claim; or
- (ii) to cover operating losses of members of the Group 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 or otherwise in the purchase of replacement assets to be used in the business of the Group,

in each case within 365 days, or such longer period as the Majority Lenders may agree, after receipt (or committed by the board of directors of the Company to be so applied within 365 days and are so applied on or prior to the date falling 6 months after the end of that 365 day period or, if such

reinvestment is in a project authorised by the board of directors of any member of the Group that will take more than 6 Months after the end of that 365 day period to complete, are actually applied within 9 Months of the end of that 365 day period).

**"Insurance Proceeds"** means the proceeds of any insurance claim in respect of damage to or destruction of an asset of the Group (and excluding, for the avoidance of doubt, third party liability, business interruption, directors' liability or similar claims) received by any member of the Group except for: (i) Excluded Insurance Proceeds; (ii) the proceeds of any insurance claim or series of related insurance claims, in either case, not exceeding an amount equal to £5,000,000 (or its equivalent); and (iii) the proceeds of all insurance claims (other than those referred to in paragraph (i) and (ii) above) during the same Financial Year which do not exceed £10,000,000 (or its equivalent in other currencies) (and the first £10,000,000 (or its equivalent in other currencies) of such proceeds in any Financial Year shall constitute "Excluded Insurance Proceeds"), in each case, after deducting any reasonable fees, costs and expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

- (b) Subject to this Clause 12.2 and unless otherwise agreed by the Majority Lenders, the Company shall ensure that the Borrowers prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause 12.3 (*Application of mandatory prepayments*):
- (i) the amount of Disposal Proceeds; and
  - (ii) the amount of Insurance Proceeds.
- (c) There will be no requirement to make a mandatory prepayment pursuant to this Clause 12.2 to the extent:
- (i) such payment, or any necessary payment between members of the Group to effect such payment, is not permitted under any applicable law or could give rise to a risk of breaching any applicable law (including without limitation financial assistance, corporate benefit restrictions on upstreaming of cash and any restrictions or potential civil or criminal liability implied by fiduciary or statutory duties of the directors or officers of the relevant members of the Group); or
  - (ii) there is a Tax or other cost to the Group in an aggregate amount equal to or in excess of 3 per cent. of the aggregate amount due to be prepaid to make such payment (or to upstream or cross-stream the relevant proportion of the cash from any member of the Group to make such payment).
- (d) Any Disposal Proceeds or Insurance Proceeds not applied in mandatory prepayment as a consequence of the provisions of paragraph (c) above will not, for the avoidance of doubt, be required to be paid into or held in a Mandatory Prepayment Account but shall be available for general corporate purposes of the Group.

- (e) The Company undertakes to use reasonable endeavours to overcome any restrictions referred to in paragraph (c) above, to minimise any costs of prepayment pursuant to this Clause 12.2 (as the case may be) and, subject to the above paragraphs, and only where to do so would not cause a liquidity problem for the Group, to use (or procure the use of) other available cash resources of the Group to make the prepayment. The Company shall continue to use its reasonable endeavours to procure that the prepayment which (but for paragraph (c) above and this paragraph (e)) would have been due is made.

### 12.3 Application of mandatory prepayments

- (a) A prepayment made under Clause 12.2 (*Disposal and Insurance Proceeds*) shall be applied in the following order:
- (i) first, in prepayment of Term Loans (including term Incremental Facility Loans) as contemplated in paragraphs (b) to (e) inclusive below;
  - (ii) secondly, in cancellation of Available Commitments under the Revolving Facility and any revolving Incremental Facility pro-rata (and the Available Commitment of the Lenders under the Revolving Facility and any revolving Incremental Facility will be cancelled rateably);
  - (iii) thirdly, in prepayment of Revolving Facility Utilisations and revolving Incremental Facility Commitments (such that outstanding Revolving Facility Loans and any revolving Incremental Facility Loans shall be prepaid before outstanding Letters of Credit) and cancellation of Revolving Facility Commitments and any revolving Incremental Facility Commitments; and
  - (iv) then, in repayment and cancellation of the Ancillary Outstandings and Ancillary Commitments and corresponding Revolving Facility Commitments.
- (b) Unless the Company makes an election under paragraph (c) below, the Borrowers shall prepay Loans, in the case of any prepayment relating to the amounts of Disposal Proceeds or Insurance Proceeds promptly upon receipt of those proceeds.
- (c) Subject to paragraph (d) below, the Company may, by giving the Agent not less than 5 Business Days (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any prepayment under Clause 12.2 (*Disposal and Insurance Proceeds*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan.
- (d) If the Company makes the election under paragraph (c) above then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.



- (e) If the Company has made an election under paragraph (c) above but an Event of Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

#### 12.4 Mandatory Prepayment Accounts

- (a) The Company shall ensure that Disposal Proceeds and Insurance Proceeds in respect of which the Company has made an election under paragraph (c) of Clause 12.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group.
- (b) The Company and each Borrower irrevocably authorise the Agent to apply amounts credited to the Mandatory Prepayment Account to pay amounts due and payable under Clause 12.3 (*Application of mandatory prepayments*).
- (c) A Lender or Agent with which a Mandatory Prepayment Account is held acknowledges and agrees that interest shall accrue at normal commercial rates on amounts credited to that account and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless an Event of Default is continuing.

#### 12.5 Excluded proceeds

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified time period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Company shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

### 13. RESTRICTIONS

#### 13.1 Notices of Cancellation or Prepayment

- (a) Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*), paragraph (d) of Clause 12.3 (*Application of mandatory prepayments*) or Clause 12.4 (*Mandatory Prepayment Accounts*) shall (subject to the terms of those Clauses) be irrevocable and the Company shall reimburse the relevant Lenders for any Break Costs actually incurred by those Lenders, 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 such irrevocable notice of cancellation or prepayment referred to in paragraph (a) above may be conditional **provided that** if any relevant

condition is not satisfied resulting in the relevant cancellation or prepayment not being made, then the Company shall reimburse the relevant Lenders for any Break Costs actually incurred by those Lenders.

### 13.2 **Interest and other amounts**

- (a) 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 although a Borrower may provide cash cover in order to avoid any Break Costs.
- (b) On any date on which a prepayment in respect of a Letter of Credit or an Ancillary Facility is to be made under this Agreement, the relevant Borrower may discharge its payment obligation by providing cash cover in an amount equal to the amount to be prepaid.

### 13.3 **No reborrowing of Term Facilities**

No Borrower may reborrow any part of a Term Facility which is prepaid.

### 13.4 **Reborrowing of Revolving Facility**

Unless a contrary indication appears in this Agreement, any part of the Revolving Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

### 13.5 **Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

### 13.6 **No reinstatement of Commitments**

Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

### 13.7 **Agent's receipt of notices**

If the Agent receives a notice under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) or an election under paragraph (d) of Clause 12.3 (*Application of Mandatory Prepayments*), it shall promptly forward a copy of that notice or election to either the Company or the affected Lender, as appropriate.

### 13.8 **Effect of Repayment and Prepayment on Commitments**

If all or part of a Utilisation under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitments (equal to the Base Currency Amount of the amount of the Utilisation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment. Unless otherwise provided in

this Agreement, any cancellation under this Clause 13.8 shall reduce the Commitments of the Lenders rateably under that Facility.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**SECTION 5  
COSTS OF UTILISATION**

**14. INTEREST**

**14.1 Calculation of interest**

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

- (a) Margin; and
- (b) LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan in Canadian dollars, CDOR or, in relation to any Loan in SEK, STIBOR.

**14.2 Payment of interest**

- (a) The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).
- (b) Subject to paragraph (d) below, if the Annual Financial Statements of the Group and related Compliance Certificate received by the Agent show that a higher Margin should have applied for a Financial Half Year ending during the Financial Year to which those Annual Financial Statements relate (other than solely as a result of the use of average exchange rates for the conversion of currencies), then the Company shall (or shall ensure the relevant Borrower shall) promptly pay to the Agent any amounts necessary to put the Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.
- (c) Subject to paragraph (d) below, if the Annual Financial Statements of the Group and related Compliance Certificate received by the Agent show that a lower Margin should have applied for a Financial Half Year ending during the Financial Year to which those Annual Financial Statements relate (other than solely as a result of the use of average exchange rates for the conversion of currencies), then the amount of interest due as at the last day of the immediately following Interest Period shall be reduced by such amount as is necessary to put the relevant Borrowers and Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.
- (d) Payments to a Lender will only be increased or reduced in accordance with paragraphs (b) and (c) above to the extent the relevant Lender was a Lender with respect to the relevant Commitment during the period when a higher or lower rate should have applied.

**14.3 Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date

up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent. 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 14.3 shall be immediately payable by the Obligor on demand by the Agent.

- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 14.4 Notification of rates of interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest under this Agreement.

### 15. INTEREST PERIODS

#### 15.1 Selection of Interest Periods and Terms

- (a) A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Company on behalf of the Borrower) 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 three Months.
- (d) Subject to this Clause 15, a Borrower (or the Company) may select an Interest Period of one, two, three or six Months or any other period agreed between the Company and the Agent (acting on the instructions of all the Lenders participating in the relevant Loan).
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

- (f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) A Revolving Facility Loan has one Interest Period only.

## 15.2 Non-Business Days

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).

## 15.3 Consolidation and division of Term Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:
  - (i) relate to Loans outstanding under the same Term Facility;
  - (ii) end on the same date; and
  - (iii) are made to the same Borrower in the same currency,

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

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

## 15.4 Canadian Interest Provisions

- (a) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.
- (b) If any provision of this Agreement would oblige a Canadian Obligor to make any payment of interest or other amount payable to any Finance Party in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Finance Party of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have

been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Finance Party of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

## 16. CHANGES TO THE CALCULATION OF INTEREST

### 16.1 Absence of quotations

Subject to Clause 16.2 (*Market disruption*), if LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 16.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the Agent shall promptly notify the Company of such occurrence and the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) In this Agreement "**Market Disruption Event**" means:
  - (i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and the relevant Interest Period; or
  - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 50 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, EURIBOR.

### 16.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs 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 and minimising the interest cost to the Group.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

### 16.4 **Break Costs**

- (a) Each Borrower shall, within five Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue and providing a reasonably detailed explanation of the calculation of such Break Costs.

## 17. **FEES**

### 17.1 **Commitment fee**

- (a) The Company shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of:
  - (i) in respect of any Revolving Facility Commitments, 40 per cent. of the applicable Margin on that Lender's Available Commitment under the Revolving Facility for the period commencing on the Closing Date and ending on the last day of the Availability Period applicable to the Revolving Facility; and
  - (ii) in respect of any Incremental Facility Commitments, the rate specified in the Incremental Facility Notice delivered by the Company in accordance with Clause 2.3 (*Incremental Facility*), on that Lender's Available Commitment in respect of those Incremental Facility Commitments for the Availability Period as set out in such Incremental Facility Notice.
- (b) The accrued commitment fee in relation to the Revolving Facility 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 on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No accrued commitment fee in relation to any Facility shall be payable if the Closing Date does not occur.



- (d) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

## 17.2 Ticking fee

- (a) If the Closing Date does not occur and provided that the Commitments of the Lenders have not been cancelled on or prior to 1 May 2014, the Company shall pay to the Agent (for the account of each Lender) a ticking fee in the Base Currency computed at the rate of 20 per cent. of the applicable Margin on that Lender's Available Commitment under Facility A and the Revolving Facility for the period commencing on 1 May 2014 and ending on the earlier of 30 June 2014, the date on which the Commitments of the Lenders are cancelled by the Company and the Closing Date.
- (b) The ticking fee is payable on the earlier of 30 June 2014 and the Closing Date.

## 17.3 Arrangement fee

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

## 17.4 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.

## 17.5 Fees payable in respect of Letters of Credit

- (a) The Company shall pay to the Issuing Bank a fronting fee at the rate of 0.125 per cent. per annum on the outstanding amount which is counter-indemnified by the other Lenders of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date **provided that** no fee shall be payable in respect of any such outstanding amount in respect of which cash cover has been provided.
- (b) The Company shall pay to the Agent (for the account of each Lender) a Letter of Credit fee in the Base Currency (computed at the rate equal to the Margin applicable to a Revolving Facility Loan) on the outstanding amount of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date, **provided that** no fee shall be payable in respect of any such outstanding amount in respect of which cash cover has been provided. This fee shall be distributed according to each Lender's L/C Proportion of that Letter of Credit.
- (c) The accrued fronting fee and Letter of Credit fee on a Letter of Credit shall be payable on the last day of each successive period of three Months from the Closing Date. The accrued fronting fee and Letter of Credit fee is also payable to the Agent on the cancelled amount of any Lender's Revolving Facility Commitment at the time the cancellation is effective if that Commitment is cancelled in full and the Letter of Credit is prepaid or repaid in full.

**17.6 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.

**17.7 Other fees**

The Company shall pay to an Arranger any commission, fees or other remuneration in respect of the Facilities as agreed from time to time between the Company and that Arranger in a Fee Letter signed on or prior to the date of this Agreement.

**17.8 No Closing Date**

No fees or other amounts shall be payable by the Company or any other member of the Group pursuant to this Clause 17 if the Closing Date does not occur.

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**18. TAX GROSS UP AND INDEMNITIES**

**18.1 Definitions**

In this Agreement:

**"Borrower DTTP Filing"** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant UK 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 Schedule 1 (*The Original Parties*), and
  - (i) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
  - (ii) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (b) where it relates to a Treaty Lender that is a New Lender, an Incremental Facility Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate, Assignment Agreement, Incremental Facility Notice or Increase Confirmation, and
  - (i) where the Borrower is a Borrower as at the relevant Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect) is filed with HM Revenue & Customs within 30 days of that Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect); or
  - (ii) where the Borrower is not a Borrower as at the relevant Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

**"CTA 2009"** means the Corporation Tax Act 2009.

**"CTA (Canada)"** means the Income Tax Act (Canada).

**"Irish Borrower"** means a Borrower that is resident for the purposes of Tax in Ireland or that is operating in Ireland through a branch or agency with which an advance under a Finance Document is connected.

**"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:

- (a) with respect to a payment made under a Finance Document by a UK Borrower:
  - (i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
    - (A) a Lender:
      - (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA 2009; or
      - (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
    - (B) a Lender which
      - (1) is a company resident in the United Kingdom for United Kingdom tax purposes;
      - (2) 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 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 5 of the CTA 2009;
    - (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in

computing the chargeable profits (within the meaning of section 19 of the CTA 2009) of that company; or

- (C) a Treaty Lender;
- (ii) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document, (a "**UK Qualifying Lender**");
- (b) with respect to a payment made under a Finance Document by an Obligor incorporated under Swedish law, a Lender which is a Treaty Lender or is otherwise entitled under Swedish domestic law to receive a payment without any Tax Deduction (a "**Swedish Qualifying Lender**");
- (c) with respect to a payment made under a Finance Document by an Irish Borrower:
  - (i) a Lender which is beneficially entitled to the interest payable to that Lender in respect of an advance under a Finance Document and:
    - (A) which is a bank licensed pursuant to Section 9 of the Central Bank Act, 1971 to carry on banking business in Ireland and which is carrying on a bona fide banking business in Ireland (for the purposes of Section 246(3) of the Taxes Consolidation Act, 1997 (the "**TCA**")) and whose Facility Office is located in Ireland; or
    - (B) which is a building society (as defined for the purposes of Section 256(1) of the TCA) and which is carrying on a bona fide banking business in Ireland (for the purposes of Section 246(3) of the TCA) and whose Facility Office is located in Ireland; or
    - (C) which is an authorised credit institution under the terms of Directive 2006/48/EC and has duly established a branch in Ireland having made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and such credit institution is recognised by the Revenue Commissioners in Ireland as carrying on a bona fide banking business in Ireland (for the purposes of Section 246(3) of the TCA) and whose Facility Office is located in Ireland; or
    - (D) which is a company (within the meaning of Section 4 of the TCA):
      - (1) which, by virtue of the law of a Relevant Territory is resident in the Relevant Territory for the purposes of tax and that jurisdiction imposes a tax that generally applies to interest receivable in that jurisdiction by companies from sources outside that jurisdiction; or

- (2) in receipt of interest which:
- (a) is exempted from the charge to Irish income tax pursuant to the terms of a double taxation treaty entered into between Ireland and another jurisdiction that is in force on the date the relevant interest is paid; or
  - (b) would be exempted from the charge to Irish income tax pursuant to the terms of a double taxation treaty entered into between Ireland and another jurisdiction signed on or before the date on which the relevant interest is paid but not in force on that date, assuming that treaty had the force of law on that date,

**provided that**, in the case of both (a) and (b) above, such company does not provide its commitment in connection with a trade or business which is carried on in Ireland through a branch or agency in Ireland; or

- (ii) which is a U.S. corporation that is incorporated in the U.S.A. and is subject to U.S. Federal income tax on its worldwide income **provided that** such U.S. corporation does not provide its commitment in connection with a trade or business which is carried on in Ireland through a branch or agency in Ireland; or
- (iii) which is a U.S. LLC, where the ultimate recipients of the interest payable to that LLC satisfy the requirements set out in (iv) above and the business conducted through the LLC is so structured for market reasons and not for tax avoidance purposes, **provided that** such LLC and the ultimate recipients of the relevant interest do not provide their commitment in connection with a trade or business which is carried on in Ireland through a branch or agency in Ireland; or
- (iv) which is a company (within the meaning of Section 4 of the TCA):
  - (A) which advances money in the ordinary course of a trade which includes the lending of money;
  - (B) in whose hands any interest payable in respect of money so advanced is taken into account in computing the trading income of that company;
  - (C) which has complied with the notification requirements set out in Section 246(5)(a) of the TCA; and
  - (D) whose Facility Office is located in Ireland; or
- (v) which is a qualifying company (within the meaning of section 110 of the TCA) and whose Facility Office is located in Ireland; or

- (vi) which is an investment undertaking (within the meaning of Section 739B of the TCA) and whose Facility Office is located in Ireland; or
- (vii) which is a Treaty Lender,
- (an "**Irish Qualifying Lender**");
- (d) in the case of any payment by an Obligor as a result of or relating to any advance made (or agreement to make an advance) to a U.S. Borrower, a Lender which:
  - (i) is a U.S. Person; or
  - (ii) is not a U.S. Person and is entitled to a complete exemption from withholding of U.S. federal tax on interest payable to it in respect of a Finance Document **provided that** such entitlement shall be determined without regard to any requirement to provide any forms, statements or other documents;
- (a "**US Qualifying Lender**"); or
- (e) in the case of any payment by an Obligor incorporated in any other jurisdiction, or not otherwise described in paragraph (a) to (d) of the definition of Qualifying Lender, any Lender.

**"Non-U.S. Borrower"** means a Borrower that is not a U.S. Person.

**"Relevant Territory"** means

- (a) a member state of the European Communities (other than Ireland); or
- (b) to the extent not a member state of the European Communities, a jurisdiction with which Ireland has entered into a double taxation treaty that either has the force of law by virtue of section 826(1) of the TCA or which will have the force of law on completion of the procedures set out in section 826(1) of the TCA.

**"Swedish Borrower"** means a Borrower that is incorporated in Sweden.

**"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 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 5 of the CTA 2009; 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 2009) 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 18.2 (*Tax gross-up*) or a payment under Clause 18.3 (*Tax indemnity*).

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

- (a) is treated as a resident of a Treaty State for the purposes of the relevant Treaty;
- (b) does not carry on a business in the jurisdiction of incorporation or formation of the relevant Borrower through a permanent establishment with which that Lender's participation in the Loan is effectively connected;
- (c) is acting from a Facility Office situated in its jurisdiction of incorporation; and
- (d) fulfils any other conditions which must be fulfilled under the relevant Treaty by residents of that Treaty State for such residents to obtain full exemption from Tax on interest imposed by the jurisdiction of incorporation or formation of the relevant Borrower, subject to the completion of any necessary procedural formalities.

**"Treaty State"** means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the jurisdiction of incorporation or formation (or tax residence in the case of an Irish Borrower) of the relevant Borrower which makes provision for full exemption from Tax imposed by such jurisdiction on interest.

**"UK Borrower"** means a Borrower that is incorporated in the United Kingdom.

**"UK Non-Bank Lender"** means where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate or Increase Confirmation which it executes on becoming a Party.

**"Withholding Forms"** means IRS Form W-8BEN, W-BECI or W-9 (or, in each case, any successor form and, in each case, attached to an IRS Form W-8IMY and a withholding statement if required) or any other IRS form by which a Lender claims, in each case, an exemption from withholding of U.S. federal tax on any payments of



interest under the Finance Documents to that person and, in the case of a person claiming an exemption under the "portfolio interest exemption" in addition to IRS Form W-8BEN, a statement certifying that such person is not (a) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (b) a "10 percent shareholder" of the U.S. Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (c) a "controlled foreign corporation" that is related to the U.S. Borrower within the meaning of Section 881(c)(3)(C) of the Code.

Unless a contrary indication appears, in this Clause 18 a reference to "determines" or "determined" means a determination made in the reasonable discretion of the person making the determination.

For the purposes of this Clause 18, a Lender shall include an Ancillary Lender.

## 18.2 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 Finance Party shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Finance Party. If the Agent receives such notification from a Finance Party it shall promptly 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 such Tax Deduction had been required.
- (d) A payment by an Obligor shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax 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 (and, in the case of a UK Treaty Lender, the payment is/are specified in a directive given by the Commissioners of the Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulation 1970 (SI/1970/488)), in respect of the relevant Obligor, 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 (or, if later, if such Lender is a fiscally transparent entity for the purposes of the jurisdiction imposing the Tax Deduction, and such status is relevant for determining Qualifying Lender status, the date the relevant member of such Lender became such a member, but only in respect of payments to be received, or deemed to be received, by such member) 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 (a)(i)(B) 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 (a)(i)(B) 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 Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction (or with a reduced Tax Deduction) had that Lender complied with its obligations under paragraphs (i) or (j) (as applicable) below.
- (e) In the case of any payment by an Obligor as a result of or relating to an advance made (or agreement to make an advance) to a U.S. Borrower, if a Tax Deduction on account of U.S. federal withholding tax is required by law to be made by such U.S. Borrower, or by an Obligor on behalf of such U.S. Borrower, paragraph (c) above shall apply only to the extent that the Lender:
  - (i) was a Qualifying Lender with respect to that U.S. Borrower as defined in paragraph (d) of the definition of Qualifying Lender on the date it first became a Lender; and
  - (ii) is a Qualifying Lender with respect to that U.S. Borrower as defined in paragraph (d) of the definition of Qualifying Lender on the date the payment falls due, or has ceased to be a Qualifying Lender under paragraph (d) of the definition of Qualifying Lender because of a change after the date it first became a Lender (or, if later, if such Lender is a fiscally transparent entity for U.S. federal income tax purposes and such status is relevant for determining Qualifying Lender status, the date the relevant member of such Lender became such a member, but only in respect of payments to be received, or deemed to be received, by such member), in any law or double taxation

agreement or official interpretation, administration or application thereof.

- (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) A Guarantor will not be obliged to make an increased payment under paragraph (c) above with respect to a payment by it in respect of a liability due for payment by a Borrower to the extent that, had the relevant payment been made by that Borrower, Tax would have been imposed on such payment for which that Borrower would not have been obliged to make an increased payment under paragraph (c) above.
- (h) Within 30 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)
  - (i) Subject to paragraph (ii) below in respect of a Treaty Lender, a Finance Party and each Obligor which makes a payment to which that Finance Party 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 (or with a reduced Tax Deduction), **provided that** the relevant Finance Party first receives reasonable written notice from the Company giving reasonable details of the procedural formalities to be completed.
  - (ii)
    - (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into 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 New Lender, an Incremental Facility Lender or an Increase Lender that is a Treaty Lender 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 Transfer Certificate, Assignment Agreement, Incremental Facility Notice or Increase Confirmation which it executes,

and having done so, that Treaty Lender shall be under no obligation pursuant to sub-paragraph (i) above in respect of payments from an Obligor incorporated in the United Kingdom.

- (j) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with sub-paragraph (i)(ii) above and:
- (i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
  - (ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
    - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
    - (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

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.
- (k) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with sub-paragraph (i)(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.
- (l) 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.
  - (m) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Company by entering into this Agreement.
  - (n) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.
  - (o) Each Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in respect of a Tax Confirmation.
  - (p) Each Qualifying Lender under paragraph (d) of the definition of Qualifying Lender shall submit to the Agent for transmission to the relevant Borrower, as identified and directed in writing by the Company, (A) upon becoming a Party to this Agreement, (B) after receipt of any reasonable written request through the Agent to do so, and (C) when the Withholding Form becomes obsolete, two duly completed and signed copies of the relevant Withholding Form. For the sake of clarity, no Lender shall be required to submit any Withholding

Form if that Lender has ceased to be a Qualifying Lender. Paragraph (c) of Clause 18.2 (*Tax gross-up*) above shall not apply to the extent the Qualifying Lender does not comply with its obligations under this paragraph (p) to provide a Withholding Form and such failure results in a Tax Deduction on the payment made by the relevant Obligor.

- (q) For the purpose of this Clause 18, (i) the Company shall be treated as both a UK Borrower and a U.S. Borrower and (ii) there shall be regarded as a Tax Deduction any U.S. tax resulting from (A) a determination that a Loan made to the Company by a Finance Party under this Agreement is treated for U.S. tax purposes as having been made to a U.S. Person or (B) interest paid on such Loan being treated under the double income tax treaty between the United Kingdom and the United States as having been paid under, or as part of, a "conduit arrangement".
- (r) In the case of any payment by an Obligor resident or deemed resident of Canada for the purposes of the CTA (Canada), the payment shall not be increased under paragraph (c) by reason of a Tax Deduction on account of Tax imposed by Canada by reason of the recipient of such payment:
  - (i) not dealing at arm's length with (within the meaning of the CTA (Canada)) the Obligor at the time such payment is made; or
  - (ii) being or not dealing at arm's length with (within the meaning of the CTA (Canada)) a "specified shareholder" of the Obligor for purposes of the thin capitalisation rules of the CTA (Canada) at the time such payment is made.

### 18.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Agent, which demand shall not be made earlier than five Business Days prior to the date such loss, liability or cost will be suffered by such Protected Party), 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 relation to a sum received under a Finance Document 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) 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 18.2 (*Tax gross-up*); or
- (B) would have been compensated for by an increased payment under Clause 18.2 (*Tax gross-up*) but was not so compensated because one of the exclusions to the gross up of Clause 18.2 (*Tax gross-up*) applied; or
- (iii) in respect of a loss, liability or cost for or on account of Tax which would not have arisen or been incurred but for the reasonably avoidable delay or the default of such Finance Party;
- (iv) to Canadian withholding taxes arising under Part XIII of the CTA (Canada) as a result of a Finance Party assigning all or part of its interest in a Term Loan, Revolving Facility Utilisation or other advance made to a Borrower which is a resident of Canada for purposes of the CTA (Canada) or deemed resident of Canada for purposes of Part XIII of the CTA (Canada) with respect to any amount payable pursuant to such Term Loan, Revolving Facility Utilisation or other advance, to an assignee that is a person resident or deemed to be resident in Canada for purposes of Part-XIII of the CTA (Canada) where such tax arises as a consequence of the Finance Party (A) not dealing at arm's length (within the meaning of the CTA (Canada)) with such assignee, or (B) being or not dealing at arm's length with (within the meaning of the CTA (Canada)) a "specified shareholder" of such Borrower for purposes of the thin capitalization rules of the CTA (Canada); or
- (v) to the extent a loss, liability or cost 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 promptly notify the Company.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 18.3, notify the Agent.

#### 18.4 Tax Credit

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

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or 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.

#### 18.5 Lender Status Confirmation

- (a) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate, Assignment Agreement or Increase Confirmation or Incremental Facility Notice which it executes on becoming a Party which of the following categories it falls in (in relation to each Borrower):
  - (i) not a Qualifying Lender;
  - (ii) a Qualifying Lender (other than a Treaty Lender); or
  - (iii) a Treaty Lender.
- (b) If a New Lender, an Incremental Facility Lender or an Increase Lender fails to indicate its status in accordance with this Clause 18.5 then such New Lender, an Incremental Facility Lender or Increase 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 promptly inform the Parent). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement, Incremental Facility Notice or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 18.5.

#### 18.6 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, the Agent and the other Finance Parties.

## 18.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru payment percentage" or other information required under the U.S. Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (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 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 its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
  - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
  - (ii) if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.



- (e) If a Borrower is a U.S. Tax Obligor, or where the Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within ten Business Days of:
- (i) where a Borrower is a U.S. Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where a Borrower is a U.S. Tax Obligor and the relevant Lender is a New Lender, the relevant Transfer Date;
  - (iii) the date a new U.S. Tax Obligor accedes as a Borrower; or
  - (iv) where the Borrower is not a U.S. Tax Obligor, the date of a request from the Agent,

supply to the Agent:

- (A) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or
- (B) any withholding statement and other documentation, authorisations and waivers as the Agent or U.S. Tax Obligor may require to certify or establish the status of such Lender under FATCA.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

- (f) Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrower. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).

## 18.8 Stamp taxes

The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document other than a Finance Document pursuant to which any rights under this Agreement are assigned or transferred by a Finance Party.

## 18.9 Value added tax

- (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 amount in respect of 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 subparagraph (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 18 to any Party will, at any time when that 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 person who is treated as making the supply, or (as appropriate) receiving the supply, under the grouping rules (as provided for in Article 11 of Council Directive 2006/112/EC or as implemented by a Participating Member State).

- (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.

## 19. INCREASED COSTS

### 19.1 Increased costs

- (a) Subject to Clause 19.3 (*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:
- (i) **"Increased Costs"** means:
- (A) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (B) an additional or increased cost; or
- (C) 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 or Letter of Credit to the extent not otherwise compensated for under any other provision of this Agreement or of the other Finance Documents or any Letter of Credit;
- (ii) **"Bank Levy"** means the United Kingdom Tax known as "the bank levy" introduced by the Finance Act 2011, as amended or re-enacted from time to time;
- (iii) **"Basel III"** means:
- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and
- (iv) "**CRD IV**" means:
  - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
  - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

## 19.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*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 which certificate shall contain a reasonably detailed calculation of such amount.

## 19.3 Exceptions

Clause 19.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to Tax (for the avoidance of doubt, Clause 18 (*Tax Gross-Up and Indemnities*) alone shall apply to Tax);
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) attributable to the Bank Levy;
- (d) attributable to the material breach by the relevant Finance Party or its Affiliates of any law or regulation or requirement of any central bank or other tax, monetary or banking regulatory authority; or
- (e) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (or, if later, the date it became a Party to this Agreement) ("**Basel II**") or any other law or regulation which implements Basel II (whether such

implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) (provided that if such Increased Costs attributable to Basel II are incurred as a result of the implementation or application of, or compliance with, Basel III or CRD IV, this sub-paragraph (e) shall not apply to the extent that such implementation, application or compliance differs from that which has been implemented or required already as at the date of this Agreement by Basel II as determined without reference to Basel III or CRD IV).

For the avoidance of doubt, a Lender which is not bound to comply with Basel II either at the date of this Agreement (or, if later, the date it became a Party to this Agreement) or as at the date of a claim under this Clause 19 shall be entitled to make a claim for all Increased Costs incurred by it as a result of the implementation or application of, or compliance with, the Basel III or CRD IV (to the extent that such Lender is bound to comply with the Basel III or CRD IV) without reference to paragraph (e) above.

## 20. OTHER INDEMNITIES

### 20.1 Currency indemnity

(a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against that Obligor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within five Business Days of demand, indemnify the Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(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.

### 20.2 Other indemnities

(a) The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Finance Party against any cost, loss or liability incurred by it as a result of:

- (i) the occurrence of any Event of Default;
- (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss

or liability arising as a result of Clause 34 (*Sharing Among the Finance Parties*);

- (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
- (iv) issuing or making arrangements to issue a Letter of Credit requested by the Company or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement; or
- (v) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company,

save to the extent such event or circumstance arises by reason of wilful default, gross negligence or material breach of a Finance Document by that Finance Party.

### 20.3 Indemnity to the Agent

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

- (a) investigating any event which it reasonably believes is a Default;
- (b) entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 35.10 (*Change of currency*); or
- (c) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

## 21. MITIGATION BY THE LENDERS

### 21.1 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 11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Tax Gross-Up and Indemnities*) or paragraph (a) of Clause 19.1 (*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.

## 21.2 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 21.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might reasonably be expected to have an adverse effect upon its business, operations or financial condition (other than any minor costs and expenses of an administrative nature).

## 22. COSTS AND EXPENSES

### 22.1 Transaction expenses

The Company shall promptly on demand pay (or cause to be paid to) the Agent, the Arrangers and the Issuing Bank the amount of all costs and expenses (including reasonable legal fees and disbursements of a single counsel in each relevant jurisdiction acting for the Agent and the Lenders up to any pre agreed amount incurred in connection with the Finance Documents and as separately agreed by the Company) 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; and
- (b) any other Finance Documents executed after the date of this Agreement,

**provided that** the Company shall not be obliged to pay (or cause to be paid) any such costs and expenses for any fees of counsel, accountants, surveyors or other experts or advisors whose engagement has not been approved by the Company.

### 22.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 35.10 (*Change of currency*), the Company shall, within five Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including reasonable legal fees and disbursements of a single counsel in each relevant jurisdiction acting for the Agent up to any pre agreed amount incurred in connection with the Finance Documents and as separately agreed by the Company) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 22.3 Enforcement and preservation costs

The Company shall, within five Business Days of demand, pay to the Finance Parties the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and any proceedings instituted by or against the Agent as a consequence of enforcing these rights.

## **SECTION 7 GUARANTEE**

### **23. GUARANTEE AND INDEMNITY**

#### **23.1 Guarantee and indemnity**

Subject to Clause 23.11 (*Guarantee Limitations*) and Clause 23.12 (*Limitations in an Accession Letter*), each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if, for any reason, any amount claimed by a Finance Party under this Clause 23 is not recoverable on the basis of a guarantee, it will be liable as a principal debtor and primary obligor to indemnify that Finance Party against any cost, loss or liability it incurs as a result of an Obligor not paying any amount expressed to be payable by it under any Finance Document on the date when it is expressed to be due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee.

#### **23.2 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.

#### **23.3 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 faith 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 23 will continue or be reinstated as if the discharge, release or arrangement had not occurred.



### 23.4 Waiver of defences

The obligations of each Guarantor under this Clause 23 will not be affected by an act, omission, matter or thing which, but for this Clause 23, would reduce, release or prejudice any of its obligations under this Clause 23 (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 (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any 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.

### 23.5 Guarantor intent

Without prejudice to the generality of Clause 23.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) 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 including (without limitation) for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

### 23.6 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 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### 23.7 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 money received from any Guarantor or on account of any Guarantor's liability under this Clause 23.

### 23.8 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 23:

- (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 23.1 (*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 35 (*Payment Mechanics*).

### 23.9 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.

### 23.10 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.

### 23.11 Guarantee Limitations

- (a) In relation to a Guarantor organised in England and Wales, its obligations under this Clause 23 (*Guarantee and Indemnity*) shall not apply to the extent that it would result in such obligations constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 and are subject to any further limitations set out in the Accession Letter applicable to such Additional Guarantor.
- (b) In relation to any U.S. Guarantor, notwithstanding any term or provision of this Clause 23 or any other term in this Agreement or any Finance Document, the maximum aggregate amount of the obligations for which that U.S. Guarantor shall be liable under this Agreement shall in no event exceed an amount equal to the largest amount that would not render such U.S. Guarantor's obligations under this Agreement, subject to avoidance under applicable United States federal or state fraudulent conveyance laws.
- (c) Notwithstanding any term or provision of this Clause 23 or any other term in this Agreement, no Subsidiary of the Company that is a controlled foreign corporation (as defined in the Code) shall give a guarantee or pledge any of its assets (including shares in a Subsidiary) as Security for an obligation of a U.S. Person (as defined in the Code) that is a United States Shareholder (as defined in section 951(b) of the Code) of such controlled foreign corporation. Furthermore, not more than 65 per cent. of the total combined voting power of all classes of shares entitled to vote of any such Subsidiary shall be pledged directly or indirectly as Security for an obligation of a U.S. Person that is a

United States Shareholder (as defined in section 951(b) of the Code) of such controlled foreign corporation.

**23.12 Limitations in an Accession Letter**

In relation to any Guarantor that has become a Guarantor after the date of this Agreement, the obligations of that Guarantor under this Clause 23 are subject to any limitations in accordance with the Agreed Guarantee Principles set out in the Accession Letter applicable to that Guarantor.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

## SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

### 24. REPRESENTATIONS

#### 24.1 General

Subject to the terms of Clause 24.21 (*Time of making representations*) each Obligor (or, where otherwise stated, the specified Obligors) makes the representations and warranties set out in this Clause 24 with respect to itself and (where expressly referred to) its Subsidiaries, at the times and in accordance with Clauses 24.21 (*Time of making representations*) and 24.22 (*Repetition of Representations*) to each Finance Party. The Company acknowledges that the Finance Parties have entered into this Agreement in reliance on those representations and warranties.

#### 24.2 Status

- (a) It and each of its Subsidiaries is a corporation, company or other person duly organised under the laws of its jurisdiction of incorporation or formation with limited liability.
- (b) It and each Material Company has the power to own its material assets and carry on its business substantially as it is being conducted.

#### 24.3 Governing law and judgments

In any proceedings taken in its jurisdiction of incorporation or formation in relation to the Finance Documents to which it is a party, the choice of governing law of the Finance Documents, and any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its jurisdiction of incorporation or formation subject to applicable insolvency, bankruptcy, liquidation, administration, examinership, moratorium, reorganisation and similar laws affecting the rights of creditors generally, general principles of equity and the Legal Reservations.

#### 24.4 Binding obligations

The obligations expressed to be assumed by it in the Finance Documents to which it is a party are legal and valid obligations, binding on it and enforceable against it in accordance with the terms thereof subject to applicable insolvency, bankruptcy, liquidation, administration, examinership, moratorium, reorganisation and similar laws affecting the rights of creditors generally, general principles of equity and the Legal Reservations.

#### 24.5 Execution of the Transaction Documents

- (a) Its execution of the Finance Documents to which it is a party and its exercise of its rights and performance of its obligations thereunder (taken as a whole) do not and will not:
  - (i) conflict in any material respect with any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding

upon it or any of its assets in such manner or to such extent as to have or be reasonably likely to have a Material Adverse Effect;

- (ii) conflict in any material respect with its constitutive documents; or
  - (iii) conflict in any material respect with any applicable law.
- (b) It has (or will, prior to execution, have) the power to enter into the Finance Documents to which it is (or will be) a party and all corporate and other action required to authorise the execution of the Finance Documents to which it is (or will be) a party and the performance of its obligations thereunder has been (or will, prior to execution, have been) duly taken.
- (c) No limit on its powers will be exceeded as a result of the borrowing or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

#### 24.6 No material proceedings

No action, litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency which would be reasonably likely to be adversely determined, and, if so adversely determined, would reasonably be expected to have a Material Adverse Effect has been started or, to the best of its knowledge and belief, threatened against it or any of its Subsidiaries.

#### 24.7 Financial Statements

- (a) Its Original Financial Statements:
- (i) save as disclosed therein, were prepared in accordance with the Accounting Principles consistently applied; and
  - (ii) save as disclosed therein, in the case of audited accounts, give a true and fair view of the financial position of Exova Holdings Limited and its Subsidiaries or, in the case of unaudited accounts, fairly present its financial position of Exova Holdings Limited and its Subsidiaries.
- (b) Its most recent financial statements delivered pursuant to Clause 25 (*Information Undertakings*):
- (i) save as notified to the Agent pursuant to Clause 25.6 (*Accounting Policies*), were prepared in accordance with the Accounting Principles consistently applied; and
  - (ii) save as disclosed therein, in the case of audited accounts, give a true and fair view of its consolidated financial conditions as at the end of (and consolidated results of operations for) the period to which they relate and, in the case of unaudited accounts, fairly present the financial position of the Group.

For the avoidance of doubt obligations in relation to pension liabilities will be re-evaluated on an annual basis.

## 24.8 **Validity and admissibility in evidence**

All Authorisations required (save for any such acts, conditions or things referred to in the qualifications to the Legal Opinions and subject to the Legal Reservations and to applicable bankruptcy or insolvency laws or other similar laws affecting creditors' rights or remedies generally and general principles of equity) in order to:

- (a) enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations (taken as a whole) expressed to be assumed by it in the Finance Documents; and
- (b) make the Finance Documents admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect, save where failure to obtain such Authorisations could not reasonably be expected to have a Material Adverse Effect.

## 24.9 **Pari passu ranking**

Under the laws of its jurisdiction of incorporation in force at the date of this Agreement or, in the case of an Obligor acceding after the date of this Agreement, as at the date of the Accession Letter pursuant to which such Obligor accedes, the claims of the Finance Parties against it under the Finance Documents will rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors save those whose claims are preferred solely by any bankruptcy, insolvency, examinership, liquidation or other similar laws or other provisions of general application.

## 24.10 **Insolvency**

Except as permitted pursuant to Clause 27.15 (*Mergers*), it has taken no (and no Material Company has taken any) corporate action nor (to the best of its knowledge and belief) have any other steps been taken or legal proceedings been started or threatened against it or any Material Company for its or their winding-up, dissolution, administration, examinership, re-organisation, bankruptcy, moratorium of payments, division or statutory merger (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, Irish law examiner, conservator, custodian, trustee, judicial factor or similar officer of it (or any Material Company) or of any or all of its (or any Material Company's) assets or revenues or any analogous procedure or step in any jurisdiction.

## 24.11 **No misleading information**

To the best of the Company's knowledge and belief (after having made reasonable enquiries), the factual information with respect to the Group provided to any Finance Party by or on behalf of any member of the Group (taken as a whole) is in all material respects true and accurate and, to the best of the Company's knowledge and belief, is not misleading in any material respect and no factual information has been omitted that renders such information taken as a whole untrue or misleading in any material respect.

**24.12 No breach of laws**

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or could reasonably be expected to have a Material Adverse Effect.

**24.13 No Default**

No Event of Default and, on the date of this Agreement, no Default has occurred and is continuing.

**24.14 No Filing or stamp taxes**

Save as set out in the Legal Reservations, under the laws of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except in the case of any filing, recording or enrolling or any Tax or fee payable which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document or at any later time that such payment is required to be made.

**24.15 Group Structure Chart**

The Group Structure Chart delivered to the Agent pursuant to Part I (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) identifies the Material Companies as of the first Utilisation Date and is true, complete and accurate in all material respects as of the first Utilisation Date.

**24.16 Pensions**

Except for certain pension schemes for members of the Group in Germany and Sweden in each case referred to in the Original Financial Statements, as far as it is aware:

- (a) neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); and
- (b) neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer; and
- (c) all pension schemes of each member of the Group are funded to the extent required by applicable law and each member of the Group is in compliance with applicable laws as to pensions,

except in each case where having such status or being so connected or associated or failing to so fund or so comply (as applicable) would not reasonably be expected to have a Material Adverse Effect.



**24.17 Federal Reserve Regulations**

- (a) No Borrower is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.
- (b) None of the proceeds of the Loans or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of buying or carrying any Margin Stock or for any other purpose which might cause all or any Loans or other extensions of credit under this Agreement to be considered a "purpose credit" within the meaning of Regulation U or Regulation X.

**24.18 Investment Companies**

No Borrower is or is required to be registered as an "investment company" under the U.S. Investment Company Act of 1940 (the "**1940 Act**").

**24.19 Anti-Terrorism Laws**

To the best of its knowledge, neither it nor any of its Affiliates has violated or will violate any applicable Anti-Terrorism Law in any respect that could reasonably be expected to have a Material Adverse Effect or cause any Finance Party to violate an Anti-Terrorism Law.

**24.20 Economic Sanctions**

Neither it nor any of its respective directors or officers or employees, agents or representatives:

- (a) is a Restricted Party;
- (b) has been engaged in any transaction, activity or conduct that could reasonably be expected to result in its being designated as a Restricted Party; and/or
- (c) has received notice of, or is otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to Sanctions that could reasonably be expected to (i) have a Material Adverse Effect; or (ii) cause any Finance Party to be in breach of any Sanctions.

**24.21 Time of making representations**

The representations set out in this Clause 24 shall be made as follows:

- (a) as at the date of this Agreement and on the first Utilisation Date, each Original Obligor shall make the representations set out in this Clause 24 (other than the representation set out in Clause 24.15 (*Group Structure Chart*), in respect of which each Original Obligor shall make the representation as at the Closing Date);
- (b) as at the date of the execution of an Accession Letter, each Additional Obligor shall, with respect to itself, be deemed to make the representations set out in Clause 24.2 (*Status*) to Clause 24.6 (*No material proceedings*), paragraph (b)

of Clause 24.7 (*Financial Statements*), Clause 24.8 (*Validity and admissibility in evidence*) to Clause 24.10 (*Insolvency*) and Clause 24.17 (*Federal Reserve Regulations*) to Clause 24.20 (*Economic Sanctions*) (inclusive).

#### 24.22 **Repetition of Representations**

The Repeated Representations shall be deemed to be repeated by each Obligor (or, where otherwise stated, the Company) by reference to the facts and circumstances then existing on the first day of each Interest Period, each date on which a Utilisation (other than a Rollover Loan or a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*)) is or is to be made, and each date on which a person becomes (or it is proposed that a person becomes) an Additional Obligor.

#### 24.23 **Knowledge Qualifications**

Any representation or warranty made (or deemed to be made) on or before the end of an Approved Acquisition Clean-up Period in respect of matters relating to a Permitted Acquisition (or subject matter thereof) for which the Approved Acquisition Clean-Up Period is in effect shall be qualified by the actual knowledge and awareness of the Obligor giving that representation or warranty, after making such enquiry as is reasonable in the circumstances (which shall not include the knowledge and/or awareness of the management of any acquired entity (as applicable)).

### 25. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 25 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 25:

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 25.1 (*Financial statements*).

"**Semi-Annual Financial Statements**" means the financial statements delivered pursuant to paragraph (b) of Clause 25.1 (*Financial statements*).

#### 25.1 **Financial statements**

The Company shall supply to the Agent in electronic copy or, if it is not practicable for the Company to supply an electronic copy, in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years ending after the Closing Date its audited consolidated financial statements for that Financial Year; and
- (b) as soon as they are available, but in any event within 60 days after the end of each half Financial Year ending after the Closing Date its unaudited consolidated financial statements for that half Financial Year.

## 25.2 Quarterly Statements

If the Net Leverage Ratio for the Relevant Period ending on a Financial Half Year Date is greater than 3.00:1, the Company shall as soon as the same becomes available, but in any event within 60 days after such Financial Half Year Date and within 60 days of each Financial Quarter Date thereafter until a Financial Half Year Date in respect of which a Compliance Certificate is delivered demonstrating a Net Leverage Ratio for the Relevant Period ending on such Financial Half Year Date which is equal to or less than 3.00:1, deliver to the Agent, in sufficient copies for all the Lenders, the Required Quarterly Information relating to such Financial Quarter.

## 25.3 Compliance Certificates

- (a) The Company shall ensure that each set of Annual Financial Statements and Semi-Annual Financial Statements is accompanied by a Compliance Certificate signed by two directors of the Company (one of whom shall be the Chief Executive Officer or the Chief Financial Officer of the Group (or his or her deputy)) and (in the case of a Compliance Certificate required to be delivered with the Annual Financial Statements) certified by the Auditors in the form agreed by the Company (acting reasonably) and the Agent (acting reasonably) unless the Company's auditors have adopted a general policy of not providing such reports (and, for the avoidance of doubt, such certification will not need to confirm more than that the numbers in the Compliance Certificate have been correctly calculated and extracted from the relevant financial statements).
- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 26 (*Financial Covenants*) and the Margin computations set out in the definition "Margin" as at the date as at which those financial statements were drawn up.

## 25.4 Requirements as to Financial Statements

The Company shall ensure that each set of financial statements delivered by it pursuant to this Clause 25 is certified by a director of the Company as giving (in relation to the Annual Financial Statements) a true and fair view of the consolidated financial condition of the Group and (in relation to the Semi-Annual Financial Statements) as fairly presenting in all material respects the consolidated financial condition of the Group, as at the end of the period to which those financial statements relate and of the results of the Group's operations during such period, subject (in relation to the Semi-Annual Financial Statements) to the absence of footnotes and to normal year-end audit and other adjustments.

## 25.5 Other information

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

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Company to its creditors generally (or any class of them);

- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, which are reasonably likely to be adversely determined and which, if so adversely determined, would reasonably be expected to have a Material Adverse Effect;
- (c) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group as any Finance Party through the Agent may reasonably request, **provided that** the Company shall not be obliged to provide any such information if to do so would breach any law or regulation or restriction (contractual or otherwise) or any applicable stock exchange requirement or duty of confidentiality binding on it, other than where such restriction was entered into for the purpose of avoiding disclosure of such information and **provided further** that, except where there is an Event of Default which is continuing, the Company shall not be obliged to provide any such information if (A) such information is not readily available to the Group, (B) preparation or provision of such information would result in a material cost to the Group relative to the materiality of the information requested or (C) the Company believes (acting reasonably) that the information is of a particularly confidential or sensitive commercial nature.

## 25.6 Accounting Policies

- (a) The Company shall ensure that each set of financial statements delivered pursuant to this Clause 25 shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, the Company notifies the Agent that there has been a change in the Accounting Principles, or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:
  - (i) a description of any change necessary for those financial statements to reflect the Accounting Principles, or accounting practices upon which the Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 26 (*Financial Covenants*) has been complied with, to determine the Margin as set out in the definition of "Margin", and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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

- (b) If the Company notifies the Agent of a change in accordance with paragraph (a) above, then the Company and Agent shall enter into negotiations in good faith with a view to agreeing:
- (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
  - (ii) if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

- (c) If such amendments are not so agreed within 30 days, the Company shall promptly deliver to the Agent:
- (i) in reasonable detail and in a form reasonably satisfactory to the Agent, details of all such adjustments as need to be made to the relevant financial statements in order to reflect the applicable accounting principles at the date of delivery of the relevant financial statements;
  - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 26 (*Financial Covenants*) has been complied with including but not limited to a reconciliation statement to be delivered with each set of financial statements; and
  - (iii) together with the Compliance Certificate delivered with the Annual Financial Statements for that Financial Year, if reasonably obtainable from the Auditors, written confirmation from the Auditors (addressed to the Agent) confirming the basis for such changes and the calculations and adjustments provided by the Company under paragraphs (i) and (ii) above.

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

- (d) If the Agent wishes to discuss at any time an Event of Default is continuing the financial position of any member of the Group with the Auditors, the Agent may notify the Company, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Company must ensure that the Auditors are authorised (at the expense of the Company):
- (i) to discuss the financial position of each member of the Group with the Agent on request from the Agent; and
  - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

## 25.7 Year-end/Financial Half Year Dates

The Company shall procure that its Financial Year-end falls on 31 December in each calendar year and that its financial half years end on Financial Half Year Dates.

## 25.8 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) If the Agent reasonably believes a Default is continuing, the Company shall promptly upon request by the Agent supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

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

obliges the Agent or any Lender (or, in the case of sub-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 sub-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 sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied (acting reasonably) with the results of 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 with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations on Lenders or

prospective new Lenders pursuant to the transactions contemplated in the Finance Documents.

- (c) The Company shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 31 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the 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 in relation to any relevant person pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## 26. FINANCIAL COVENANTS

### 26.1 Financial condition

The Company shall ensure that the financial condition of the Group shall be such that:

- (a) *Net Leverage Ratio:*

Net Leverage Ratio in relation to each Relevant Period ending on each Financial Half Year Date commencing with the Financial Half Year Date falling on 31 December 2014, shall not be greater than 3.50:1.

- (b) *Interest Cover Ratio:*

Interest Cover Ratio in relation to each Relevant Period ending on each Financial Half Year Date, commencing with the Financial Half Year Date falling on 31 December 2014, shall not be less than 3.00:1.

### 26.2 Financial definitions

"**Adjusted EBITDA**" means, in respect of any period, the Consolidated Net Profit (or loss) of the Group, for that period, including SRED Credits received or receivable or offset against tax liabilities for that period, and adjusted to exclude the following items (without duplication) of income or expense to the extent that such items are included in the calculation of Consolidated Net Profit:

- (a) interest and similar charges net of interest income (for the avoidance of doubt, including, without limitation, in connection with the issuance of guarantees, indemnities, bonds, standby letters of credit or similar instruments issued by a

bank or financial institution in respect of commercial obligations of any member of the Group owing in the ordinary course of business);

- (b) any non-cash expenses and charges (including, without limitation, any non-cash interest, non-cash stock option compensation expenses, non-cash expenses arising from any management or employee incentive plans and non-cash expenses arising from any similar long term incentive plan);
- (c) total net income tax expense and deferred taxes;
- (d) depreciation or impairment expense or dilapidation provisions;
- (e) the expense associated with amortization or impairment of intangible and other assets;
- (f) non-cash provisions for reserves for discontinued operations;
- (g) any Exceptional Items and any Restructuring Costs;
- (h) any gain or loss associated with the sale or write-down or revaluation of assets not in the ordinary course of business;
- (i) any IPO and Refinancing Costs;
- (j) any Pension Items;
- (k) monitoring, corporate finance, financial advisory, management consulting or similar fees paid to CD&R, the CD&R Investors or their Affiliates as permitted under this Agreement;
- (l) any gain or loss as a result of interest or currency exchange rate fluctuations;
- (m) any fair value movements in all Hedging Transactions;
- (n) any income or loss accounted for by the equity method of accounting;
- (o) any costs relating to any actual or attempted Permitted Acquisition (and any integration costs in relation thereto) or Permitted Joint Venture (and any integration costs in relation thereto);
- (p) any adjustments to the carrying value of assets or liabilities arising from purchase price or acquisition accounting adjustments made in accordance with the Accounting Principles in connection with any Permitted Acquisition to the extent any such adjustment (in part or whole) is ultimately recorded in Consolidated Net Profit (or loss);
- (q) any losses to the extent covered by business interruption or similar insurance and to the extent of the proceeds effectively received; and
- (r) any non-recurring fees, costs or expenses referable to the management of employee or management incentive plans,



after being further adjusted (A) to include on a pro forma basis the Adjusted EBITDA of a member of the Group acquired by the Group during the Relevant Period for the whole of the Relevant Period including that part of the Relevant Period when it was not a member of the Group, calculated on the basis that any cost savings or synergies that are reasonably expected to arise in respect of such acquired entity as a result of, and within 12 Months of, it becoming a member of the Group had occurred during that Relevant Period (such cost savings and synergies to be confirmed as being, in the opinion of the CEO or CFO, reasonably likely to be achieved, and any non recurring items relating to the Adjusted EBITDA of the acquired company during that period shall be ignored, **provided that** any such *pro forma* increase or decrease shall be without duplication for cost savings or synergies actually realised in such Relevant Period and already included in Adjusted EBITDA, (B) to exclude the Adjusted EBITDA of a member of the Group disposed of by the Group during the Relevant Period for the whole of the Relevant Period and (C) to include on a *pro forma* basis the amount of "run rate" cost savings projected (in good faith by the CEO or CFO) to be realised as a result of specified actions taken, in either case within 12 months after the consummation of any operational change (which cost savings shall be added to Adjusted EBITDA until fully realised and calculated on a *pro forma* basis as though such cost savings had been realised on the first day of the Relevant Period), **provided that** (x) such cost savings are reasonably identifiable and factually supportable and (y) the aggregate amount of cost savings added pursuant to this sub-paragraph (C) shall not exceed 10% of Adjusted EBITDA for any Relevant Period (it being understood and agreed that "run rate" shall mean the full recurring benefit that is associated with any action taken).

For the purposes of this definition of Adjusted EBITDA, the Adjusted EBITDA of the Middle East Entities and the Minority Entities will be treated as if they were wholly-owned Subsidiaries regardless of the accounting treatment adopted in the consolidated financial statements of the Group and no deduction shall be made to reduce such Adjusted EBITDA to reflect any minority interest's share of Adjusted EBITDA.

**"Applicable Accounting Principles"** means generally accepted accounting principles under IFRS in force as at the date of this Agreement consistent with the policies, principles, procedures and practices applied in the Original Financial Statements.

**"Cash Equivalents"** means investments in:

- (a) marketable obligations of or guaranteed by (i) the United Kingdom, the United States of America, Sweden, France or Germany, (ii) any other European Union member state in which the Group has operations, (iii) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Group in that country with such funds or (iv) any other country being a country having one of the two highest rating categories obtainable from either Standard & Poor's, a division of The McGraw Hill Companies, Inc. ("**S&P**") or Moody's Investors Services Inc. ("**Moody's**"), or issued by an agency of any thereof and backed by any of the same;
- (b) certificates of deposit, notes and acceptances maturing within one year issued by (i) banks which are authorised persons with permission to accept deposits under the Financial Services and Markets Act 2000 or by building societies

under the Building Societies Act 1986, (ii) banks or institutions authorised to operate as banks that are Finance Parties or (iii) by institutions authorised to operate as banks in any of the countries referred to in sub-paragraph (a) above, and **provided that** such institution's short term senior debt immediately prior to the making of such an investment is rated not less than A-1 by S&P or not less than P-1 by Moody's, or (where an institution is rated by both S&P and by Moody's) is rated not less than A-1 by S&P and not less than P-1 by Moody's;

- (c) certificates of deposit, notes and acceptances maturing within one year issued by banks or institutions authorised to operate as banks in the Middle East provided that the aggregate amount of any such certificates of deposit, notes and acceptances shall not, when aggregated with the amount of any cash credited to an account in the name of a member of the Group with a bank or institution authorised to operate as a bank in the Middle East and falling within the definition of "Cash", exceed an amount equal to £15,000,000 (or its equivalent);
- (d) commercial paper issued by a corporation organised in any of the countries referred to in paragraphs (a)(i), (ii) or (iv) above with not more than 270 days to maturity, provided that immediately prior to the making of such an investment such issuer (or guarantor) of the commercial paper is rated for short term obligations not less than A-1 by S&P or not less than P-1 by Moody's, or (where such issuer (or guarantor) is rated by both S&P and by Moody's) is rated not less than A-1 by S&P and not less than P-1 by Moody's; or
- (e) any other investments approved by the Majority Lenders.

**"Consolidated Net Profit"** means, in respect of any period, the total consolidated net profit of the Group for that period determined in accordance with the Applicable Accounting Principles before deduction of any minority interests and dividends.

**"Exceptional Items"** means any exceptional, unusual, one-off, non-recurring or extraordinary items, including, without limitation, costs incurred in respect of any impairment of property, plant and equipment, loss on disposal of any Subsidiary and any costs relating to the long term incentive plan of any members of the Group.

**"Finance Leases"** means leases or hire purchase contracts which would, in accordance with the Applicable Accounting Principles, be treated as finance or capital leases.

**"Financial Half Year"** means the period commencing on the day after one Financial Half Year Date and ending on the next Financial Half Year Date.

**"Financial Half Year Date"** means 30 June and 31 December.

**"Financial Quarter"** means the period commencing on the day after one Financial Quarter Date and ending on the next Financial Quarter Date.

**"Financial Quarter Date"** means 31 March, 30 June, 30 September and 31 December.

**"Financial Year"** means the annual accounting period of the Group ending on or about 31 December each year.

**"Indebtedness for Borrowed Money"** means, at any time, the aggregate outstanding principal, capital or nominal amount of any indebtedness of members of the Group for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptances under any acceptance credit or bill discount 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 (but not Trade Instruments);
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted on arm's length terms (other than any receivables to the extent they are sold on a non-recourse basis or limited recourse basis provided that the level and nature of that recourse to any member of the Group is customary or usual for such sale or discounting of receivables);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument (but not in any case Trade Instruments) issued by a bank or financial institution in respect of an underlying liability (but not, in any case, Trade Instruments) of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (g) any amount raised by the issue of shares which are expressed to be redeemable on a fixed date or at the option of the holder thereof in each case on or before the Termination Date in respect of Facility A;
- (h) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into the agreement is to raise finance (but excluding trade payables in the ordinary course of business of such member of the Group);
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing (but excluding any Trade Instruments); and
- (j) (without double counting) any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above,

but in the case of paragraphs (b), (f) and (j) above excluding, for the avoidance of doubt, indemnities or reimbursement obligations issued to or in favour of any bank or financial institution in relation to any guarantee, indemnity, bond, standby letter of credit or similar instrument issued by such bank or financial institution in respect of

commercial obligations of any member of the Group arising in the ordinary course of trade and not otherwise constituting Indebtedness for Borrowed Money.

**"Interest Cover Ratio"** means the ratio of Adjusted EBITDA for a Relevant Period to Interest Expense for that Relevant Period.

**"Interest Expense"** means, in respect of any period:

- (a) interest expense and similar charges accrued and paid or payable in respect of Indebtedness for Borrowed Money in cash for such period, after taking into account the net payment or receipt paid or payable or received or receivable under any interest or currency Hedging Transaction in respect of Indebtedness for Borrowed Money for such period and excluding:
  - (i) any amortization or write-off of financing or issue costs on Indebtedness for Borrowed Money of the Group;
  - (ii) foreign exchange differences that are treated as interest under Accounting Principles as they relate to any indebtedness (including intercompany loans) denominated in a currency other than Sterling and any associated currency Hedging Transactions;
  - (iii) fair value movements of any Hedging Transactions;
  - (iv) interest in respect of any loans made to a member of the Group by any Holding Company of the Company from time to time but only to the extent that such loans are subordinated to the facilities on terms acceptable to the Agent (acting on the instructions of the Majority Lenders, acting reasonably) and any such interest is not cash pay interest;
  - (v) interest in respect of employee benefits plans or arrangements or post retirement benefit arrangements;
  - (vi) any fair value movement in any Indebtedness for Borrowed Money for such period;
  - (vii) any costs related to any Permitted Acquisition that are classified as interest under Accounting Principles; and
  - (viii) all arrangement, underwriting and participation fees and similar issue costs, agency and fronting fees, repayment and prepayment premiums, fees or costs; minus
- (b) interest income (accrued and received or receivable in cash for such period) of the Group excluding:
  - (i) fair value movements in any Hedging Transactions for such period;
  - (ii) any fair value movements in any Indebtedness for Borrowed Money for such period;

- (iii) foreign exchange differences that are treated as interest income under Accounting Principles as they relate to any indebtedness (including intercompany loans) denominated in a currency other than Sterling and any associated currency Hedging Transactions; and
- (iv) interest in respect of employee benefit plans or arrangements or post retirement benefit arrangements.

**"IPO and Refinancing Costs"** means all fees, costs and expenses, stamp, registration and other Taxes incurred by or on behalf of any Parent Company, the Company or any other member of the Group in connection with the Facilities, the Finance Documents, the IPO, the refinancing of Indebtedness for Borrowed Money contemplated by paragraph (a)(i) of Clause 3.1 (*Purpose*), the transactions contemplated by the Steps Paper and any transactions relating to the foregoing.

**"Middle East Entity"** means any entity in which any member of the Group has an interest and which is incorporated in, or with its principal place of business in, any country in the Middle East that is included in the consolidated financial statements of the Company under the Accounting Principles whether or not the entity is a member of the Group at the date of this Agreement.

**"Minority Entity"** means any entity which is a member of the Group as at the Closing Date but which is not a wholly-owned member of the Group.

**"Net Leverage Ratio"** means the ratio of Total Financial Indebtedness on the last day of a Relevant Period to Adjusted EBITDA in respect of that Relevant Period.

**"Pension Items"** means any income, receipt, charge or payment attributable to a post employment benefit scheme other than the current service costs attributable to the scheme.

**"Relevant Period"** means each period of twelve months ending on the last day of each Financial Half Year Date.

**"Restructuring Costs"** means any fees, costs and expenses relating to information technology or to relocations, carve-outs, corporate reorganisations or severance, redundancy, recruitment costs, payment in lieu of notice, early retirement costs and payments in respect of post retirement benefits and other similar costs in respect of a reduction in headcount, together with any costs (including double running costs and supplier penalties) of the closure of offices or laboratories, costs incurred in relation to onerous leases and any direct costs attributable to any of the foregoing.

**"SRED Credit"** means any federal, provincial and territorial tax credit received or receivable or offset against tax paid or payable in respect of the Scientific Research & Experimental Development (SRED) federal tax incentive programme administered by the Canada Revenue Agency in respect of the conduct of qualified scientific research and experimental development.

**"Total Financial Indebtedness"** means, as of any date of determination, (a) the principal amount of all Indebtedness for Borrowed Money of the Group (calculated on the basis of amortised cost in accordance with the Accounting Principles) but

excluding (i) any indebtedness incurred in respect of any loans made to a member of the Group by any Holding Company of the Company from time to time but only to the extent that such indebtedness is subordinated to the facilities on terms acceptable to the Agent (acting on the instructions of the Majority Lenders, acting reasonably) and any interest payable in connection with such indebtedness is not cash pay interest and (ii) for the avoidance of doubt, indemnities or reimbursement obligations issued to or in favour of any bank or financial institution in relation to any guarantee, indemnity, bond, standby letter of credit or similar instrument issued by such bank or financial institution in respect of commercial obligations of any member of the Group arising in the ordinary course of business, in each case determined on a consolidated basis in accordance with Applicable Accounting Principles minus (b) the aggregate amount of all cash and Cash Equivalents of any member of the Group

and for the purposes of determining compliance with paragraph (a) of Clause 26.1 (*Financial condition*), all amounts not denominated in Sterling shall be translated into Sterling at the same exchange rate as used to translate income statement items for the Relevant Period ending on the date at which Total Financial Indebtedness is being calculated in the same currency into Sterling.

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

### 26.3 Financial testing

- (a) The financial covenants set out in Clause 26.1 (*Financial condition*) shall be tested by reference to each of the Annual Financial Statements and Semi-Annual Financial Statements and/or each related Compliance Certificate delivered pursuant to Clause 25.3 (*Compliance Certificates*).
- (b) For the avoidance of doubt, Adjusted EBITDA for any Relevant Period (or part thereof) prior to the Closing Date shall be calculated by reference to the Adjusted EBITDA of Exova Group Limited and its Subsidiaries.
- (c) For the purposes of the Interest Cover Ratio for any Relevant Period ending on 31 December 2014, the aggregate consolidated Interest Expense for the period from the first Utilisation Date to the last day of such Relevant Period shall be annualised on a straight line basis.

### 26.4 Accounting Terms

All of the terms defined in this Clause 26, as well as other accounting expressions which are not otherwise defined herein, shall be construed in accordance with the Applicable Accounting Principles.

### 26.5 Cure

If on any Financial Half Year Date any of the requirements of Clause 26.1 (*Financial condition*) are not met but on a subsequent Financial Half Year Date those requirements are complied with, the previous breach (and any resulting Event of Default) will be deemed to have been waived and remedied for all purposes under the

Finance Documents to the satisfaction of the Agent (unless an Event of Default has occurred and notice of acceleration has been given by the Agent under this Agreement (which has not been revoked) prior to receipt by the Agent of the Compliance Certificate in accordance with Clause 25.3 (*Compliance Certificates*) for the Relevant Period ending on that subsequent Financial Half Year Date).

## 27. GENERAL UNDERTAKINGS

The undertakings in this Clause 27 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.

### 27.1 Maintenance of legal validity

Each Obligor shall maintain in full force and effect all material Authorisations required in or by the laws or regulations of a Relevant Jurisdiction to enable it lawfully to enter into and perform its obligations under the Finance Documents to which it is a party and to ensure, subject to the Legal Reservations, applicable bankruptcy, examinership or insolvency laws or other similar laws affecting creditors rights or remedies generally, general principles of equity and any other reservations made in the Legal Opinions, the legality, validity, enforceability against it and admissibility in evidence in each Relevant Jurisdiction of the Finance Documents to which it is a party.

### 27.2 Insurance

Each Obligor shall, and shall procure that each member of the Group which is a Subsidiary of such Obligor shall, maintain insurances on and in relation to (or benefit from Group policies in respect of) its business and assets with reputable underwriters or insurance companies against such risks and to such extent as is usual for companies carrying on a business such as that carried on by such member of the Group.

### 27.3 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would reasonably be expected to have a Material Adverse Effect.

### 27.4 *Pari passu* ranking

Each Obligor shall ensure that at all times the claims of the Finance Parties against it under the Finance Documents rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors save those whose claims are preferred by any bankruptcy, insolvency, examinership, liquidation or other similar laws or other applicable laws of general application.

### 27.5 Conduct of Business

Each Obligor shall (and shall procure that each of its Subsidiaries shall) ensure that it has the right and is duly qualified to conduct its business as it is conducted from time to time in all applicable jurisdictions and does all things reasonably necessary to obtain, preserve and keep in full force and effect all Authorisations and rights including, without limitation, all franchises, contracts, licences, consents and other

rights which are necessary and material for the conduct of its business save, to the extent that failure to so qualify, obtain or preserve would not reasonably be expected to have a Material Adverse Effect.

## 27.6 Tax

Each Obligor shall (and shall procure that each of its Subsidiaries shall) duly and punctually pay and discharge:

- (a) all taxes, assessments and governmental charges imposed upon it or its assets within the time period allowed therefore without imposing penalties and without resulting in any Security (other than a Permitted Encumbrance falling within paragraph (g) of the definition thereof); and
- (b) all lawful claims which, if unpaid, would by operation of law give rise to Security (other than a Permitted Encumbrance falling within paragraph (g) of the definition thereof),

except where failure so to pay and discharge such taxes, assessments, governmental charges and claims would not reasonably be expected to have a Material Adverse Effect.

## 27.7 Intellectual Property

The Company shall (and shall procure that each member of the Group shall) do all acts as are reasonably practicable to maintain, protect and safeguard the Material Intellectual Property and not terminate or discontinue the use of any Material Intellectual Property (and, in particular, shall not permit any registration thereof to terminate, be abandoned, cancelled, lapse or be liable to any claim of abandonment) or change adversely in a material respect any Material Intellectual Property, any contracts relating to Material Intellectual Property or take any action which could foreseeably imperil the existence or right of the Group to use any Material Intellectual Property except with the prior written consent of the Majority Lenders or pursuant to a Permitted Disposal or Permitted Encumbrance.

## 27.8 Group Acceding Guarantors

- (a) Subject to the Agreed Guarantee Principles, the Company shall ensure that each member of the Group which is or becomes a Material Company shall, as soon as reasonably practicable after (and in any event within 60 days after) becoming a Material Company, become an Additional Guarantor.
- (b) Subject to the Agreed Guarantee Principles, the Company shall ensure that any Dormant Subsidiary which as at the date of this Agreement is a member of the Group and is incorporated in (or formed under the laws of) Canada, England and Wales or the United States of America shall, as soon as reasonably practicable after (and in any event within 60 days after) ceasing to be a Dormant Subsidiary, become an Additional Guarantor.



- (c) Subject to the Agreed Guarantee Principles, the Company shall ensure that (i) any company incorporated in (or formed under the laws of) Canada, England and Wales or the United States of America which becomes a member of the Group after the date of this Agreement and (ii) Catalyst Environmental Limited, shall become an Additional Guarantor by the date falling 9 Months after the date on which it became a member of the Group (or, in respect of Catalyst Environmental Limited, the date falling 9 Months after the Closing Date) unless such company becomes a Dormant Subsidiary or is merged into any other member of the Group on or prior to such date.
- (d) Subject to the Agreed Guarantee Principles, the Company shall ensure that Defiance Testing & Engineering Services, Inc. shall become an Additional Guarantor by the date falling no later than 6 Months after the Closing Date unless such company becomes a Dormant Subsidiary or is merged into any other member of the Group on or prior to such date.

## 27.9 Anti-Money Laundering

- (a) Each Obligor will use commercially reasonable efforts to ensure that no funds used to pay the obligations under the Finance Documents are derived from any unlawful activity.
- (b) The Obligors acknowledge that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lenders and the Agent may be required to obtain, verify and record information regarding a Canadian Obligor, its directors, authorised signing officers, direct or indirect shareholders or other persons in control of such Canadian Obligor, and the transactions contemplated hereby. Each Canadian Obligor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assign or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (c) If the Agent has ascertained the identity of a Canadian Obligor or any authorised signatories of a Canadian Obligor for the purposes of applicable AML Legislation, then the Agent:
  - (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
  - (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation

to ascertain the identity of any Canadian Obligor or any authorised signatories of any Canadian Obligor on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from a Canadian Obligor or any such authorised signatory in doing so.

### 27.10 Negative pledge

In this Clause 27.10, "**Quasi-Security**" means a transaction described in paragraph (b) below.

- (a) No Obligor shall (and each Obligor shall procure that none of its Subsidiaries shall) create or permit to subsist any Security or Quasi-Security over all or any of its present or future revenues or assets other than a Permitted Encumbrance.
- (b) Except as permitted under paragraph (c) below, no Obligor shall (and each Obligor shall ensure that none of its Subsidiaries shall):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, retained, made subject to a plea in compensation, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraph (b) above does not apply to any Security or (as the case may be) Quasi-Security which is:
  - (i) a Permitted Encumbrance;
  - (ii) a Permitted Sale and Leaseback; or
  - (iii) a Permitted Disposal.

### 27.11 Loans and Credit

No Obligor shall (and each Obligor shall procure that none of its Subsidiaries shall) make any loans to any person that is not a member of the Group or be a creditor in respect of any Indebtedness for Borrowed Money owed by a person that is not a member of the Group other than Permitted Investments, Permitted Loans and Permitted Transactions.

**27.12 Disposals**

No Obligor shall (and each Obligor shall procure that none of its Subsidiaries shall) sell, lease, transfer or otherwise dispose of, by one or more transactions or series of transactions (whether related or not) and whether voluntary or involuntary, the whole or any part of its revenues or its assets save for Permitted Disposals or Permitted Transactions.

**27.13 Acquisitions**

Other than any Permitted Investment or Permitted Acquisition, no Obligor shall (and each Obligor shall procure that none of its Subsidiaries shall) (a) purchase, subscribe for or otherwise acquire any shares (or other securities or any interest therein) in, or incorporate, any other company or agree to do any of the foregoing or (b) purchase or otherwise acquire any business or undertaking or any interest therein or agree to do so.

**27.14 Change of business**

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

**27.15 Mergers**

Other than by way of a Permitted Merger, no Obligor shall (and each Obligor shall procure that none of its Subsidiaries shall) merge, amalgamate or consolidate with any other person, enter into any demerger transaction, or participate in any other similar type of corporate reconstruction.

**27.16 Pensions**

The Company shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group or their associates or connected persons (as those terms are used in sections 38 and 43 of the Pensions Act 2004) and/or any of their employees are not pension schemes to which sections 38 to 51 or Part 3 of the Pensions Act 2004 apply to the extent that the application thereof has or is reasonably likely to have a Material Adverse Effect and that no action or omission is taken by any member of the Group in relation to such a pension scheme if such action or omission has or is reasonably likely to have a Material Adverse Effect.

**27.17 Financial assistance**

Each Obligor shall 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 payment of amounts due under this Agreement

**27.18 Sanctions**

No Obligor shall (and the Company shall ensure that no other member of the Group will):

- (a) 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 individual or entity (whether or not related to any member of the Group) for the purpose of financing other transactions with, or investments in, any individual or entity which is, at the time of such contribution or making available, a Restricted Party;
- (b) directly or indirectly fund all or part of any repayment or prepayment of the Facilities or any payment to a Finance Party under a Finance Document out of proceeds derived from any business or transaction with or action involving a Restricted Party or from any action which is in breach of any Sanctions; or
- (c) engage in any transaction, activity or conduct that (i) would violate Sanctions in any respect that could reasonably be expected to (A) have a Material Adverse Effect or (B) cause any Finance Party to be in breach of any Sanctions, (ii) would cause any Finance Party to be in breach of any Sanctions or (iii) could reasonably be expected to result in its or any other member of the Group's or any Finance Party's being designated as a Restricted Party.

#### 27.19 **Anti-corruption law**

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 to make any unlawful payments which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions in any respect that could reasonably be expected to (A) have a Material Adverse Effect or (B) cause any Finance Party to be in breach of the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

#### 27.20 **Conditions subsequent**

The Company shall, as soon as the same are available and in any event by no later than the Refinancing Date, supply to the Agent in electronic copy or, if it is not practicable for the Company to supply an electronic copy, in sufficient copies for all the Lenders, the Original Financial Statements referred to in paragraph (a) of the definition of Original Financial Statements.

## 27.21 Carry Forward/Back of Baskets

- (a) If in any Financial Year (the "**Original Financial Year**"), the amounts specified in sub-paragraph (s) of the definition of Permitted Disposal (the "**Basket Amounts**"), are not fully utilised by the Company in that Original Financial Year (such unutilised amount being the "**Unused Basket Amount**"), then the Basket Amounts in the immediately following Financial Year (the "**Carry Forward Year**") shall, for the purposes of that Carry Forward Year only, be increased by the Unused Basket Amount. If any Unused Basket Amount is not utilised in that Carry Forward Year, it shall cease to be available. The original Basket Amounts shall be treated as having been utilised before any Unused Basket Amount carried forward into that Carry Forward Year.
- (b) In any Financial Year (the "**Initial Financial Year**"), up to 50 per cent. of a Basket Amount for the immediately following Financial Year (the "**Following Financial Year**") (such amount being the "**Carry Back Basket Amount**") may be carried back to the Initial Financial Year to increase the Basket Amount permitted to be utilised in the Initial Financial Year **provided that** the Carry Back Basket Amount shall, for the avoidance of doubt, reduce the Basket Amount permitted to be utilised in the Following Financial Year in an identical amount.

## 27.22 Basket Increases for Accretive Acquisitions

If, as a result of a Permitted Acquisition, Adjusted EBITDA of the Group for any Financial Year increases or would, on a *pro forma* basis, increase by 10% or more (the "**EBITDA Increase**"), the amount of each annual and each aggregate basket which is not determined by reference to a percentage of total assets of the Group in the definition of Permitted Disposals, the definition of Permitted Encumbrances, the definition of Permitted Investments and the definition of Permitted Loans shall be increased by the same percentage as of the EBITDA Increase.

## 28. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 28 is an Event of Default (save for Clause 28.16 (*Acceleration*) to Clause 28.20 (*Withdrawal Event*)).

### 28.1 Non-payment

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

- (a) if the failure to pay relates to a payment of principal, its failure to pay is caused by:
- (i) administrative or technical error; or
  - (ii) a Disruption Event; and
  - (iii) payment is made within 5 Business Days of its due date; or

- (b) if the failure to pay relates to an interest payment or any other payment hereunder or under a Finance Document (not being a repayment of principal hereunder), payment is made within 5 Business Days.

## 28.2 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or in any document delivered by it pursuant thereto or in connection therewith is or proves to have been incorrect or misleading in any material respect when made or deemed to be made and the circumstances giving rise to such misrepresentation, if capable of alteration, are not altered so as to make such representation or statement correct or not misleading by the date falling 30 days after the earlier of the date upon which such Obligor or the Company becomes aware of such misrepresentation and the date on which such Obligor or the Company receives notice of such misrepresentation from the Agent.

## 28.3 Financial condition

Subject to Clause 26.5 (*Cure*), any of the requirements of Clause 26.1 (*Financial condition*) are not satisfied.

## 28.4 Other obligations

An Obligor fails duly to perform or comply with:

- (a) Clause 25 (*Information Undertakings*), Clause 27.5 (*Conduct of Business*), Clause 27.10 (*Negative pledge*), Clause 27.11 (*Loans and Credit*), and such failure, if capable of remedy, is not remedied within 15 days after the earlier of the date on which the relevant Obligor or the Company becomes aware of such breach and the date on which the relevant Obligor or the Company receives written notice from the Agent to remedy such breach;
- (b) Clause 27.13 (*Acquisitions*) and, if such failure is capable of remedy, the relevant Obligor has not within 7 days of the earlier of the date on which it or the Company became aware of such breach and the date on which it or the Company receives written notice from the Agent to remedy such breach, taken all steps reasonably necessary to remedy such failure and such failure is not, within 21 days, thereafter duly remedied; or
- (c) any other obligation expressed to be assumed by it in the Finance Documents and such failure, if capable of remedy, is not remedied within 30 days after the earlier of the date on which such Obligor or the Company becomes aware of such failure and the date on which such Obligor or the Company receives written notice from the Agent to remedy such failure.

## 28.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

- (b) Any Financial Indebtedness of any member of the Group is by reason of an event of default (howsoever described) declared to be or otherwise becomes due and payable prior to its specified maturity.
- (c) Any creditor of any member of the Group becomes entitled (after satisfaction of any condition required to be satisfied before such event of default arises and any relevant grace period having elapsed) by reason of an event of default (howsoever described) to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity.
- (d) No Event of Default will occur under this Clause 28.5 if the aggregate amount of all such Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (c) above at any one time outstanding is less than £7,500,000 (or its equivalent).
- (e) Financial Indebtedness of one member of the Group to another member of the Group shall not constitute Financial Indebtedness for the purposes of this Clause 28.5.

## 28.6 **Insolvency**

- (a) Subject to Clause 28.18 (*Non material Obligors*), any Obligor or Material Company is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts, commits an act of bankruptcy under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally (other than negotiations with the Finance Parties under the Finance Documents) with a view to rescheduling its indebtedness.
- (b) Subject to Clause 28.18 (*Non material Obligors*), a moratorium is declared with respect of creditors generally in respect of any indebtedness of any Obligor or Material Company.

## 28.7 **Insolvency proceedings**

- (a) Subject to Clause 28.18 (*Non material Obligors*), any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, or the liquidation, bankruptcy, winding-up, dissolution, administration, examinership or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of an Obligor or Material Company;
  - (ii) a composition, compromise, assignment or arrangement with any material creditor of an Obligor or Material Company by reason of financial difficulties of that Obligor or Material Company with a view to avoiding, reducing or rescheduling a payment which is not capable of being contested in good faith and which would otherwise be due and payable by that Obligor or Material Company;

- (iii) the appointment (other than in respect of a solvent liquidation of a member of the Group that is not an Obligor) of a liquidator, trustee in bankruptcy, monitor, receiver, Irish law examiner, administrator, administrative receiver, compulsory manager, judicial factor or other similar officer in respect of an Obligor or Material Company or any of its assets with an aggregate value in excess of £7,500,000; or
  - (iv) enforcement of any Security over any assets of an Obligor or Material Company with an aggregate market value in excess of £7,500,000,
- or any analogous procedure or formal step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to:
    - (i) any winding-up petition or any other action, proceeding or other procedure or step which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of its commencement (other than in respect of an entity organised in Canada, in which case it shall be 45 days and other than in respect of any entity organised in the United States, in which case it shall be 60 days); or
    - (ii) any action, proceeding or other procedure or step as part of a Permitted Merger or a Permitted Transaction.

#### 28.8 Creditors' process

Any expropriation, attachment, sequestration, distress, diligence or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group having an aggregate value of £7,500,000 (or its equivalent) and is not discharged within 21 days.

#### 28.9 Governmental Intervention

Subject to Clause 28.18 (*Non material Obligors*), by or under the authority of any government, all or a majority of the issued shares of any Obligor or Material Company or the whole or any part (and if in part, the book value of which is twenty per cent. or more of the book value of the whole) of the revenues or assets of any Obligor or Material Company is seized, nationalised, expropriated or compulsorily acquired.

#### 28.10 Repudiation and rescission of agreements

An Obligor (or any other member of the Group party thereto) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document and, in each case, such act is evidenced in writing.

#### 28.11 Unlawfulness and invalidity

Subject to Clause 28.18 (*Non material Obligors*):

- (a) subject to the Legal Reservations, it is or becomes unlawful for an Obligor to perform any of its material obligations under the Finance Documents; or



- (b) subject to the Legal Reservations, any material obligation or obligations of any Obligor under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

#### 28.12 Cessation of business

Any Obligor or Material Company suspends or ceases to carry on all or substantially all of its business or a material part of the business of the Group except as a result of a Permitted Disposal, a Permitted Merger or a Permitted Transaction.

#### 28.13 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced against any member of the Group or its assets which are reasonably likely to be adversely determined and, if so adversely determined have, or could reasonably be expected to have, a Material Adverse Effect.

#### 28.14 Material adverse change

Any event or circumstance occurs which has or would reasonably be expected to have a Material Adverse Effect.

#### 28.15 Auditor's Qualification

The auditors of the Company qualify their annual audit report to the consolidated accounts of the Group on the grounds that the business is not able to be carried on as a going concern, or on the basis of material misstatement or materially inadequate disclosure or access.

#### 28.16 Acceleration

- (a) On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:
- (i) cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
  - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
  - (iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;

- (iv) declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;
  - (v) declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;
  - (vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable at which time they shall become immediately due and payable;
  - (vii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
  - (viii) exercise or direct the Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.
- (b) In the case of an occurrence of an Event of Default referred to in Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency proceedings*) which is continuing in respect of a Canadian Obligor or a U.S. Obligor or a Material Company organised in the United States in a US court of competent jurisdiction, then, without notice to such Obligor or Material Company or any other act by the Agent or any other person, the Loans to such Obligor or Material Company, interest thereon and all other amounts owed by such Obligor or Material Company under the Finance Documents shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived.

#### 28.17 Clean-Up Period

Notwithstanding any other provision of any Finance Document for the period from the date of any Permitted Acquisition until (i) in respect of a target incorporated or any business or asset situated in England and Wales, Canada or the US, the date which falls 90 days after the date of such Permitted Acquisition; and (ii) in respect of a target incorporated or any business or asset situated in any jurisdiction other than England and Wales, Canada or the US, the date which falls 120 days after the date of such Permitted Acquisition (the "**Approved Acquisition Clean-up Period**"):

- (a) any breach of a Clean-Up Representation or a Clean-Up Undertaking; or
- (b) any Event of Default constituting a Clean-Up Default,

will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default (as the case may be) if:

- (i) it would have been (if it were not for this provision) a breach of representation or warranty, a breach of covenant or an Event of Default

only by reason of circumstances relating exclusively to the entity or business subject to the Permitted Acquisition (or any obligation to procure or ensure in relation to such Subsidiary or business);

- (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
- (iii) the circumstances giving rise to it have not been procured by or approved by the Company or any other Obligor (other than the entity or business which is subject to the Permitted Acquisition); and
- (iv) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing after the relevant Approved Acquisition 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).

#### 28.18 Non-material Obligors

In the event that any of the events or circumstances described in Clause 28.6 (*Insolvency*), Clause 28.7 (*Insolvency Proceedings*), Clause 28.9 (*Governmental Intervention*) or 28.11 (*Unlawfulness and invalidity*) occurs in relation to any Obligor which is not an Original Obligor nor falling within sub-paragraph (b) of the definition of Material Company, such event or circumstance shall not constitute an Event of Default unless:

- (a) in the case such Obligor is a Borrower, all or any part of the Loans owed by such Borrower together with accrued interest and any other sums then owed by such Borrower and any Letter of Credit issued for the account of such Borrower shall not have been repaid (or assumed by another Borrower in respect of which no such event or circumstance has occurred on terms satisfactory to the Agent (acting reasonably)) within five Business Days of the occurrence of the relevant circumstances; or
- (b) such events or circumstances have arisen in relation to one or more Guarantors which in aggregate represent more than 7.5 per cent. of EBITDA of the Group, calculated on a consolidated basis; compliance with this condition shall be determined by reference to the latest audited financial statements of the relevant Obligors (consolidated in the case of an Obligor which itself has Subsidiaries) if audited accounts are prepared for such Obligor or unaudited accounts if they are not and the latest audited consolidated financial statements of the Group,

**provided that** upon the occurrence (and during the continuance) of any of the events or circumstances described in any of Clause 28.6 (*Insolvency*), Clause 28.7 (*Insolvency proceedings*) or Clause 28.9 (*Governmental Intervention*) in relation to any Borrower which is not an Original Obligor nor falling within sub-paragraph (b) of the definition of Material Company, unless the Agent (acting on the instructions of the Majority Lenders) shall agree otherwise, such Borrower shall not be entitled to request any Loan or the issue of any Letter of Credit under the Facilities.

**28.19 Exchange rate fluctuations**

- (a) When applying baskets, thresholds and other exceptions to the representations and warranties, information undertakings, general undertakings or Event of Defaults in Clause 24 (*Representations*), Clause 25 (*Information Undertakings*), Clause 27 (*General Undertakings*) and this Clause 28, the equivalent to an amount in the Base Currency shall be calculated as at the date of the Group incurring or making the relevant disposal, acquisition, investment, lease, loan, debt or guarantee or taking other relevant action.
- (b) No Event of Default under this Clause 28 or Default or breach under Clause 24 (*Representations*), Clause 25 (*Information Undertakings*) or Clause 27 (*General Undertakings*) shall occur solely as a result of a subsequent change in the Base Currency equivalent of any relevant amount, due to fluctuations in exchange rates.

**28.20 Withdrawal Event**

Notwithstanding the above or any other provision of any Finance Document to the contrary, a Withdrawal Event shall not of itself constitute a breach of representation or warranty, a breach of covenant, a Default or an Event of Default (as the case may be) under any Finance Document.

**SECTION 9  
CHANGES TO PARTIES**

**29. CHANGES TO THE LENDERS**

**29.1 Assignments and transfers by the Lenders**

Subject to this Clause 29, a Lender (the "**Existing Lender**") may:

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

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

**29.2 Conditions of assignment or transfer**

- (a) Transfers, assignments or any sub-participation by an Existing Lender which requires the sub-participator to vote in accordance with the instructions of the sub-participant (or its agent) (a "**Voting Sub-participation**") will only be permitted with the prior consent of the Company, not to be unreasonably withheld or delayed (and, for the avoidance of doubt, it will not be deemed to be unreasonable to (i) withhold consent to an assignment, transfer or sub-participation to a Business Competitor or (ii) withhold or delay consent where the Company has made reasonable requests for information about the proposed New Lender or sub-participant and that information has not been provided) unless such assignment, transfer or sub-participation by an Existing Lender, is:
  - (i) to another Lender or an Affiliate of a Lender (and for the purposes of this sub-paragraph, in the case of a transfer in relation to the Revolving Facility or revolving Incremental Facility, references to Lender shall be construed to mean a Lender under the Revolving Facility or revolving Incremental Facility);
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
  - (iii) made at a time when an Event of Default under Clause 28.1 (*Non-payment*), Clause 28.6 (*Insolvency*), Clause 28.7 (*Insolvency proceedings*), Clause 28.8 (*Creditors' process*), Clause 28.10 (*Repudiation and rescission of agreements*) or Clause 28.11 (*Unlawfulness and invalidity*) is continuing.
- (b) The consent of the Issuing Bank (such consent not to be unreasonably withheld or delayed) is required for any assignment or transfer or Voting Sub-participation by an Existing Lender of any of its rights and/or obligations under the Revolving Facility.

- (c) An assignment or transfer of part of a Lender's participation must be in a minimum amount of £2,000,000 or, if less, the total amount of its Commitments and in an amount such that the Base Currency Amount of that Lender's remaining participation (when aggregated with its Affiliates' and Related Funds' participation) in respect of Commitments or Utilisations made under the Facilities is in a minimum amount of £5,000,000.
- (d) No assignment or transfer or sub-participation may be made by an Existing Lender to an entity (the "**Relevant Entity**") if that Relevant Entity is (at the time of the assignment or transfer) a Business Competitor unless the assignment or transfer or sub-participation is made with the consent of the Company in its sole discretion.
- (e) An assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement and Lender Accession Undertaking 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 was an Original Lender; and
  - (ii) the 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.
- (f) A transfer will only be effective if the procedure set out in Clause 29.5 (*Procedure for transfer*) is complied with.
- (g) If:
  - (i) a Lender assigns, transfers or sub-participates or declares a trust of or creates security over all or 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, sub-participation or declaration of trust of or creation of security over all or any of its rights or obligations under the Finance Documents, or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office or sub-participant under Clause 18 (*Tax Gross-Up and Indemnities*) or Clause 19 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office or sub-participant 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 or sub-participant would have been if the assignment, transfer or change had not occurred.

This paragraph (g) shall not apply in relation to Clause 18 (*Tax Gross-Up and Indemnities*) to a UK Qualifying Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with sub-paragraph (i)(ii)(B) of Clause 18.2 (*Tax gross-up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that UK Treaty Lender.

- (h) Each New Lender, by executing the relevant Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking, 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.
- (i) If any transfer or assignment or sub-participation is completed in breach of the provisions of this Clause 29.2 the right to vote in respect of the Commitments so transferred or assigned shall be suspended and such Commitments shall be excluded when determining decisions requiring a vote by some or all of the Lenders, or a class of Lenders, until such time as the conditions set out in this Clause have been complied with.

### 29.3 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender or (ii) to a Related Fund, 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 £2,500.

### 29.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender 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 or any other Finance Party in connection with any Transaction 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 29; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

#### 29.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 29.2 (*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 and Lender Accession Undertaking delivered to it by the Existing Lender and the New Lender and the Agent makes a corresponding entry in the Register pursuant to Clause 29.12 (*The Register*). The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate and Lender Accession Undertaking 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 and Lender Accession Undertaking and make such corresponding entry in the Register.
- (b) The Agent shall only be obliged to execute a Transfer Certificate and Lender Accession Undertaking delivered to it by the Existing Lender and the New Lender and make a corresponding entry in the Register upon its completion of all "know your customer" or other checks relating to any person that it is required to carry out in relation to the transfer to such New Lender.
- (c) Subject to Clause 29.10 (*Pro rata interest settlement*) on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate and Lender Accession Undertaking the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and other members of the Group party to any Finance Document 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 other members of the Group party to any Finance Document and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Agent, the Arrangers, the New Lender, the other Lenders, the Issuing Bank and any relevant Ancillary Lender shall acquire the same rights and assume the same obligations between themselves 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 Arrangers, the Issuing Bank and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a "Lender".
- (d) Subject to the terms of this Agreement, the obligations of each Obligor under this Agreement will continue in full force and effect following any novation under this Clause 29.5. A novation under this Clause 29.5 is a novation (*novation*) within the meaning of 1271 *et seq.* of the French Code civil.

#### 29.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 29.2 (*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 and Lender Accession Undertaking 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 and Lender Accession Undertaking 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 and Lender Accession Undertaking.
- (b) The Agent shall only be obliged to execute an Assignment Agreement and Lender Accession Undertaking delivered to it by the Existing Lender and the New Lender upon its completion of all "know your customer" or other checks relating to any person that it is required to carry out in relation to the assignment to such New Lender.

- (c) Subject to Clause 29.10 (*Pro rata interest settlement*) on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement and Lender Accession Undertaking;
  - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement and Lender Accession Undertaking; 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 29.6 to assign their rights under the Finance Documents **provided that** they comply with the conditions set out in Clause 29.2 (*Conditions of assignment or transfer*).

**29.7 Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking or Increase Confirmation to Company**

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

**29.8 Accession of Incremental Facility Lender**

Any person which provides Incremental Facility Commitments or an Incremental Facility Loan shall become a Party to this Agreement as a Lender by executing an Accession Letter.

**29.9 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 29, 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) in the case of any Lender which is a fund, 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 other Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor 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.

#### 29.10 **Pro rata interest settlement**

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 29.5 (*Procedure for transfer*) or any assignment pursuant to Clause 29.6 (*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):

- (a) on the relevant Transfer Date, any interest or fees accrued in respect of the relevant participation up to but excluding that Transfer Date and which are expressed to accrue by reference to the lapse of time ("**Accrued Amounts**") shall become due and payable to the Existing Lender on that Transfer Date, but payment of the Accrued Amounts shall be deferred (without further interest accruing on them) until the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) 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, when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender.

#### 29.11 **Assignment to Federal Reserve Bank**

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, without notice to or consent of any Party, to secure the obligations of such Lender to any U.S. Federal Reserve Bank **provided that** (a) no Lender shall be relieved of any of its obligations under this Agreement as a result of any such assignment and pledge and (b) in no event shall such U.S. Federal Reserve Bank be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action under this Agreement.

#### 29.12 **The Register**

The Agent, acting solely for this purpose as an agent of the Obligors, in each case in the ordinary course of business, shall maintain at one of its offices a copy of each Transfer Certificate and Lender Accession Undertaking, Assignment Agreement, and Increase Certificate and Incremented Facility Notice delivered to it and a register (the "**Register**") for the recordation of the names and contact addresses of each Lender and the Commitments of and obligations owing to each Lender. The entries in the

Register shall be conclusive and binding for all purposes, absent manifest error, and the Obligors, the Agent and the Lenders shall treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. No transfer by a Lender shall be effective until recorded in the Register. The Agent will provide an electronic copy of the Register to the Company upon reasonable request (but such request may not be made more than once in any Financial Quarter unless the Agent agrees otherwise).

### 30. DEBT PURCHASE TRANSACTIONS BY SPONSOR AFFILIATES

In this Clause 30:

- (a) **"Debt Purchase Transaction"** means, in relation to a person, a transaction where such person:
- (i) purchases by way of assignment or transfer;
  - (ii) enters into any sub-participation in respect of; or
  - (iii) 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.
- (b) For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
- (i) in ascertaining the Majority Lenders, the Super Majority Lenders or whether any given percentage of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and
  - (ii) for the purposes of Clause 41.2 (*Exceptions*), such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment),
- unless the relevant consent, waiver, amendment or other vote is discriminatory towards the Sponsor Affiliate (in its capacity as a beneficial owner of a Commitment or a party to a sub-participation agreement relating to a Commitment) when compared to the Lenders as a whole.
- (c) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate, such notification to include the amount of Commitment to which the Debt Purchase Transaction relates.

- (d) Each Sponsor Affiliate that is a Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

### 31. CHANGES TO THE OBLIGORS

#### 31.1 Assignment and transfers by Obligors

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

#### 31.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.9 ("*Know your customer*" checks), the Company may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:
- (i) in the case of the Revolving Facility, it is incorporated or formed in Canada, England and Wales, Ireland, Scotland, Sweden or the United States or otherwise if all the Lenders under the Revolving Facility (acting reasonably) approve the addition of that Subsidiary;
  - (ii) in the case of any Incremental Facility Commitments, it is incorporated in any jurisdiction approved by all Lenders and the Agent providing the relevant Incremental Facility Commitments;
  - (iii) the Company and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;
  - (iv) the Subsidiary is (or becomes) a Guarantor on or prior to becoming a Borrower;
  - (v) the Company confirms that no Default is continuing; and
  - (vi) the Agent has received all of the documents and other evidence listed in Part II (*Conditions precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Obligor, each in form and substance satisfactory to the Agent (acting reasonably).

- (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 (acting reasonably)) all the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*).

### 31.3 Resignation of a Borrower

- (a) In this Clause 31.3, Clause 31.5 (*Resignation of a Guarantor*) and Clause 31.7 (*Resignation on disposal*), "**Third Party Disposal**" means the disposal of an Obligor or any Holding Company of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 27.12 (*Disposals*) or made with the approval of the Majority Lenders (and the Company has confirmed this is the case).
- (b) If a Borrower or any Holding Company of a Borrower is the subject of a Third Party Disposal, the Company may request that such Borrower (other than the Company) and any of its Subsidiaries ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (c) The Agent shall accept a Resignation Letter and notify the Company and the other Finance Parties of its acceptance if:
- (i) the Company has confirmed that no Event of Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) neither the Borrower nor any of its Subsidiaries are under no actual or contingent obligations as a Borrower under any Finance Documents;
  - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 31.5 (*Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations); and
  - (iv) the Company has confirmed that it shall ensure that any relevant Disposal Proceeds will, to the extent required, be applied in accordance with Clause 12.3 (*Application of mandatory prepayments*).
- (d) Upon notification by the Agent to the Company of its acceptance of the resignation of a Borrower, that company and any of its relevant Subsidiaries shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.
- (e) The Agent may, at the reasonable cost and expense of the Company, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a

Resignation Letter until it has obtained such opinion in form and substance satisfactory to it (acting reasonably).

### 31.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.9 ("*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 and executed Accession Letter; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent (acting reasonably).
- (c) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it (acting reasonably)) all the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*).

### 31.5 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
  - (i) that Guarantor or any Holding Company of that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 31.3 (*Resignation of a Borrower*)) and the Company has confirmed this is the case; or
  - (ii) the Super Majority Lenders have consented to the resignation of that Guarantor.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
  - (i) the Company has confirmed that no Event of Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) no payment is due from the Guarantor under Clause 23.1 (*Guarantee and indemnity*);
  - (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 31.3 (*Resignation of a Borrower*); and

- (iv) the Company has confirmed that it shall ensure that the Disposal Proceeds will, to the extent required, be applied, in accordance with Clause 12.3 (*Application of mandatory prepayments*).
- (c) In the case of a resignation in accordance with paragraph (a)(ii) above the resignation of the Guarantor will be effective as of the date specified in the Resignation Letter relating to that Guarantor or such later date on which the Agent notifies the Company of its acceptance of a Resignation Letter in accordance with this Clause 31.5.
- (d) In the case of a resignation in accordance with paragraph (a)(i) above, the resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

### 31.6 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (b) of Clause 24.21 (*Time of making representations*) are true and correct in all material respects in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### 31.7 **Resignation on disposal**

If a Borrower or Guarantor or any Holding Company of a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

- (a) the resignation of that Borrower or Guarantor shall not become effective until the date of that disposal; and
- (b) if the disposal of that Borrower or Guarantor (or, as applicable, its Holding Company) is not made, the Resignation Letter of that Borrower or Guarantor shall have no effect and the obligations of the Borrower or Guarantor shall continue in full force and effect.



## SECTION 10 THE FINANCE PARTIES

### 32. ROLE OF THE AGENT, THE ARRANGERS, THE ISSUING BANK AND OTHERS

#### 32.1 Appointment of the Agent

- (a) Each of the Arrangers, the Lenders and the Issuing Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arrangers, the Lenders and the Issuing Bank authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

#### 32.2 Duties of the Agent

- (a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 29.7 (*Copy of Transfer Certificate and Lender Accession Undertaking or Assignment Agreement and Lender Accession Undertaking or Increase Confirmation to Company*), paragraph (a) above shall not apply to any Transfer Certificate and Lender Accession Undertaking or to any Assignment Agreement and Lender Accession Undertaking or any Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arrangers) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

#### 32.3 Role of the Arrangers

Except as specifically provided in the Finance Documents, none of the Arrangers has obligations of any kind to any other Party under or in connection with any Finance Document.

### 32.4 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent, the Arrangers and/or the Issuing Bank as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Arrangers, the Issuing Bank or any Ancillary Lender shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### 32.5 Business with the Group

The Agent, the Arrangers, the Issuing Bank and each Ancillary Lender may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

### 32.6 Rights and discretions

- (a) The Agent and the Issuing Bank may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority 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 Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arrangers or the Issuing Bank is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a

breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

### 32.7 **Majority Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders or, if applicable, the Super Majority Lenders (or, if so instructed by the Majority Lenders, or, if applicable, the Super Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders or, if applicable, the Super Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders or, if applicable, the Super Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders or Super Majority Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders or Super Majority Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

### 32.8 **Responsibility for documentation**

None of the Agent, the Arrangers, the Issuing Bank or any Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arrangers, the Issuing Bank, an Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

### 32.9 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 35.11 (*Disruption to Payment Systems etc.*)), none

of the Agent, the Issuing Bank, or any Ancillary Lender will be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence, wilful misconduct or material breach of the terms of the Finance Documents.

- (b) No Party (other than the Agent, the Issuing Bank, or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Issuing Bank, or any Ancillary Lender, in respect of any claim it might have against the Agent, the Issuing Bank, or an Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, the Issuing Bank, or any Ancillary Lender may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or any Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arrangers.

### 32.10 **Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability 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 35.11 (*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 (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

### 32.11 **Resignation of the Agent**

- (a) The Agent may resign (after consultation with the Company) and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (with the consent of the Company, such consent not to be unreasonably withheld or delayed, **provided**

**that**, it shall not be unreasonable to withhold or delay consent where the Company has made reasonable requests for information about the proposed successor Agent and that information has not been provided or the proposed successor Agent is a Business Competitor) may appoint a successor Agent.

- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (with the consent of the Company, such consent not to be unreasonably withheld or delayed, **provided that**, it shall not be unreasonable to withhold or delay consent where the Company has made reasonable requests for information about the proposed successor Agent and that information has not been provided or the proposed successor Agent is a Business Competitor) may appoint a successor Agent.
- (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 32 and any other term of this Agreement (with the consent of the Company not to be unreasonably withheld or delayed) dealing with the rights or obligations of the Agent consistent with the current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 32.11. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
  - (i) the Agent fails to respond to a request under Clause 18.7 (*FATCA Information*) and the Company or a Lender reasonably believes that the

Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

- (ii) the information supplied by the Agent pursuant to Clause 18.7 (*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.

- (i) After consultation with the Company, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

### 32.12 Replacement of the Agent

- (a) The Majority Lenders may, with the consent of the Company (such consent not to be unreasonably withheld or delayed, **provided that** it shall not be unreasonable to withhold or delay consent where the Company has made reasonable requests for information about the proposed replacement Agent and that information has not been provided or the proposed replacement Agent is a Business Competitor) by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 32 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### 32.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent and the Arrangers are obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

### 32.14 Relationship with the Lenders

- (a) Subject to Clause 29.10 (*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, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and paragraph (a)(iii) of Clause 37.6 (*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.

### 32.15 Credit appraisal by the Lenders, Issuing Bank and Ancillary Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender, Issuing Bank and Ancillary Lender confirms to the Agent, the Arrangers, the Issuing Bank and each Ancillary Lender that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (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 or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

### 32.16 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall appoint another Lender or an Affiliate of a Lender to replace that Reference Bank if such person has been approved by the Company (acting reasonably).

### 32.17 Agent's management time

- (a) Any amount payable to the Agent under Clause 20.3 (*Indemnity to the Agent*), Clause 22 (*Costs and Expenses*) and Clause 32.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 17 (*Fees*).
- (b) Save for reasonable daily or hourly rates, no additional consent or similar fees shall be payable to the Agent in relation to any proposed or requested amendments, consents or waivers.



### 32.18 **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.

### 32.19 **Reliance and engagement letters**

Each Finance Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

## 33. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will save to the extent expressly provided otherwise in this Agreement (including in Clause 18 (*Tax Gross Up and Indemnities*)):

- (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.

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

### 34.1 **Payments to Finance Parties**

Except with respect to any cash cover provided for any Issuing Bank or Ancillary Lender, if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 35 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents (a "**Recovered Amount**") then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) 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 35 (*Payment Mechanics*), without taking account of any Tax

which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

- (c) 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 35.6 (*Partial payments*).

#### 34.2 **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 35.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

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

On a distribution by the Agent under Clause 34.2 (*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.

#### 34.4 **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.

#### 34.5 **Exceptions**

- (a) This Clause 34 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 34, have a valid and enforceable claim against the relevant Obligor.

- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

#### 34.6 Ancillary Lenders

- (a) This Clause 34 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause 28.16 (*Acceleration*).
- (b) Following service of notice under Clause 28.16 (*Acceleration*), this Clause 34.6 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility to its Designated Net Amount.

## SECTION 11 ADMINISTRATION

### 35. PAYMENT MECHANICS

#### 35.1 Payments to the Agent

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

#### 35.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to an Obligor*) and Clause 35.4 (*Clawback*) 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 in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

#### 35.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 36 (*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.

#### 35.4 Clawback

- (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) 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.

### 35.5 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 35.1 (*Payments to the Agent*) may instead either:
- (i) pay that amount direct to the required recipient(s); or
  - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "**Acceptable Bank**" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 35.5 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 32.12 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 35.2 (*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.

### 35.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent and the Arrangers, the Issuing Bank under those Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Letter of Credit*) and Clause 7.3 (*Indemnities*); and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

### 35.7 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, counterclaim, retention or plea of compensation.

### 35.8 Business Days

- (a) Any payment 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.

### 35.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

### 35.10 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 Interbank Market and otherwise to reflect the change in currency.

### 35.11 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 41 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses 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 35.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### 36. SET-OFF

- (a) If 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.

### 37. NOTICES

#### 37.1 Communications in writing

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

#### 37.2 Addresses

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

- (a) in the case of the Company or any Original Obligor, that identified on the signature pages with its name below;



- (b) in the case of each Lender, the Issuing Bank, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified on the signature pages with its name below,

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

### 37.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (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 37.3 will be deemed to have been made or delivered to each of the Obligors.

### 37.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

### 37.5 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.

### 37.6 Electronic communication

- (a) Any communication to be made between the Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

### 37.7 Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the "**Designated Website**") if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Company and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the Company and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall at its own cost, supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall at its own cost, supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.

- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
  - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall at its own cost comply with any such request within ten Business Days.

### 37.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 38. CALCULATIONS AND CERTIFICATES

### 38.1 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.

### 38.2 **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is *prima facie* evidence of the matters to which it relates.

### 38.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## 39. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents 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.

## 40. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 41. **AMENDMENTS AND WAIVERS**

### 41.1 **Required consents**

- (a) Subject to Clause 41.2 (*Exceptions*), any term of the Finance Documents other than any Fee Letter 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) If the consent of a Lender is required under this Clause 41, such Lender may elect to vote in respect of all or part of its Commitments in respect of which it is entitled to vote for the purposes of the relevant amendment or waiver (the "**Relevant Commitments**") or may elect to vote under part of its Relevant Commitments in one way and vote under another part of its Relevant Commitments in another way.
- (c) If any Lender gives a consent in relation to, or agrees to a waiver or amendment of, any provisions of the Finance Documents and subsequently transfers, assigns or effects a sub-participation (which requires the sub-participant to vote in accordance with the instructions of the sub-participant) of any of that Lender's Commitments, the New Lender (or sub-participant, as applicable) shall be deemed to have given such consent or agreement in respect of the transferred, assigned or sub-participated Commitments.

- (d) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 41.
- (e) Each Obligor agrees to any such amendment or waiver permitted by this Clause 41 which is agreed to by the Company; this includes any amendment or waiver which would, but for this paragraph (e), require the consent of all of the Guarantors.

#### 41.2 Exceptions

- (a) In this Clause 41, "**Facility Change**" means an amendment or waiver that has the effect of changing or which relates to:
  - (i) the introduction of an additional loan, commitment, tranche or facility into the Finance Documents (in any currency or currencies) ranking *pari passu* with or subordinate to the Facilities;
  - (ii) an increase in, addition to or an extension of any Commitment or the Total Commitments (including with respect to any availability period or maturity date) (other than in respect of Incremental Facility Commitments) or any redenomination of a Commitment into another currency;
  - (iii) a reduction in, deferral of or extension to the availability or date of payment of or redenomination into another currency of any amount under the Finance Documents;
  - (iv) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission or other amount payable (other than in accordance with the ratchets set out in the definition of "Margin"); or
  - (v) any amendment to the Finance Documents consequential on, incidental to or required by applicable law to implement or reflect anything described in sub-paragraphs (i) to (iv) above.
- (b) Subject as otherwise provided in this Clause 41.2, an amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" or "Super Majority Lenders" in Clause 1.1 (*Definitions*), "Change of Control" in Clause 1.1 (*Definitions*) or "Facility Change" in paragraph (a) above;
  - (ii) an extension to the date of payment of any amount under the Finance Documents (other than an extension which results from an amendment or waiver in relation to Clause 12 (*Mandatory Prepayment*) (except for Clause 12.1(*Exit*) or Clause 11.1 (*Illegality*));
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable (**provided that** any such amendments or waivers shall only require the consent of the Lenders to whom any amount owing is being reduced);

- (iv) an increase in or an extension of any Commitment or the Total Commitments (**provided that** any such amendments or waivers shall only require the consent of the Lenders assuming that increased or additional Commitment and shall not require the consent of the other Lenders);
- (v) a change to the Borrowers or Guarantors other than in accordance with Clause 31 (*Changes to the Obligors*);
- (vi) any provision which expressly requires the consent of all the Lenders;
- (vii) Clause 2.4 (*Finance Parties' rights and obligations*), Clause 29 (*Changes to the Lenders*), Clause 34 (*Sharing Among the Finance Parties*) or this Clause 41,

in each case other than as a result of, or to the extent necessary to implement, a Facility Change, shall not be made without the prior consent of all the Lenders **provided that** an amendment or waiver described in sub-paragraph (vii) above shall only require the consent of those Lenders which will be materially prejudiced by the proposed amendment or waiver.

- (c) An amendment or waiver that has the effect of changing or which relates to the release of any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) unless permitted under this Agreement or any other Finance Document shall not be made without the prior consent of the Super Majority Lenders.
- (d) A Facility Change shall not be made without the prior consent of the Majority Lenders and each Lender that is assuming an increased or additional Commitment in the relevant Loan or Facility or whose Commitment is being extended or redenominated or to whom any amount owing is being reduced, deferred or redenominated (as the case may be) and, upon the granting of any consent in relation to a Facility Change, the Agent shall enter into any documentation necessary to implement such Facility Change on behalf of the Finance Parties.
- (e) An amendment or waiver which relates to the rights or obligations of the Agent, any Arranger, the Issuing Bank or any Ancillary Lender (each in their capacity as such) may not be effected without the consent of the Agent, that Arranger, the Issuing Bank or, as the case may be, that Ancillary Lender.
- (f) Any amendment or waiver of any term of the Finance Documents which relates to rights or obligations applicable to a particular Utilisation, Facility or class of Lenders and which does not materially and adversely affect the rights or interests of the Lenders in respect of other Utilisations or Facilities or other class or classes of Lenders, shall only require the consent of the Majority Lenders or the Lenders (as applicable) in each case as if references to "Lenders" in that definition were references to the Lenders (or the requisite majority) participating or required to participate in that Utilisation, to the Lenders (or the requisite majority) under that Facility or to the Lenders (or the requisite majority) constituting that class of Lenders (as the case may be).

- (g) If a change in any currency of a country occurs (including, but not limited to, a Withdrawal Event), the Finance Documents will be amended to the extent the Agent (acting reasonably and after consultation with the Company) determines to be necessary to comply with any generally accepted conventions and market practice in the Relevant Interbank Market, to otherwise reflect the change in currency and to ensure that the Finance Documents are on terms no less favourable to all of the Parties than those terms applicable immediately prior to such change.
- (h) The Agent may agree with the Parent at any time any amendment to or modification of a name or other details of an Original Lender as set out in Part II of Schedule 1 (*The Original Parties*), which is technical in nature or which is necessary to correct a manifest error.
- (i) Any term of the Finance Documents (other than any Ancillary Document) may be amended or waived by the Company and the Agent without the consent of any other Party if that amendment or waiver is to cure defects, errors or omissions, or inconsistencies or reflect changes of a minor, technical or administrative nature.

#### 41.3 Replacement of Lender

- (a) If at any time:
  - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (e) below);
  - (ii) any Lender becomes a Defaulting Lender as a result of an event described in paragraph (a) or (d) of the definition of "Defaulting Lender"; or
  - (iii) an Obligor becomes obliged to repay any amount in accordance with Clause 11.1 (*Illegality*) or Clause 11.2 (*Illegality in relation to Issuing Bank*) or to pay additional amounts pursuant to Clause 19.1 (*Increased costs*), Clause 18.2 (*Tax gross-up*), Clause 18.3 (*Tax indemnity*) to any Lender in excess of amounts payable to the other Lenders generally,

then the Company may, on 5 Business Days' prior written notice to the Agent and such Lender (or such shorter period as the Agent and such Lender may agree), either (x) replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement and under any Ancillary Document to which it is a party to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company and which is acceptable to the Agent (acting reasonably and such approval not to be unreasonably withheld or delayed) and (in the case of any transfer of a Revolving Facility Commitment), the Issuing Bank (acting reasonably and such consent not to be unreasonably withheld or delayed), which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations under this Agreement and any Ancillary Document to

which it is a party on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and Ancillary Outstandings and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents or (y) in relation to sub-paragraph (a)(iii) above only, cancel the Commitment of such Lender and procure the repayment of that Lender's participation in the Utilisation in accordance with Clause 11.6 (*Right of cancellation and prepayment in relation to a single Lender or Issuing Bank*).

- (b) The Company shall enclose with any notice given pursuant to paragraph (a) above, a duly completed Transfer Certificate and Lender Accession Undertaking, duly signed by the Replacement Lender and, if applicable, the relevant Obligor(s).
- (c) The transferring Lender shall within 2 Business Days of receipt of a notice from the Company enclosing a duly completed Transfer Certificate and Lender Accession Undertaking duly signed by the Replacement Lender, execute such Transfer Certificate and Lender Accession Undertaking and return an original of its counterpart thereto to the Replacement Lender with a copy to the Company and the Agent failing which the transfer will be deemed to have taken place on the date of receipt by the Agent of the correct purchase price (for the account of the transferring Lender) from the Replacement Lender.
- (d) The replacement of a Lender pursuant to this Clause 41 shall be subject to the following conditions:
  - (i) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such replacement of a Lender by a Replacement Lender, the completion of which the Agent shall promptly notify to the Company, the transferring Lender and the Replacement Lender;
  - (ii) the Company shall have no right to replace the Agent;
  - (iii) none of the Agent, the Lender or any other Finance Party shall have any obligation to the Company to find a Replacement Lender;
  - (iv) in the event of a replacement of a Non-Consenting Lender, such replacement must take place no later than 20 Business Days after the date the Non-Consenting Lender notifies the Company and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Company; and
  - (v) in no event shall the Lender replaced under this paragraph (d) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.



- (e) In the event that:
- (i) the Company or the Agent (at the request of the Company) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders or of Lenders other than the Majority Lenders; and
  - (iii) 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 prior to that reduction) or whose Commitments aggregate more than 66  $\frac{2}{3}$  per cent. of the aggregate Commitments of the Lenders eligible to vote in respect of the request, in each case have consented or agreed to such waiver or amendment,

then any Lender who does not, within ten Business Days (or such other period as the Company and the Agent shall agree) and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

#### 41.4 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
- (i) the Majority Lenders or Super Majority Lenders; or
  - (ii) whether:
    - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or
    - (B) the agreement of any specified group of Lenders,
 has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,
- that Defaulting Lender's Commitments under the relevant Facility/ies will be reduced by the amount of its Available Commitments under the relevant Facility/ies and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of sub-paragraphs (i) and (ii) above.
- (b) For the purposes of this Clause 41.4, 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; and/or

- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), (c) or (d) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

#### 41.5 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 five Business Days' prior written notice to the Agent and such Lender:

- (i) replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
- (ii) require such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of the undrawn Revolving Commitment of the Lender; or
- (iii) require such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably and such acceptance not to be unreasonably withheld or delayed) and (in the case of any transfer of a Revolving Facility Commitment) to the Issuing Bank (acting reasonably and such acceptance not to be unreasonably withheld or delayed), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such replacement of a Lender by a Replacement Lender, the completion of which the Agent shall promptly notify to the Company, the transferring Lender and the Replacement Lender;

- (ii) the Company shall have no right to replace the Agent;
- (iii) none of the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
- (iv) the transfer must take place no later than 20 Business Days after the notice referred to in paragraph (a) above; and
- (v) 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.

#### 41.6 **Failure to respond**

If any Lender fails to respond to a request for a waiver or consent or amendment of or in relation to any of the terms of any Finance Document or other vote of Lenders under the terms of this Agreement within ten Business Days (or such longer period as may be agreed between the Company and the Agent) of such request being made to it, or abstains from accepting or rejecting a request, such Lender's Commitments, relevant Commitment and/or participations under the relevant Facility/ies shall not be included for the purpose of calculating the Total Commitments or participations or Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Commitments or relevant Commitments or participation has been obtained to approve that request.

### 42. **CONFIDENTIALITY**

#### 42.1 **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

#### 42.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by equivalent 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 and 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 sub 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 32.14 (*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 sub-paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by 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 or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 29.9 (*Security over Lenders' rights*);
  - (vii) required in connection with, and for the purposes of, any litigation arbitration, administrative or other investigations, proceedings or disputes;
  - (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 equivalent 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; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers (with such changes to it as the Company, acting reasonably, may require) or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party.

A copy of any Confidentiality Undertaking and any amendments thereto signed by any person pursuant to paragraph (b)(ix)(A) above shall be provided by the relevant Finance Party to the Company within 10 Business Days of request by the Company.

#### 42.3 Disclosure to numbering service providers

- (a) The Agent may disclose to any national or international numbering service provider appointed by the Agent to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligor the following information:
  - (i) names of Obligor;
  - (ii) country of domicile of Obligor;
  - (iii) place of incorporation of Obligor;
  - (iv) date of this Agreement;
  - (v) the names of the Agent and the Arrangers;
  - (vi) date of each amendment and restatement of this Agreement;

- (vii) amount of Total Commitments;
- (viii) currencies of the Facilities;
- (ix) type of Facilities;
- (x) ranking of Facilities;
- (xi) Termination Date for Facilities;
- (xii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xi) above; and
- (xiii) such other information agreed between the Agent and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company will on request of the Agent confirm whether any of the information set out in sub-paragraphs (i) to (xiii) of paragraph (a) above is in its opinion unpublished price sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and
  - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

#### 42.4 Confidentiality and disclosure of Funding Rates and Reference Bank Quotations

- (a) The Agent agrees to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Company pursuant to Clause 14.4 (*Notification of rates of interest*); and
  - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or

more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use with Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.

- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Agent's obligations in this Clause 42.4 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 14.4 (*Notifications of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### 42.5 Other obligations

- (a) The Agent acknowledges that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent undertakes not to use any Funding Rate or any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent agrees (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 42.4 (*Confidentiality and disclosure of Funding Rates and Reference Bank Quotations*) 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 42.5.

#### 42.6 Entire agreement

Save as expressly agreed otherwise after the date of this Agreement between the relevant parties, this Clause 42 (*Confidentiality*) 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.

#### 42.7 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.

#### 42.8 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 42.2 (*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 42 (*Confidentiality*).



**42.9 Continuing obligations**

The obligations in this Clause 42 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of two years from the earlier of (a) the date of the termination of this Agreement and (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

**43. 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.

**44. USA PATRIOT ACT**

Each Lender hereby notifies each Obligor that pursuant to the requirements of the USA Patriot Act, such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA Patriot Act.

## SECTION 12 GOVERNING LAW AND ENFORCEMENT

### 45. GOVERNING LAW

This Agreement and all non-contractual obligations arising from or connected with it are governed by English law.

### 46. ENFORCEMENT

#### 46.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to non-contractual obligations arising from or in connection with this Agreement or a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 46.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

#### 46.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Company by its execution of this Agreement, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

### 47. WAIVER OF JURY TRIAL

EACH OF THE PARTIES TO THIS AGREEMENT AGREES TO WAIVE IRREVOCABLY ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM BASED

UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT. This waiver is intended to apply to all disputes. Each party acknowledges that (a) this waiver is a material inducement to enter into this Agreement, (b) it has already relied on this waiver in entering into this Agreement and (c) it will continue to rely on this waiver in future dealings. Each party represents that it has reviewed this waiver with its legal advisers and that it knowingly and voluntarily waives its jury trial rights after consultation with its legal advisers. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

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

**SCHEDULE 1  
THE ORIGINAL PARTIES**

**PART I  
THE ORIGINAL OBLIGORS**

<b>Name of Original Borrower</b>	<b>Jurisdiction of Incorporation and Registration number (or equivalent, if any)</b>
Exova plc	England and Wales, registered no. 6674383
Exova Group (UK) Limited	England and Wales, registered no. 2463815
Exova Holdings Limited	England and Wales, registered no. 6672543
Exova Topco Limited	England and Wales, registered no. 6720542
Exova 2014 Limited	England and Wales, registered no. 8907086
Exova Group Limited	England and Wales, registered no. 6720350
Exova (UK) Limited	Scotland, registered no. SC070429
Exova (US) Holdings Inc.	Delaware, registered no. 6873534
Exova, Inc.	Delaware, registered no. 4306
Exova Property Holdings Inc.	Ontario, registered no. 001340421
Exova Canada Inc.	Ontario, registered no. 001764749

<b>Name of Original Guarantor</b>	<b>Jurisdiction of Incorporation and Registration number (or equivalent, if any)</b>
Exova plc	England and Wales, registered no. 6674383
Exova Group (UK) Limited	England and Wales, registered no. 2463815
Exova Holdings Limited	England and Wales, registered no. 6672543
Exova Topco Limited	England and Wales, registered no. 6720542
Exova 2014 Limited	England and Wales, registered no. 8907086
Exova Group Limited	England and Wales, registered no. 6720350
Exova (UK) Limited	Scotland, registered no. SC070429

**Name of Original Guarantor**

**Jurisdiction of Incorporation and  
Registration number (or equivalent, if  
any)**

Exova (US) Holdings Inc.

Delaware, registered no. 6873534

Exova, Inc.

Delaware, registered no. 4306

Exova Property Holdings Inc.

Ontario, registered no. 001340421

Exova Canada Inc.

Ontario, registered no. 001764749

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**PART II**  
**THE ORIGINAL LENDERS**

Name of Original Lender	Facility A Commitment (£)	Revolving Facility Commitment (£)	Status (Non-Acceptable L/C Lender: Yes/No)	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
Barclays Bank PLC	13,076,923.08	6,923,076.92	No	N/A
Credit Suisse AG, London Branch	13,076,923.08	6,923,076.92	No	N/A
Goldman Sachs Bank USA	13,076,923.08	6,923,076.92	No	13/G/351779/DTTP (USA)
HSBC Bank plc	26,153,846.15	13,846,153.85	No	N/A
ING Bank NV, London Branch	26,153,846.15	13,846,153.85	No	N/A
Natixis	26,153,846.15	13,846,153.85	No	N/A
The Royal Bank of Scotland plc	26,153,846.16	13,846,153.84	No	N/A
Santander UK plc	26,153,846.15	13,846,153.85	No	N/A
<b>Total</b>	<b>170,000,000</b>	<b>90,000,000</b>		

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**PART I**  
**CONDITIONS PRECEDENT TO INITIAL UTILISATION**

**1. Original Obligors**

- (a) A copy of the Constitutional Documents and of the constitutional documents of each other Original Obligor.
- (b) A copy of a resolution of the board (or, if applicable, a committee of the board) of directors of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform 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;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (iv) in the case of an Obligor other than the Company, authorising the Company to act as its agent in connection with the Finance Documents.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in sub-paragraph (b) above.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (e) A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor (other than the Company) (if required by applicable law), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.
- (f) If applicable, copy of a resolution of the board of directors of each corporate shareholder of each Original Guarantor (other than the Company) approving the terms of the resolution referred to in paragraph (e) above.
- (g) A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guarantee or similar limit, binding on any Original Obligor, to be exceeded.

- (h) A certificate of an authorised signatory of the Company or other relevant Original Obligor certifying that each copy document relating to it specified in this Part I (*Conditions precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (i) A copy of a good standing certificate (including verification of tax status) with respect to each Original Obligor whose jurisdiction of organisation is a state of the U.S. or the District of Columbia, issued as of a recent date by the Secretary of State or other appropriate official of such Original Obligor's jurisdiction of incorporation or organisation.
- (j) A certificate (in the agreed form) of the Chief Financial Officer of each Original Obligor whose jurisdiction of organisation is a state of the U.S. or the District of Columbia as to the solvency of that Original Obligor.
- (k) A copy of a status certificate with respect to each Canadian Obligor issued as of a recent date by the Ministry of Government and Consumer Services.

## 2. Finance Documents

- (a) This Agreement executed by the members of the Group party to this Agreement.
- (b) The Fee Letters executed by the parties thereto.

## 3. Legal opinions

The following legal opinions, each addressed to the Agent and the Original Lenders:

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Agent and the Arrangers as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (b) A legal opinion of the following legal advisers to the Agent and the Arrangers:
  - (i) Brodies LLP as to Scottish law; and
  - (ii) Clifford Chance US LLP as to New York state law, Delaware General Corporation Law and U.S. federal law.
- (c) A legal opinion of Osler, Hoskin & Harcourt LLP, legal advisers to the Company, as to the laws of Canada,

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

## 4. Other documents and evidence

- (a) Evidence that any agent for service of process referred to in Clause 46.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.



- (b) The Group Structure Chart.
- (c) A copy, certified by an authorised signatory of the Company to be a true copy, of the consolidated accounts of Exova Group Limited and its Subsidiaries for the financial year ending on 31 December 2013;
- (d) Completion of all applicable "know your customer" or similar procedures or checks in relation to each Original Obligor.
- (e) An IPO Notice signed by the Company confirming that the gross proceeds of the IPO are equal to or greater than £110,000,000.
- (f) Evidence of admission of certain of the Company's ordinary shares to the premium listing segment of the Official List maintained by the Financial Conduct Authority and to trading on the London Stock Exchange plc's main Market for listed securities.
- (g) Evidence in the form of:
  - (i) a notice of prepayment and cancellation under the terms of the Existing High Yield Notes, such notice of prepayment having become irrevocable and unconditional on the date on which the IPO completes; and
  - (ii) an irrevocable notice of prepayment and cancellation under the Existing Senior Facilities Agreement,

in each case confirming that the outstanding Indebtedness for Borrowed Money under the Existing Senior Facilities Agreement and the Existing High Yield Notes immediately prior to the Closing Date will be prepaid and cancelled in full, and the security granted in respect of the facilities under the Existing Senior Facilities Agreement will be irrevocably released, in each case by no later than the Closing Date.
- (h) Evidence that the Existing Loan Notes have become intra-Group obligations in accordance with the Steps Paper.
- (i) A *pro forma* post IPO balance sheet.
- (j) Evidence that the fees, costs and expenses (if any) then due from the Company pursuant to Clause 17 (*Fees*), Clause 17.5 (*Fees payable in respect of Letters of Credit*), Clause 17.6 (*Interest, commission and fees on Ancillary Facilities*), Clause 18.8 (*Stamp taxes*) and Clause 22 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.
- (k) An executed copy of each Ancillary Document relating to an Original Ancillary Facility (if any).

**PART II**  
**CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY**  
**AN ADDITIONAL OBLIGOR**

1. An Accession Letter 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 or, if applicable, a committee of the board of directors (or any equivalent body) 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, deliver and perform the Accession Letter and any other Finance Document to which it is a party;
  - (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Company to act as its agent in connection with the Finance Documents.
4. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor (if required by applicable law), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. If applicable, a copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 above.
8. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) is correct, complete

and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.

10. If necessary in a jurisdiction where a legal opinion is required, a certificate in a form agreed between the Additional Obligor and the Agent (acting reasonably) of an authorised signatory of the Additional Obligor certifying such other factual matters as may be required in order to support the legal opinions to be delivered pursuant to paragraph 12 below.
11. If available, the latest audited financial statements of the Additional Obligor.
12. The following legal opinions, each addressed to the Agent and the Lenders:
  - (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Letter.
  - (b) If the Additional Obligor is incorporated in or has its "centre of main interest" (or "**establishment**") in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation; "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.
13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales or Scotland, evidence that the agent for service of process specified in Clause 46.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
14. Such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process (if applicable).
15. A copy of a good standing certificate (including verification of tax status) with respect to each Additional Obligor whose jurisdiction of organization is a state of the U.S. or the District of Columbia, issued as of a recent date by the Secretary of State or other appropriate official of such Additional Obligor's jurisdiction of incorporation or organisation.
16. A copy of a certificate of status or local law equivalent, as applicable, with respect to each Additional Obligor that is a Canadian Obligor.
17. A certificate (in the agreed form) of the Chief Financial Officer of each Additional Obligor whose jurisdiction of organization is a state of the U.S. or the District of Columbia as to the solvency of the Additional Obligor.

**SCHEDULE 3  
REQUESTS**

**PART I  
UTILISATION REQUEST - LOANS**

From: [Borrower] [Company]\*

To: [Agent]

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. [We wish to borrow a Loan on the following terms:
  - (a) Borrower: [•]
  - (b) Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
  - (c) Facility to be utilised: [Facility A]/[Revolving Facility]/[Incremental Facility]\*\*
  - (d) Currency of Loan: [•]
  - (e) Amount: [•] or, if less, the Available Facility
  - (f) Interest Period: [•]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. [The proceeds of this Loan should be credited to *account*].

5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[the Company on behalf of [*insert name of relevant Borrower*]] / [*insert name of Borrower*]\*

**NOTES:**

- \* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Company.
- \*\* Select the Facility to be utilised and delete references to the other Facilities.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**PART II**  
**UTILISATION REQUEST - LETTERS OF CREDIT**

From: [Borrower] [Company]\*

To: [Agent]

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Letter of Credit to be [issued]/[renewed] by the Issuing Bank specified below (which has agreed to do so) on the following terms:
  - (a) Borrower: [•]
  - (b) Issuing Bank: [•]
  - (c) Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
  - (d) Facility to be utilised: Revolving Facility
  - (e) Currency of Letter of Credit: [•]
  - (f) Amount: [•] or, if less, the Available Facility in relation to the Revolving Facility:
  - (g) Term: [•]
3. We confirm that each condition specified in paragraph (b) or (c) of Clause 6.5 (*Issue of Letters of Credit*) is satisfied on the date of this Utilisation Request.
4. We attach a copy of the proposed Letter of Credit.
5. [The purpose of this proposed Letter of Credit is [•].]
6. This Utilisation Request is irrevocable.

7. Delivery instructions:

*[Specify delivery instructions.]*

Yours faithfully,

.....  
authorised signatory for  
[the Company on behalf of] [*insert name of relevant Borrower*]/[*insert name of Relevant Borrower*]\*

**NOTES:**

\* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Company.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**PART III  
SELECTION NOTICE**

**Applicable to a Term Loan**

From: [Borrower] [Company]\*

To: [Agent]

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility A Loan[s] ]/[Incremental] Loan[s] with an Interest Period ending on [•]\*\*.
3. [We request that the above Facility A Loan[s] ]/[Incremental] Loan[s] be divided into [•] Facility A Loans]/[Incremental] Loan[s] with the following Base Currency Amounts and Interest Periods:] \*\*\*

or

[We request that the next Interest Period for the above Facility A Loan[s]/[Incremental Loans] is [•]].\*\*\*\*

4. This Selection Notice is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[the Company on behalf of] [*insert name of relevant Borrower*] \*

**NOTES:**

- \* Amend as appropriate. The Selection Notice can be given by the Borrower or the Company.
- \*\* Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.
- \*\*\* Use this option if division of Facility A Loans/Incremental Loans is requested.
- \*\*\*\* Use this option if sub-division of Facility A/Incremental Loans is not required.



**SCHEDULE 4  
FORM OF TRANSFER CERTIFICATE AND LENDER ACCESSION  
UNDERTAKING**

To: [•] as Agent

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

Dated:

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This agreement (the "**Agreement**") shall take effect as a Transfer Certificate and Lender Accession Undertaking for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 29.5 (*Procedure for transfer*) of the Facilities Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 29.5 (*Procedure for transfer*).
  - (b) The proposed Transfer Date is [•].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) 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 29.4 (*Limitation of responsibility of Existing Lenders*).
4. [In respect of a payment made under a Finance Document by an Irish Borrower, the New Lender confirms that it is:
  - (a) [an Irish Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Irish Qualifying Lender].]
5. [In respect of a payment made under a Finance Document by a UK Borrower, the New Lender confirms that it is:
  - (a) [a UK Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]

- (c) [not a UK Qualifying Lender].]
6. [In respect of a payment made under a Finance Document by a US Borrower, the New Lender confirms that it is:
- (a) [a US Qualifying Lender (other than a Treaty Lender);]
- (b) [a Treaty Lender;]
- (c) [not a US Qualifying Lender].]
7. [In respect of a payment made under a Finance Document by a Swedish Borrower, the New Lender confirms that it is:
- (a) [a Swedish Qualifying Lender (other than a Treaty Lender);]
- (b) [a Treaty Lender;]
- (c) [not a Swedish Qualifying Lender].]
8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
- (i) a company so resident in the United Kingdom; or
- (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA 2009) 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 2009; 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 2009) of that company.]
9. [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 Facilities Agreement.]

10. The New Lender confirms that it is not a "Business Competitor" (as that term is defined in the Facilities Agreement) of the Group.
11. The New Lender confirms that it is [not] a "Sponsor Affiliate" (as that term is defined in the Facilities Agreement).
12. The New Lender confirms that it [is]/[is not] a Non-Acceptable L/C Lender.
13. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.
15. This Transfer Certificate and Lender Accession Undertaking has been [executed and delivered as a deed]/[entered into] on the date stated at the beginning of this Transfer Certificate and Lender Accession Undertaking.

**THE SCHEDULE**

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

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate and Lender Accession Undertaking for the purposes of the Facilities Agreement and the Transfer Date is confirmed as [●].

[Agent]

By:

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**SCHEDULE 5**  
**FORM OF ASSIGNMENT AGREEMENT AND LENDER ACCESSION**  
**UNDERTAKING**

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

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

Dated:

**Exova 2014 Limited – £260,000,000 Facilities Agreement**  
**dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is an Assignment Agreement and Lender Accession Undertaking. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement and Lender Accession Undertaking for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2.
  - (a) We refer to Clause 29.6 (*Procedure for assignment*) of the Facilities Agreement.
  - (b) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
  - (c) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.
  - (d) 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 (c) above.
3. The proposed Transfer Date is [•].
4. On the Transfer Date the New Lender becomes:
  - (a) Party to the Finance Documents as a Lender;
  - (b) [*other relevant agreements in other relevant capacity*].
5. The Facility Office and address, fax number and attention on details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) 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 29.4 (*Limitation of responsibility of Existing Lenders*).
7. [In respect of a payment made under a Finance Document by an Irish Borrower, the New Lender confirms that it is:
  - (a) [an Irish Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Irish Qualifying Lender].]
8. [In respect of a payment made under a Finance Document by a UK Borrower, the New Lender confirms that it is:
  - (a) [a UK Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a UK Qualifying Lender].]
9. [In respect of a payment made under a Finance Document by a US Borrower, the New Lender confirms that it is:
  - (a) [a US Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a US Qualifying Lender].]
10. [In respect of a payment made under a Finance Document by a Swedish Borrower, the New Lender confirms that it is:
  - (a) [a Swedish Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Swedish Qualifying Lender].]
11. [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 2009) 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 2009; 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 2009) of that company.]
12. [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 Facilities Agreement.]
13. The New Lender confirms that it is not a "Business Competitor" (as that term is defined in the Facilities Agreement).
14. The New Lender confirms that it is [not] a "Sponsor Affiliate" (as that term is defined in the Facilities Agreement).
15. The New Lender confirms that it [is]/[is not] a Non-Acceptable L/C Lender.
16. The New Lender confirms that it is not a Qualifying Lender.
17. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and to the Company (on behalf of each Obligor) of the assignment referred to herein, upon delivering in accordance with Clause 29.7 (*Copy of Transfer Certificate and lender Accession Undertaking or Assignment Agreement and lender Accession Undertaking or Increase Confirmation to the Company*) to the Company.

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

[10/11]. This Agreement and any non-contractual obligation arising out of or in connection with it are governed by and construed in accordance with English law.

[11/12]. This Agreement has been [executed and delivered as a deed] [entered into] on the date stated at the beginning of this Agreement.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by assignment,  
release and accession**

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement and Lender Accession Undertaking for the purposes of the Facilities Agreement by the Agent, and the Transfer Date is confirmed as [•].

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

[Agent]

By:



**SCHEDULE 6  
FORM OF ACCESSION LETTER**

To: [•] as Agent

From: [Subsidiary] and [Company]

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is an Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to [Clause 31.2 (*Additional Borrowers*)]/[Clause 31.4 (*Additional Guarantors*)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company or corporation and registered number [•].
3. [Any necessary legal limitations to guarantees to be added.]
4. [Subsidiary's] administrative details for the purposes of the Finance Documents are as follows:
 

Address:

Fax No.:

Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. This Guarantor Accession Letter is entered into by deed.

[Company]

[Subsidiary]

**SCHEDULE 7  
FORM OF RESIGNATION LETTER**

To: [•] as Agent

From: [resigning Obligor] and [Company]

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 31.3 (*Resignation of a Borrower*)]/[Clause 31.5 (*Resignation of a Guarantor*)], we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents.
3. We confirm that:
  - (a) no Event of Default is continuing or would result from the acceptance of this request; and
  - (b) \* [this request is given in relation to a Third Party Disposal of [the Holding Company of] [*resigning Obligor*];]
  - (c) [the Disposal Proceeds have been or will be, to the extent required applied in accordance with Clause 12.2 (*Disposal and Insurance Proceeds*);]\* \*
  - (d) [•]\*\*
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company]

[resigning Obligor]

By:

By:

**NOTES:**

- \* Insert where resignation only permitted in case of a Third Party Disposal.
- \*\* Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.
- \*\*\* Insert any other conditions required by the Facilities Agreement.

**SCHEDULE 8  
FORM OF COMPLIANCE CERTIFICATE**

To: [•] as Agent

From: [•] as Company

Dated:

Dear Sirs

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
  - (a) [*Net Leverage Ratio*: in respect of the Relevant Period ending on [•] Total Financial Indebtedness as at the last day of such Relevant Period was [•] and Adjusted EBITDA for such Relevant Period was [•]. Therefore Total Financial Indebtedness as at the last day of such Relevant Period was [•] times Adjusted EBITDA for such Relevant Period and the covenant contained in [paragraph [(a) (*Net Leverage Ratio*)] of Clause 26.1 (*Financial condition*)] [has/has not] been complied with;]
  - (b) [*Interest Cover Ratio*: in respect of the Relevant Period ending on [•] Adjusted EBITDA for such Relevant Period was [•] and Interest Expense for such Relevant Period was [•]. Therefore Adjusted EBITDA for such Relevant Period was [•] times Interest Expense for such Relevant Period and the covenant contained in paragraph [(b) (*Interest Cover Ratio*)] of Clause 26.1 (*Financial condition*)] [has/has not] been complied with;]

We confirm that Net Leverage Ratio is [•]:1 and that, therefore, the Facility A Margin should be [•]% p.a., and the Revolving Facility Margin should be [•]% p.a. \*\*\*

3. [We confirm that no Default is continuing.]\*
4. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [•].]\*\*

Signed

<p>..... Director, Chief Financial Officer (or deputy) or Chief Executive Officer (or deputy) of [•]</p>	<p>..... [Chief Financial Officer (or deputy ) or Chief Executive Officer (or deputy) of [•]</p>
--	--

[insert applicable certification language or Auditors of the Company to `sign separate certificate]

.....  
for and on behalf of

[name of auditors of the Company]

**NOTES:**

- \* Only to be provided in accordance with Clause [25.8] (*Notification of default*). If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.
- \*\* To be given only in respect of a Relevant Period ending at the end of a Financial Year.
- \*\*\* In respect of the Compliance Certificate delivered in respect of the Relevant Period ended 30 June 2014 only the Net Leverage Ratio need be calculated (for the purposes of determining the Margin for Facility A and the Revolving Facility only).

**SCHEDULE 9  
TIMETABLES**

**PART I  
LOANS**

	<b>Loans in euro</b>	<b>Loans in sterling</b>	<b>Loans in Canadian dollars</b>	<b>Loans in other currencies</b>
Approval as an Optional Currency, if required (Clause 4.3 ( <i>Conditions relating to Optional Currencies</i> ))				
Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 4.3 ( <i>Conditions relating to Optional Currencies</i> )	-	-	-	U-4
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) or a Selection Notice (Clause 15.1 ( <i>Selection of Interest Periods and terms</i> ))	U-3 9.30am (or in respect of the first Utilisation Request, U-2 9.30am)	U-1 9.30am (or in respect of the first Utilisation Request, U-2 9.30am)	U-4 9.30am (or in respect of the first Utilisation Request, U-2 9.30am)	U-3 9.30am (or in respect of the first Utilisation Request, U-2 9.30am)
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 ( <i>Lenders' participation</i> )	U-3 Noon (or in respect of the first Utilisation U-2 noon)	U-1 Noon (or in respect of the first Utilisation U-2 noon)	U-4 Noon (or in respect of the first Utilisation U-2 noon)	U-3 Noon (or in respect of the first Utilisation U-2 noon)
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-3 3.00pm (or in respect of the first Utilisation U-2	U-1 3.00pm (or in respect of the first Utilisation U-2	U-4 3.00pm (or in respect of the first Utilisation U-2 4.00pm)	U-3 3.00pm (or in respect of the first Utilisation U-2 3.00pm)

	<b>Loans in euro</b>	<b>Loans in sterling</b>	<b>Loans in Canadian dollars</b>	<b>Loans in other currencies</b>
	3.00pm)	3.00pm)		
Agent receives a notification from a Lender under Clause 8.2 ( <i>Unavailability of a currency</i> )	Quotation Day 9.30am	-	Quotation Day 9.30am  (or in respect of the first Utilisation 5.00pm)	Quotation Day 9.30am
Agent gives notice in accordance with Clause 8.2 ( <i>Unavailability of a currency</i> )	Quotation Day 5.30pm	-	Quotation Day 5.30pm	Quotation Day 5.30pm
LIBOR or EURIBOR or CDOR or STIBOR is fixed	Quotation Day as of 11.00 a.m. (London time) in respect of LIBOR and as of 11.00 a.m. (Brussels time) in respect of EURIBOR	Quotation Day as of 11.00 a.m.	Quotation Day as of 10.15 a.m. (Toronto time) in respect of CDOR	Quotation Day as of 11.00 a.m. (London time) in respect of LIBOR and as of 11.05 a.m. (Stockholm time) in respect of STIBOR

"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U - X" = X Business Days prior to date of utilisation

**PART II  
LETTERS OF CREDIT**

**Letters of Credit**

Delivery of a duly completed Utilisation Request (Clause 6.2  
*(Delivery of a Utilisation Request for Letters of Credit)*) U-3 9.30am

Agent determines (in relation to a Utilisation) the Base Currency Amount of the Letter of Credit if required under paragraph (d) of Clause 6.5 *(Issue of Letters of Credit)* and notifies the Issuing Bank and Lenders of the Letter of Credit in accordance with paragraph (d) of Clause 6.5 *(Issue of Letters of Credit)*. U-3 noon

Delivery of duly completed Renewal Request U-3

"U" = date of utilisation, or, if applicable, in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 *(Renewal of a Letter of Credit)*, the first day of the proposed term of the renewed Letter of Credit

"U-X" = Business Days prior to date of utilisation

**SCHEDULE 10**  
**FORM OF LETTER OF CREDIT**

To: [Beneficiary](the "**Beneficiary**")

Date

**Irrevocable Standby Letter of Credit no. [•]**

At the request of [•], [Issuing Bank] (the "**Issuing Bank**") issues this irrevocable standby Letter of Credit ("**Letter of Credit**") in your favour on the following terms and conditions:

**1. Definitions**

In this Letter of Credit:

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

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

"**Expiry Date**" means [•].

"**Total L/C Amount**" means [•].

**2. Issuing Bank's agreement**

- (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by no later than [•] p.m. ([London] time) on the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.
- (c) The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

**3. Expiry**

- (a) The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
- (b) Unless previously released under paragraph (a) above, on [•] p.m. ([London] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank



except for any Demand validly presented under the Letter of Credit that remains unpaid.

4. **Payments**

All payments under this Letter of Credit shall be made in [•] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. **Delivery of Demand**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or telex and must be received in legible form by the Issuing Bank at its address and by the particular department or office (if any) as follows:

[

]

Presentation by facsimile is permitted. Such draft(s) shall be made to the Issuing Bank – facsimile number [•] and promptly confirmed by telephone call to [•], **provided that** the giving of such telephonic notice shall not be a condition of the Issuing Bank's obligation to make payment hereunder.

6. **Assignment**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

7. **ISP**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

8. **Governing Law**

This Letter of Credit and any non-contractual obligations arising out of or in connection with it are governed by English law.

9. **Jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including any dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully

[Issuing Bank]

By:

**NOTES:**

- \* This may need to be amended depending on the currency of payment under the Letter of Credit.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**SCHEDULE  
FORM OF DEMAND**

To: [ISSUING BANK]

[Date]

Dear Sirs

**Standby Letter of Credit no. [●] issued in favour of [BENEFICIARY] (the "Letter of Credit")**

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of [●] is due [and has remained unpaid for at least [●] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [●].
2. Payment should be made to the following account:  
 Name:  
 Account Number:  
 Bank:
3. The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory)

(Authorised Signatory)

For  
[BENEFICIARY]

## SCHEDULE 11 AGREED GUARANTEE PRINCIPLES

### 1. Security principles

- 1.1 The guarantees will be given in accordance with certain principles as set out in this Schedule 11. This Schedule 11 addresses the manner in which the Agreed Guarantee Principles will impact on the guarantees required to be given under this Agreement.
- 1.2 The Agreed Guarantee Principles embody recognition by all Parties that there may be certain legal and practical difficulties in obtaining effective guarantees from members of the Group in jurisdictions in which they are organised or conduct business (the "**Security Jurisdictions**"). In particular:
- (a) general statutory limitations, financial assistance, capital maintenance, corporate benefit, fraudulent preference, "thin capitalisation" rules, corporate distribution provisions, retention of title claims and similar principles may limit the ability of a member of the Group to provide a guarantee or may require that the guarantee be limited by an amount or otherwise;
  - (b) no guarantee shall be taken to the extent to which it would result in any material cost which is excessive in the context of the benefit of such guarantee to the Lenders or any material negative Tax consequence for the Group (including but not limited to material effects on interest deductibility and stamp duty, notarisational and registration fees) which is excessive in the context of the benefit of such guarantee to the Lenders;
  - (c) the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisational, registration or other applicable fees, Taxes and duties;
  - (d) members of the Group will not be required to give guarantees if it is not within the legal capacity of the relevant members of the Group or if the same would conflict with the fiduciary duties of the directors (or other officers) of the relevant member of the Group or contravene any legal prohibition or regulatory condition or would result in (or result in a material risk of) personal or criminal liability on the part of any director (or other officer) of any member of the Group **provided that** the relevant member of the Group shall use reasonable endeavours to overcome any such obstacle;
  - (e) the giving of a guarantee will not be required if it would restrict the ability of the relevant Obligor to conduct its operations and business in the ordinary course as otherwise permitted by the Finance Documents;
  - (f) to the extent possible, there should be no action required to be taken in relation to the guarantees when any Lender transfers any of its participation in the Facilities to a new Lender;
  - (g) any Subsidiary of the Company that is a Controlled Foreign Corporation (as defined in the United States Internal Revenue Code) may not give a guarantee

for an obligation of a United States Person (as defined in the United States Internal Revenue Code). These principles also apply with respect to any entity that becomes a United States Person and/or a Controlled Foreign Corporation following any guarantee. These principles also apply to any relevant provision under any other Finance Document (including any permitted hedging document); and

(h) no Joint Venture will be required to provide a guarantee.

## 2. **Guarantees**

Subject to any other rights arising by operation of law, obtaining any relevant foreign legal opinions and subject to any Legal Reservations and subject to the requirements of the Agreed Guarantee Principles, the Agent shall receive the benefit of an upstream, cross-stream and downstream guarantee from the Obligors under the Finance Documents in accordance with the Agreed Guarantee Principles.

**SCHEDULE 12**  
**FORM OF AFFILIATE ANCILLARY LENDER ACCESSION UNDERTAKING**

To: [Agent]

From: [Acceding Affiliate Ancillary Lender]

THIS UNDERTAKING is made on [date] by [insert name of Affiliate Ancillary Lender]] (the "**Acceding Affiliate Ancillary Lender**") in relation to the facilities agreement (the "**Facilities Agreement**") dated [•] between, among others, Exova PLC, [The Royal Bank of Scotland plc] as senior agent, and the Lenders (each as defined in the Facilities Agreement). Terms defined in the Facilities Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

The Acceding Affiliate Ancillary Lender is an Affiliate of a Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Affiliate Ancillary Lender being accepted as an Ancillary Affiliate Ancillary Lender for the purposes of the Facilities Agreement, the Acceding Affiliate Ancillary Lender confirms, for the benefit of the parties to the Facilities Agreement, that, as from [date], it intends to be party to the Facilities Agreement as an Ancillary Affiliate Ancillary Lender, and undertakes to perform all the obligations expressed in the Facilities Agreement to be assumed by a Finance Party (as defined in the Facilities Agreement) and agrees that it shall be bound by all the provisions of the Facilities Agreement, as if it had been an original party to the Facilities Agreement as an Ancillary Lender.

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above.

[For and on behalf of  
 [Name of Acceding Affiliate Ancillary Lender]

[Accepted by the Agent

.....  
 for and on behalf of  
 [Insert name of Agent]

Date:]

**SCHEDULE 13**  
**FORM OF INCREASE CONFIRMATION**

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

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

Dated:

**Exova 2014 Limited – £260,000,000 Facilities Agreement**  
**dated [•] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.2 (*Increase*) of the Facilities 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 was an Original Lender under the Facilities Agreement.
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 a party to the relevant Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 37.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph [(g)] of Clause 2.2 (*Increase*).
8. [In respect of a payment made under a Finance Document by an Irish Borrower, the Increase Lender confirms that it is:
  - (a) [an Irish Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Irish Qualifying Lender].]\*
9. [In respect of a payment made under a Finance Document by a UK Borrower, the Increase Lender confirms that it is:
  - (a) [a UK Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]

- (c) [not a UK Qualifying Lender.] \*
10. [In respect of a payment made under a Finance Document by a US Borrower, the New Increase confirms that it is:
- (a) [a US Qualifying Lender (other than a Treaty Lender);]
- (b) [a Treaty Lender;]
- (c) [not a US Qualifying Lender.] \*
11. [In respect of a payment made under a Finance Document by a Swedish Borrower, the Increase Lender confirms that it is:
- (a) [a Swedish Qualifying Lender (other than a Treaty Lender);]
- (b) [a Treaty Lender;]
- (c) [not a Swedish Qualifying Lender.]\*
12. [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 2009) 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 2009; 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 2009) of that company.]\*\*
9. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]) and is tax resident in [•]\*\*\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify:
- (a) each Borrower which is a Party as a Borrower as at the Increase Date; and
- (b) each Additional Borrower which becomes an Additional Borrower after the Increase Date,



that it wishes the scheme to apply to the Facilities Agreement.]\*\*\*\*

[8/9] The Increase Lender confirms that it is not a "Business Competitor" (as that term is defined in the Facilities Agreement).

[9/10] The Increase Lender confirms that it is not a Sponsor Affiliate.

[10/11][The Increase Lender confirms that it [is]/[is not]\*\*\*\*\* a Non-Acceptable L/C Lender.]\*\*\*\*\*

[11/12] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[12/13] This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

[13/14] This Agreement has been entered into on the date stated at the beginning of this Agreement.

**THE SCHEDULE****Relevant Commitment/rights and obligations to be assumed by the Increase Lender**

[insert relevant details]

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

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent [and the Issuing Bank]\*\*\*\*\*, and the Increase Date is confirmed as [•].

For and on behalf of

For and on behalf of

Agent

[Issuing Bank

By:

By:]\*\*\*\*\*

## NOTES:

- \* Delete as applicable - each Increase Lender is required to confirm which of these three categories it falls within.
- \*\* Include only if the Increase Lender is a UK Non-Bank Lender i.e. falls within [paragraph (a)(ii)] of the definition of "Qualifying Lender" in Clause 18.1 (*Definitions*).
- \*\*\* Insert jurisdiction of tax residence.
- \*\*\*\* This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.
- \*\*\*\*\* Delete as applicable.
- \*\*\*\*\* Include only if the increase includes the assumption of a Revolving Facility Commitment.
- \*\*\*\*\* Only if increase in the Total Revolving Facility Commitments.

**SCHEDULE 14  
FORM OF IPO NOTICE**

From : The Company

To: [The Agent]

Dated:

**Dear Sirs**

**Exova 2014 Limited – £260,000,000 Facilities Agreement  
dated [•] March 2014 (the "Facilities Agreement")**

We refer to the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this IPO Notice unless given a different meaning in this IPO Notice.

We hereby notify you that certain ordinary shares of the Company have been admitted to the premium listing segment of the Official List maintained by the Financial Conduct Authority and to trading on the [London Stock Exchange] plc's Main Market for listed securities (the "**Listing**") and proceeds of the Listing have been transferred to [the Company].

We attach a copy of the IPO prospectus to this notice.

We hereby confirm that the gross proceeds of the Listing are not less than GBP[•].

The IPO Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

For and on behalf of the Company

**SCHEDULE 15**  
**PERMITTED FORM OF INCREMENTAL FACILITY NOTICE**

To: [•] as Agent

From: [•] the "**Company**") and [the *Incremental Facility Lender*] (the "**Incremental Facility Lender**")

Dated: [•]

**Exova 2014 Limited – £260,000,000 Facilities Agreement**  
**dated [•] March 2014 (the "Facilities Agreement")**

We refer to the Facilities Agreement. This is an Incremental Facility Notice. Terms defined in the Facilities Agreement shall have the same meaning when used in this Incremental Facility Notice.

The Company wishes to establish an Incremental Facility on the following terms:

Type of Facility: [•]  
 Availability Period: [•]  
 Purpose: [•]  
 Proposed Borrower: [•]  
 Proposed Lender(s): [•]  
 Requested amount: [•]  
 Currency/ies available: [•]  
 Utilisation Date: [•]  
 Termination Date: [•]  
 Margin: [•] per cent. per annum  
 Commitment fee: [•]  
 Other relevant fees: [•]

1. The Company confirms that no Event of Default is continuing or would result from the incurrence of Financial Indebtedness under the Incremental Facility; and
2. As from the date of this Incremental Facility Notice, the Incremental Facility Lender shall be deemed as a beneficiary of the Facilities Agreement as a Finance Party.
3. [In respect of a payment made under a Finance Document by an Irish Borrower, the Incremental Facility Lender confirms that it is:
  - (a) [an Irish Qualifying Lender (other than a Treaty Lender);]

- (b) [a Treaty Lender;]
  - (c) [not a Irish Qualifying Lender].]\*
4. [In respect of a payment made under a Finance Document by a UK Borrower, the Incremental Facility Lender confirms that it is:
- (a) [a UK Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a UK Qualifying Lender].] \*
5. [In respect of a payment made under a Finance Document by a US Borrower, the New Incremental Facility confirms that it is:
- (a) [a US Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a US Qualifying Lender].] \*
6. [In respect of a payment made under a Finance Document by a Swedish Borrower, the Incremental Facility Lender confirms that it is:
- (a) [a Swedish Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Swedish Qualifying Lender].]\*
7. [The Incremental Facility 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 2009) 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 2009; 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 2009) of that company.]\*\*

8. [The Incremental Facility 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 date of this Incremental Facility Notice; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the date of this Incremental Facility Notice,
- that it wishes the scheme to apply to the Facilities Agreement.]\*\*\*\*
9. This Incremental Facility Notice may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Incremental Facility Notice.
10. This Incremental Facility Notice (including any non-contractual obligations arising out of or in relation to this Incremental Facility Notice) is governed by, and is to be construed in accordance with, English law.

.....  
[Authorised Signatory]  
For and on behalf of the Company

.....  
[Authorised Signatory]  
For and on behalf of the Incremental Facility Lender

**SIGNATURES**

**THE COMPANY**

**EXOVA 2014 LIMITED**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**THE ORIGINAL BORROWERS**

**EXOVA 2014 LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP (UK) LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier



**EXOVA (UK) LIMITED**

By: 

Address: Lochend Industrial Estate, Newbridge,  
Midlothian, Scotland,  
EH28 8PL

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA HOLDINGS LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA TOPCO LIMITED**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA PLC**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA (US) HOLDINGS INC.**

By:

Address: 160 Greentree Drive,  
Suite 101  
Dover  
Delaware, 19904  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP LIMITED**

By:

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA (US) HOLDINGS INC.**

By: 

Address: 160 Greentree Drive,  
Suite 101  
Dover  
Delaware, 19904  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA, INC.**

By:



Address: Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA PROPERTY HOLDINGS INC.**

By:



Address: 2395 Speakman Drive,  
Mississauga, Ontario,  
Canada, L5K 1B3

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

EXOVA CANADA INC.

By:



Address: 2395 Speakman Drive,  
Mississauga, Ontario,  
Canada, L5K 1B3

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**THE ORIGINAL GUARANTORS**

**EXOVA 2014 LIMITED**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP (UK) LIMITED**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA (UK) LIMITED**

By: 

Address: Lochend Industrial Estate, Newbridge,  
Midlothian, Scotland,  
EH28 8PL

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA HOLDINGS LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

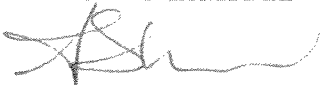
Fax: +44 20 7747 3899

Attention: Eric Rouzier



**EXOVA TOPCO LIMITED**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA PLC**

By:



Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP LIMITED**

By: 

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA (US) HOLDINGS INC.**

By:

Address: 160 Greentree Drive,  
Suite 101  
Dover  
Delaware, 19904  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA GROUP LIMITED**

By:

Address: 6 Coronet Way  
Centenary Park, Eccles  
Manchester, M50 1RE  
United Kingdom

Fax: +44 131 333 5082

Attention: Anne Thorburn; Neil MacLennan

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA (US) HOLDINGS INC.**

By:



Address: 160 Greentree Drive,  
Suite 101  
Dover  
Delaware, 19904  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA, INC.**

By: 

Address: Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801  
USA

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA PROPERTY HOLDINGS INC.**

By: 

Address: 2395 Speakman Drive,  
Mississauga, Ontario,  
Canada, L5K 1B3

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899

Attention: Eric Rouzier

**EXOVA CANADA INC.**

By:



Address: 2395 Speakman Drive,  
Mississauga, Ontario,  
Canada, L5K 1B3

Fax: +1 905 822 9076

Attention: David Brash

With a copy sent to: CD&R LLP  
Cleveland House  
33 King Street  
London, SW1Y 6RJ

Fax: +44 20 7747 3899


Attention: Eric Rouzier

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

THE ARRANGERS

BARCLAYS BANK PLC

By:



**Rob Azurdia**  
Director

CREDIT SUISSE AG, LONDON BRANCH

By:

GOLDMAN SACHS BANK USA

By:

HSBC BANK PLC

By:

ING BANK N.V., LONDON BRANCH

By:

**THE ARRANGERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

By: 



**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:

**THE ARRANGERS**

**BARCLAYS BANK PLC**

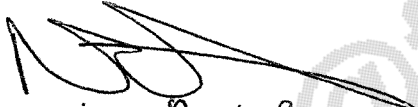
By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

  
Nicola Stewart  
Authorised Signatory

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:



**THE ARRANGERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

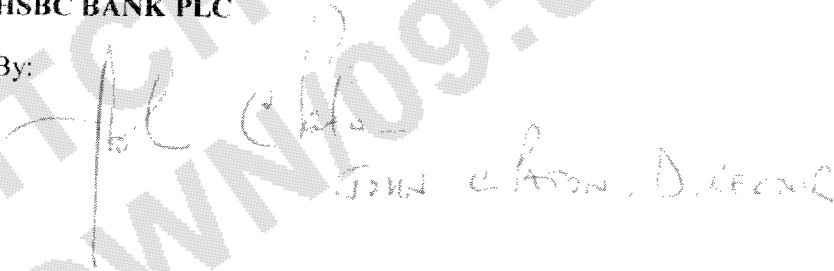
By:

**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:



Handwritten signature in black ink, appearing to be 'Johnathan D. ...'.

**ING BANK N.V., LONDON BRANCH**

By:

**THE ARRANGERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:

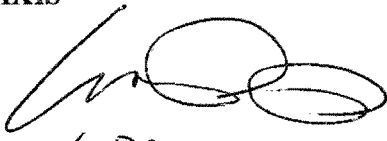
**ING BANK N.V., LONDON BRANCH**


By:

A handwritten signature in black ink, appearing to be a stylized 'M' or similar initials.

**NATIXIS**

By:

  
G. DRUMMOND

  
CAROL O'GARRA

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**SANTANDER UK PLC**

By:

ra.KITCHIN@freshfields.com 15:55  
CROWN/09:02:2017

**NATIXIS**

By:

---

**THE ROYAL BANK OF SCOTLAND PLC**

By:



**SANTANDER UK PLC**

By:

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**NATIXIS**

By:

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**SANTANDER UK PLC**

By:



ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**THE AGENT**

**THE ROYAL BANK OF SCOTLAND PLC**

By:

A handwritten signature in black ink, consisting of a stylized, cursive script.

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**THE LENDERS**

**BARCLAYS BANK PLC**

By:

  
**Rob Azurdia**  
Director

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:

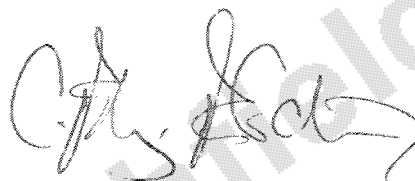
**THE LENDERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:



**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:



**THE LENDERS**

**BARCLAYS BANK PLC**


By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

  
Nicola Stewart  
Authorised Signatory

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:

**THE LENDERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:



*[Handwritten signature]*  
*[Handwritten name: CHAI C TANG]*

**ING BANK N.V., LONDON BRANCH**

By:

**THE LENDERS**

**BARCLAYS BANK PLC**

By:

**CREDIT SUISSE AG, LONDON BRANCH**

By:

**GOLDMAN SACHS BANK USA**

By:

**HSBC BANK PLC**

By:

**ING BANK N.V., LONDON BRANCH**

By:

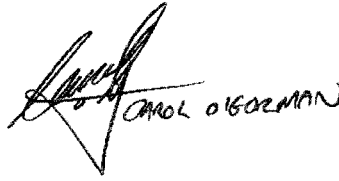
A handwritten signature in black ink, appearing to be the initials 'ML' or similar, written in a cursive style.

**NATIXIS**

By:



G. DRUMMOND



CAROL O'BOZEMAN

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**SANTANDER UK PLC**

By:


ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**NATIXIS**

By:

**THE ROYAL BANK OF SCOTLAND PLC**

By:



**SANTANDER UK PLC**

By:

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55

**NATIXIS**

By:

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**SANTANDER UK PLC**

By:

CR KA 

ra.KITCHIN@freshfields.com  
CROWN/09:02:2017 15:55