



.....11 November 2024.....

SIX EXCHANGE GROUP AG
as Borrower
and
SIX GROUP AG
as Guarantor
and
UBS SWITZERLAND AG
as Mandated Lead Arranger
and
UBS SWITZERLAND AG
acting as Agent

Up to £240,000,000 FACILITY AGREEMENT

Herbert Smith Freehills LLP

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THIS AGREEMENT is dated 11 November 2024 and made

BETWEEN:

- (1) **SIX EXCHANGE GROUP AG** (the **Borrower**);
- (2) **SIX GROUP AG** (the **Guarantor** and the **Parent**);
- (3) **UBS SWITZERLAND AG** (the **Mandated Lead Arranger**);
- (4) **THE FINANCIAL INSTITUTION** listed in Schedule 1 (*The Original Lender*) as original lender (the **Original Lender**); and
- (5) **UBS SWITZERLAND AG** as agent of the other Finance Parties (the **Agent**).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Acquisition means the acquisition of all of the Shares by the Borrower pursuant to a Scheme or an Offer and, if applicable, a Squeeze-Out Procedure.

Acquisition Completion Date means:

- (a) in the case of a Scheme, the Scheme Effective Date; and
- (b) in the case of an Offer, the date on which the Offer is declared or becomes unconditional.

Acquisition Costs means any fees, costs and expenses, stamp, registration and other Taxes incurred by or on behalf of the Borrower or any other member of the Group in connection with the Acquisition or the Finance Documents.

Acquisition Documents means the Scheme Documents or, where the Acquisition proceeds by way of Offer, the Offer Documents.

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

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.

AIM means the Alternative Investment Market of the London Stock Exchange.

AML Laws has the meaning given to it in Clause 18.16 (*Anti-money laundering*).

Announcement means the press release made by or on behalf of the Borrower announcing a firm intention to implement a Scheme or, as the case may be, make an Offer, in each case in accordance with Rule 2.7 of the Takeover Code.

Anti-Corruption Laws means all laws, rules and regulations of any jurisdiction applicable to any member of the Group from time to time, as amended, concerning or relating to bribery or

corruption, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010.

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

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

Availability Period means the period from and including the date of this Agreement to and including the last day of the Certain Funds Period.

Available Commitment means a Lender's Commitment minus:

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

Available Facility means the aggregate for the time being of each Lender's Available Commitment.

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

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

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

Central Bank Rate Spread has the meaning given to that term in the Reference Rate Terms.

Certain Funds Period means the period from and including the date of this Agreement to and including the date that is the earliest of:

- (a) 15 January 2026;
- (b) if the Acquisition proceeds by way of a Scheme, the earlier of:
 - (i) the date on which a Court Meeting is held (and not adjourned or otherwise postponed) to approve the Scheme at which a vote is held to approve the Scheme, but the Scheme is not approved by the requisite majority of the shareholders at such Court Meeting, unless, within five Business Days of such event the Borrower notifies the Agent that the Borrower intends to issue, and then within 10 Business Days the Borrower does issue, a press release announcing a conversion from a Scheme to an Offer in accordance with the Takeover Code;
 - (ii) the date on which a Target General Meeting is held (and not adjourned or otherwise postponed) to pass the Scheme Resolutions at which a vote is held on the Scheme Resolutions, but the Scheme Resolutions are not passed by the requisite majority of the shareholders of the Target at such Target General Meeting, unless, within five Business Days of such event the Borrower notifies the Agent that the Borrower intends to issue, and then within 10 Business Days the Borrower does issue, a press release announcing a conversion from a Scheme to an Offer in accordance with the Takeover Code;

- (iii) the date on which an application for the issuance of the Scheme Court Order is made to the Court (and not adjourned or otherwise postponed) but the Court (in its final judgment) refuses to grant the Scheme Court Order, unless, within five Business Days of such event the Borrower notifies the Agent that the Borrower intends to issue, and then within 10 Business Days the Borrower does issue, a press release announcing a conversion from a Scheme to an Offer in accordance with the Takeover Code;
 - (iv) the date on which the Scheme lapses or is withdrawn with the consent of the Panel or by order of the Court, unless, within five Business Days of such event the Borrower notifies the Agent that the Borrower intends to issue, and then within 10 Business Days the Borrower does issue, a press release announcing a conversion from a Scheme to an Offer in accordance with the Takeover Code; and
 - (v) the date falling 15 days after the Scheme Effective Date;
- (c) if the Acquisition proceeds pursuant to an Offer, the earlier of:
- (i) the date on which the Offer lapses, terminates or is withdrawn with the consent of the Panel unless, within five Business Days of such event the Borrower notifies the Agent that the Borrower intends to issue, and then within 10 Business Days the Borrower does issue, a press release announcing a conversion from an Offer to a Scheme in accordance with the Takeover Code; and
 - (ii) the date falling 15 days after the later of the date on which the Offer is closed for further acceptances and (where applicable) the date of completion of the Squeeze-Out Procedure, in each case, in accordance with the Takeover Code; and
- (d) the date on which all of the consideration payable under the Acquisition in respect of the Shares or proposal made or to be made under Rule 15 of the Takeover Code in connection with the Acquisition has, in each case, been paid in full including in respect of any Shares to be acquired pursuant to a Squeeze-Out Procedure.

CO means the Swiss Code of Obligations (Schweizerisches Obligationenrecht) of 30 March 1911 (SR 220), as amended and restated from time to time.

Code means the US Internal Revenue Code of 1986.

Clean-Up Default means any Default or any Event of Default in so far as it relates exclusively to the Target Group or to the assets of any member of the Target Group.

Clean-Up Period means, in relation to the Acquisition, the period beginning on the Acquisition Completion Date and ending on the date falling 120 days after the Acquisition Completion Date.

Commitment means:

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

Compounded Reference Rate means, in relation to any RFR Banking Day during the Interest Period of a Loan, the percentage rate per annum which is the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day.

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

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

Confidential Information means all information relating to the Borrower, any Obligor, the Group, the Target Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 34 (*Confidentiality*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

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

Court means the High Court of England and Wales.

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

Court Meeting means, in the event the Acquisition is to be effected by way of the Scheme, the meeting of the holders of the Shares to be convened pursuant to section 896 of the Companies Act 2006.

CTA means the Corporation Tax Act 2009.

Daily Non-Cumulative Compounded RFR Rate means, in relation to any RFR Banking Day during an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 8 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

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

Default means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Defaulting Lender means any Lender:

- (a) which has failed to make its participation in a Loan available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

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

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three 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.

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 Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems- related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or

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

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

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

Event of Default means any event or circumstance specified as such in Clause 21 (*Events of Default*).

Existing Debt means Financial Indebtedness incurred or committed to be incurred by any member of the Group pursuant to any financing agreement already in place prior to the date of this Agreement.

Extension Request means a request substantially in the form set out in Part 2 of Schedule 3 (*Requests*).

Facility means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

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

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a **withholdable payment** described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a **passthru payment** described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

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

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

Fee Letter means any letter or letters between one or more of the Finance Parties and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*).

Finance Documents means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) each Utilisation Request;
- (d) any Extension Request;
- (e) any Reference Rate Supplement;
- (f) any Compounding Methodology Supplement; and
- (g) any other document designated as such by the Agent and the Borrower.

Finance Party means the Agent, a Mandated Lead Arranger or a Lender.

Financial Advisor means UBS AG London Branch in its capacity as financial advisor to the Borrower in connection with the Acquisition.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with IFRS in force prior to 1 January 2019, have been treated as an operating lease);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability which would fall within one of the other paragraphs of this definition; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to Clause 10.2(a)(ii) (*Cost of funds*).

Group means the Parent and its Subsidiaries from time to time.

Historic RFR means, in relation to an RFR Banking Day, the most recent RFR for a day which is no more than two RFR Banking Days before that RFR Banking Day.

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

IFRS means international financial reporting standards as issued by the International Accounting Standards Board (ISAB) from time to time.

Impaired Agent means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of **Defaulting Lender**; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

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

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

Increase Confirmation means a confirmation substantially in the form set out in Schedule 6 (*Form of Increase Confirmation*).

Increase Lender has the meaning given to that term in Clause 2.2 (*Increase*).

Initial Termination Date means the date falling 15 months after the date of this Agreement.

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a

petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of one or more of the stabilisation powers pursuant to Part 11 of the Swiss Banking Act and/or has instituted against it a bank insolvency proceeding pursuant to Part 12 of the Swiss Banking Act or has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

Interest Period means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

ITA means the Income Tax Act 2007.

Legal Reservations means:

- (a) the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally

affecting the rights of creditors and similar principles or limitations under the laws of any applicable jurisdiction;

- (b) the time barring of claims under applicable limitation laws and defences of acquiescence, set-off or counterclaim;
- (c) the Swiss general principle of reasonableness and fairness (*Treu und Glauben*) and similar principles under the laws of any applicable jurisdiction; and
- (d) any matters which are set out as qualifications or reservations (howsoever described) as to matters of law in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*).

Lender means:

- (a) the Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*) or Clause 22 (*Changes to the Lenders*),

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

Liquidity Facility means any emergency funding or similar facility made available to a member of the Group by a central bank or an equivalent entity or by any other financier for the purposes of:

- (a) satisfying the financial or other obligations of a member of the Group in its capacity as an operator of a clearing house or an exchange;
- (b) enabling a member of the Group to continue its business of operating as a clearing house or an exchange; or
- (c) addressing any concern or satisfying any expectation expressed by a regulator, central bank or other governmental entity with respect to the financial needs of a member of the Group in its capacity as an operator of a clearing house or an exchange.

LMA means the Loan Market Association.

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

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

Major Default means, with respect to the Parent and the Borrower only and not any other person (including any other member of the Group or any member of the Target Group and excluding (i) any procurement obligations or approval on the part of the Parent or the Borrower with respect to any other member of the Group or any member of the Target Group or their respective assets, liabilities or obligations and (ii) any failure to comply, breach or Default by any other member of the Group or the Target Group or their respective assets, liabilities or obligations), any circumstances constituting an Event of Default under any of:

- (a) Clause 21.1 (*Non-payment*) (insofar as it arises from non-payment of principal or interest);
- (b) Clause 21.2 (*Other obligations*) insofar as it arises from a breach of a Major Undertaking;
- (c) Clause 21.3 (*Misrepresentation*) insofar as it arises from a breach of a Major Representation which is not correct in all material respects;

- (d) Clause 21.5 (*Insolvency*) provided that:
 - (i) in paragraph (a)(ii) the words "by reason of actual or anticipated financial difficulties" is added after the words "making payments";
 - (ii) in paragraph (a)(iii) "one or more of its creditors" is deemed to be replaced with "its creditors generally"; and
 - (iii) paragraph (c) shall be deemed to be disapplied;
- (e) Clause 21.6 (*Insolvency proceedings*) provided that:
 - (i) in paragraph (b) "with any creditor" is deemed to be replaced with "the general creditors";
 - (ii) in paragraph (c) the word "material" is deemed to be added before "assets"; and
 - (iii) paragraph (d) shall be deemed to be disapplied;
- (f) Clause 21.7 (*Creditors' process*);
- (g) Clause 21.8 (*Ownership of the Borrower*);
- (h) Clause 21.9 (*Unlawfulness*) (but only to the extent that the circumstances constituting such Event of Default could reasonably be expected to be materially adverse to the interests of the Lenders under the Finance Documents); and
- (i) Clause 21.10 (*Repudiation*) provided that the words "or evidences an intention to repudiate a Finance Document" shall be deemed to be disapplied.

Major Representation means, with respect to the Parent or the Borrower only and not to any other person (including any other member of the Group or any member of the Target Group), a representation or warranty under any of:

- (a) Clause 18.1 (*Status*);
- (b) Clause 18.2 (*Binding obligations*);
- (c) paragraphs (a) and (b) of Clause 18.3 (*Non-conflict with other obligations*);
- (d) Clause 18.4 (*Power and authority*); and
- (e) Clause 18.5 (*Validity and admissibility in evidence*),

and excluding any representation that requires the Parent or the Borrower to procure compliance by another person (including any other member of the Group or any member of the Target Group).

Major Undertaking means, with respect to the Parent or the Borrower only and not to any other person (including any other member of the Group or any member of the Target Group and excluding (i) any procurement obligations or approval on the part of the Parent or the Borrower with respect to any other member of the Group or any member of the Target Group or their respective assets, liabilities or obligations and (ii) any failure to comply, breach or Default by any other member of the Group or the Target Group or their respective assets, liabilities or obligations), each of the undertakings set out below:

- (a) Clause 20.3 (*Negative pledge*);
- (b) Clause 20.4 (*Merger*);
- (c) Clause 20.5 (*Change of business*); and
- (d) paragraphs (a), (b)(iv), (c), (e) and (h) of Clause 20.8 (*Acquisition undertakings*).

Majority Lenders means:

- (a) if there are no Loans outstanding, a Lender or Lenders whose Commitments aggregate 66 $\frac{2}{3}$ % or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66 $\frac{2}{3}$ % or more of the Total Commitments

immediately prior to the reduction); and

- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate 66⅔% or more of all the Loans then outstanding.

Margin means, in respect of each Loan:

- (a) for the period from (and including) the date of this Agreement to (but excluding) the earlier of (i) the Acquisition Completion Date and (ii) the date falling 6 months after the date of this Agreement, 0.35% per annum;
- (b) for the period from (and including) the earlier of (i) the Acquisition Completion Date; and (ii) the date falling 6 months after the date of this Agreement to (but excluding) the date falling 9 months after the date of this Agreement, 0.65% per annum;
- (c) for the period from (and including) the date falling 9 months after the date of this Agreement to (but excluding) the date falling 12 months after the date of this Agreement, 0.75% per annum; and
- (d) for the period from (and including) the date falling 12 months after the date of this Agreement to (and including) the Termination Date, 0.85% per annum.

Material Adverse Effect means an event or circumstance, a series of events or circumstances which, taking into account all the circumstances, has a material adverse effect on:

- (a) the business or financial condition of the Group taken as a whole;
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under the Finance Documents; or
- (c) subject to the Legal Reservations, the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

Minimum Acceptance Threshold has the meaning given to in Clause 20.8(b)(iv) (*Acquisition undertakings*).

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

New Lender has the meaning given to that term in Clause 22.1 (*Assignments and transfers by the Lenders*).

Obligor means the Borrower or the Guarantor.

Offer means the contractual takeover offer (as defined in section 974 of the Companies Act 2006) made by the Borrower to effect the Acquisition pursuant to the terms of the Offer Documents.

Offer Documents means the offer document (including any supplementary offer document) to be sent by the Borrower to the Target's shareholders (and any other persons with information rights) in respect of the Offer, and otherwise made available to such persons and in the manner required by Rule 24.1 of the Takeover Code and any other document designated in writing as an "Offer Document" by the Borrower and the Agent, and if applicable, any document required to effect the Squeeze-Out Procedure.

Original Financial Statements means the audited consolidated financial statements of the Group for the financial year ended 31 December 2023 delivered as a condition precedent under Part 1 of Schedule 2 (*Conditions Precedent to Signing*).

Panel means The Panel on Takeovers and Mergers.

Participating Member States 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.

Reference Rate Supplement means a document which:

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

Registrar means the Registrar of Companies for England and Wales.

Reference Rate Terms means the terms set out in Schedule 7 (*Reference Rate Terms*) or in any Reference Rate Supplement.

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

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

Repeating Representations means each of the representations set out in Clauses 18.1 (*Status*) to 18.6 (*Governing law and enforcement*) (inclusive), Clause 18.9(a) (*No default*), Clause 18.10 (*No misleading information*), Clause 18.11(b) (*Financial statements*), Clause 18.13 (*Ranking*) and Clause 18.14 (*Sanctions*).

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

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

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

Restricted Person means a person that is:

- (a) listed on, or owned or controlled by a person listed on any Sanctions List, or a person acting on behalf or at the direction of such person; or
- (b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or
- (c) a governmental agency, authority, or body or state-owned enterprise of any country which is the subject of sanctions by any Sanctions Authority.

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

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

Sanctioned Country means a country or territory which is, or whose government is, at any time, the subject or target of country-wide or territory-wide Sanctions, being at the date of this

Agreement Cuba, North Korea, Iran, Syria and the Crimea Region, Luhansk Region, Donetsk Region, Zaporizhzhia Region and Kherson Region.

Sanctions means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures (in each case having the force of law) administered, enacted or enforced by:

- (a) the Security Council of the United Nations;
- (b) the United States of America;
- (c) the European Union;
- (d) the United Kingdom;
- (e) Switzerland; and
- (f) the governments and official institutions or agencies of any of paragraphs (a) to (f) above, including but not limited to OFAC, the US Department of State, His Majesty's Treasury and the State Secretariat for Economic Affairs of Switzerland,

(together **Sanctions Authorities**).

Sanctions List means the Specially Designated Nationals and Blocked Persons List issued by OFAC, the Consolidated List of Financial Sanctions Targets issued by His Majesty's Treasury, or any similar list issued or maintained or made public by any of the Sanctions Authorities.

Scheme means an English law governed scheme of arrangement effected under part 26 of the Companies Act 2006 to be proposed by the Target to the shareholders of the Target to implement the Acquisition as contemplated by the Scheme Documents.

Scheme Circular means, where the Acquisition proceeds by way of Scheme, the circular (including any supplementary circular) issued by the Target addressed to the shareholders of the Target containing, *inter alia*, the details of the Acquisition, the Scheme and the notices convening the Court Meeting and the Target General Meeting.

Scheme Court Order means, where the Acquisition proceeds by way of Scheme, the order of the Court sanctioning the Scheme as required by Part 26 of the Companies Act 2006.

Scheme Documents means, where the Acquisition proceeds by way of Scheme, each of the Scheme Circular, the Scheme Court Order, the Scheme Resolutions and any other document designated as a "Scheme Document" by the Agent and the Borrower.

Scheme Effective Date means, where the Acquisition is implemented by way of Scheme, the date on which the Scheme Court Order is filed or registered (as the case may be) at the Registrar.

Scheme Resolutions means, where the Acquisition is implemented by way of Scheme, the resolutions referred to in the Scheme Circular and to be considered at the Court Meeting and the Target General Meeting.

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

Selection Notice means a notice substantially in the form set out in Part III of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

Shares means the issued shares in the capital of the Target not already owned by the Borrower and any person acting in concert with the Borrower (including any such shares in the capital of the Target issued or to be issued prior to the Acquisition Completion Date).

Squeeze-Out Notice means a notice under section 979 of the Companies Act 2006 given by the Borrower to a shareholder of the Target who has not accepted the Offer (if any) implementing the Squeeze-Out Procedure.

Squeeze-Out Procedure means an acquisition of the Shares pursuant to the procedures contained in sections 979 to 982 of the Companies Act 2006.

Subsidiary means an entity:

- (a) more than half the issued (share) capital of which is legally owned, directly or indirectly, by the first-mentioned entity or which is otherwise controlled, directly or indirectly, by the first mentioned entity; or
- (b) which is a Subsidiary of another Subsidiary of the first-mentioned entity;

and, for these purposes, an entity shall be deemed to be **controlled** by another person or entity if that other person or entity is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

Swiss Banking Act means the Swiss Federal Banking Act (*Bankengesetz*) of 8 November 1934 (SR 952.0), as amended and restated from time to time.

Swiss Federal Tax Administration means the Swiss federal tax administration referred to in article 34 of the Swiss Withholding Tax Act.

Swiss Guidelines means the following guidelines issued by the Swiss Federal Tax Administration (each as issued, amended or replaced or as substituted, superseded and overruled by any law, statute, ordinance, court decision, regulation or the like as in force from time to time):

- (a) guideline S-02.123 in relation to interbank loans of September 1986 (Merkblatt Verrechnungssteuer auf Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben) vom September 1986);
- (b) guideline S-02.130.1 in relation to money market instruments and book claims of April 1999 (Merkblatt vom April 1999 betreffend Geldmarktpapiere und Buchforderungen inländischer Schuldner);
- (c) circular letter no. 15 (1-015-DVS-2017) of October 2017 in relation to bonds and derivatives (Kreisschreiben Nr. 15 vom Oktober 2017 betreffend Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer sowie der Stempelabgaben);
- (d) circular letter no. 34 (1.034-V-2011) of July 2011 in relation to deposits (Kreisschreiben Nr. 34 vom Juli 2011 betreffend Kundenguthaben);
- (e) the practice note 010-DVS-2019 of 5 February 2019 published by the Swiss Federal Tax Administration regarding Swiss Withholding Tax in the Group (Mitteilung-010-DVS-2019-d vom 5. Februar 2019 – Verrechnungssteuer: Guthaben im Konzern);
- (f) circular letter No. 46 of 24 July 2019 in relation to syndicated credit facilities (Kreisschreiben Nr. 46 "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen" vom 24. Juli 2019); and
- (g) circular letter No. 47 of 25 July 2019 in relation to bonds (Kreisschreiben Nr. 47 "Obligationen" vom 25. Juli 2019).

Swiss Non-Bank Rules means any of the Swiss Ten Non-Bank Rule and the Swiss Twenty Non-Bank Rule.

Swiss Non-Qualifying Bank means any person which does not qualify as a Swiss Qualifying Bank but is considered as one (1) creditor only for the purposes of the Non-Bank Rules.

Swiss Obligor means any Obligor incorporated in Switzerland or deemed to be resident in Switzerland for Swiss Withholding Tax purposes.

Swiss Qualifying Bank means a financial institution acting on its own account which is licensed as a bank by the banking laws in force in its jurisdiction of incorporation or a branch of a financial institution, which is licensed as a bank by the banking laws in force in the jurisdiction where such branch is situated, and which, in each case, exercises as its main purpose a true banking activity, having bank personnel, premises, communication devices of its own and authority of decision making, all in accordance with the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

Swiss Ten Non-Bank Rule means the rule that the aggregate number of creditors (within the meaning of the Swiss Guidelines) under the Facility, other than Swiss Qualifying Banks, must not at any time exceed 10, all in accordance with the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

Swiss Twenty Non-Bank Rule means the rule that the aggregate number of creditors, other than Swiss Qualifying Banks, of the Borrower under all outstanding debt relevant for the classification as debenture (*Kassenobligation*) (including debt arising under this Agreement, facilities and/or private placements) made or deemed to be made by the Borrower must not at any time exceed 20, all in accordance with the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

Swiss Withholding Tax means any Taxes imposed under the Swiss Withholding Tax Act.

Swiss Withholding Tax Act means the Swiss Federal Act on Withholding Tax of 13 October 1965 (Bundesgesetz vom 13. Oktober 1965 über die Verrechnungssteuer), as amended and restated from time to time.

Takeover Code means The City Code on Takeovers and Mergers.

Target means Aquis Exchange Plc, a company incorporated in England and Wales with company number 07909192.

Target General Meeting means, where the Acquisition proceeds by way of Scheme, the general meeting of the shareholders of the Target (and any adjournment thereof) to be convened for the purpose of considering, and, if thought fit, approving the shareholder resolutions necessary to approve or give effect to the Scheme.

Target Group means the Target and its subsidiaries (as such term is defined in the Companies Act 2006).

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).

Termination Date means the Initial Termination Date or such later date as shall apply following an extension effected pursuant to Clause 6.3 (*Extension of the Facility*).

Total Commitments means the aggregate of the Commitments being £240,000,000 (two hundred and forty million pounds sterling) at the date of this Agreement.

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

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

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

Unconditional Date means the date on which the Offer is declared or becomes unconditional.

Unpaid Sum means any sum due and payable but unpaid by an Obligor under a Finance Document.

Utilisation means a utilisation of the Facility.

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

Utilisation Request means a notice substantially in the form set out in Part 1 of Schedule 3 (*Utilisation Request*).

VAT means:

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

1.2 Construction

- (a) Unless a contrary indication appears, any reference in any Finance Document to:
 - (i) the Agent, any Mandated Lead Arranger, any Finance Party, any Lender, any Obligor, the Borrower, the Guarantor, any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents.
 - (ii) the Agent's "cost of funds" is a reference to the average cost (determined either on an actual or notional basis) which the Agent would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount referred to in paragraph (b) of Clause 27.4 (*Clawback and pre-funding*);
 - (iii) **assets** includes present and future properties, revenues and rights of every description;
 - (iv) a Lender's "**cost of funds**" in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;
 - (v) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

- (vi) **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;
 - (vii) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (viii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law being a regulation, rule, official directive, request or guideline with which those to whom it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (ix) **repay** (or any derivative form thereof) shall, subject to any contrary indication, be construed to include **prepay** (or, as the case may be, the corresponding derivative form thereof);
 - (x) a provision of law is a reference to that provision as amended or re-enacted from time to time;
 - (xi) a time of day is a reference to London time; and
 - (xii) the word **including** is without limitation and "include" shall be construed accordingly.
- (b) 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 or certificate given under or in connection with any Finance Document has the same meaning in that Finance Document or notice or certificate as in this Agreement.
- (d) A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been remedied or waived.
- (e) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
 - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Borrower.
- (f) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (g) Any Reference Rate Supplement overrides anything in:
- (i) Schedule 7 (*Reference Rate Terms*); or

- (ii) any earlier Reference Rate Supplement.
- (h) A Compounding Methodology Supplement relating to the Daily Non- Cumulative Compounded RFR Rate overrides anything relating to that rate in:
 - (i) Schedule 8 (*Daily Non-Cumulative Compounded RFR Rate*); or
 - (ii) any earlier Compounding Methodology Supplement.

1.3 Currency symbols and definitions

- (a) **£, GBP** and **sterling** denote the lawful currency of the United Kingdom.
- (b) **€, EUR** and **euro** denote the lawful currency of the Participating Member States.
- (c) **CHF** and **Swiss franc** denote the lawful currency of Switzerland.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the Third Parties Act) to enforce or to enjoy the benefit of any term of that 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 that Finance Document at any time.

1.5 Swiss terms

In this Agreement and any other Finance Documents, where it relates to a Swiss Obligor, a reference to:

- (a) "constitutional documents" means an up-to-date certified extract from the commercial register, an up-to-date and certified copy of the articles of association and a copy of the organizational regulations (if available and relevant);
- (b) a "liquidator", "trustee", "administrative receiver", "receiver" or "administrator" or similar officer includes any of (i) "*Sachwalter*" appointed in accordance with the Swiss Code of Obligations as of 30 March 1911 (*Schweizerisches Obligationenrecht*), as amended and restated from time to time ("CO"), (ii) "Liquidator" appointed in accordance with the provisions of the CO, and (iii) "*Konkursamt*" or "*Konkursverwaltung*", any "*Liquidator*" or "*Sachwalter*" or "*Sanierungsbeauftragter*" (including a supervisory authority acting in any such capacity) or any of their officials or employees or other officers appointed in accordance with the Swiss Debt Collection and Bankruptcy Act of 11 April 1889 (*Bundesgesetz über Schuldbetreibung und Konkurs*) as amended and restated from time to time;
- (c) a "moratorium", "dissolution", "administration", "reorganisation", "winding-up", "administration", "liquidation" or "insolvency" includes, without limitation, bankruptcy, liquidation, composition with creditors (*Nachlassvertrag*) or moratorium (*provisorische or definitive Nachlassstundung/Stundung/Notstundung*) or protective measures (*Schutzmassnahmen/sichernde Massnahmen*);
- (d) a person being unable to pay its debts includes that person being in a state of inability to make payments (*zahlungsunfähig*) and being over-indebted (*überschuldet*), unless

creditors have subordinated their claims sufficient to eliminate such over-indebtedness in accordance with article 725b et seq.CO; and

- (e) a director or a manager includes in relation to a company limited by shares (*Aktiengesellschaft*) a member of the board of directors (*Verwaltungsrat*) or a member of the executive management (*Geschäftsleitung*).

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a sterling term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Increase

- (a) The Borrower may by giving prior notice to the Agent after the effective date of a cancellation of:

- (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.8 (*Right of cancellation in relation to a Defaulting Lender*); or
- (ii) the Commitments of a Lender in accordance with:
 - (A) Clause 7.1 (*Illegality*); or
 - (B) paragraph (a) of Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

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

- I. the increased Commitments will be assumed by one or more Eligible Institutions (each an **Increase Lender**) each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
- II. each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
- III. each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;

- IV. the Commitments of the other Lenders shall continue in full force and effect; and
 - V. any increase in the Commitments shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the conditions set out in Clause 2.2(b) below are satisfied.
- (b) An increase in the Commitments will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender (which the Agent shall, subject to paragraph (b)(ii) below, execute as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement); and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Borrower and the Increase Lender upon being so satisfied.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (d) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 22.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 22.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (e) The Borrower 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.
- (f) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a Fee Letter.
- (g) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (h) Clause 22.4 (*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 **Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3. **PURPOSE**

3.1 **Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards:

- (a) financing the Acquisition; and
- (b) the payment of Acquisition Costs.

3.2 **Monitoring**

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

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if on or before the Utilisation Date for that Loan, the Agent has received (or, acting on the instructions of the Majority Lenders, waived in writing the requirement to receive) all of the documents and other evidence listed in Part 1 and Part 2 of Schedule 2 (*Conditions Precedent*) which shall be in form and substance satisfactory to the Agent (save to the extent expressly specified in Schedule 2 (*Conditions Precedent*) as not being required to be in form and substance satisfactory to the Agent). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

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

4.2 Certain Funds

- (a) During the Certain Funds Period (save in circumstances where, pursuant to Clause 4.2(b), a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*)), none of the Finance Parties shall be entitled to:

- (i) cancel any of its Commitments;
- (ii) rescind, terminate or cancel this Agreement or the Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents or otherwise which it may have to the extent to do so would directly or indirectly prevent or limit the making of a Utilisation or which would require a Utilisation to be repaid or prepaid;
- (iii) refuse to participate in the making of a Utilisation;
- (iv) exercise any right of rescission, set-off or counterclaim or similar right or remedy to make or enforce any claim under or pursuant to the Finance Documents or otherwise to the extent to do so would directly or indirectly prevent or limit the making of a Utilisation or which would require a Utilisation to be repaid or prepaid; or
- (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or take any other action or make or enforce any claim to the extent to do so would directly or indirectly prevent or limit the making of a Utilisation or which would require a Utilisation to be repaid or prepaid,

provided that immediately after the expiry of the Certain Funds Period all such rights, remedies and entitlements shall, subject to Clause 21.12 (*Clean-Up Period*), be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period if the underlying event, circumstance or other matter giving rise to such right, remedy or entitlement (as applicable) is still subsisting at such time.

- (b) Clause 4.2(a) does not apply if:
- (i) the Borrower has not delivered all of the documents and evidence required to be delivered in accordance with Clause 4.1 (*Initial conditions precedent*) unless, in respect of any document or item of evidence, the Agent has expressly waived the requirement to deliver that document or item of evidence;
 - (ii) a Major Representation is not correct in all material respects or will not be correct in all material respects immediately after a proposed Loan is made;
 - (iii) a Major Default is then continuing or would result from a proposed Loan; or
 - (iv) it is, in any applicable jurisdiction, unlawful for any Lender to perform any of its obligations as contemplated by any Finance Document or to fund or

maintain its participation in any Loan, provided that such event shall not release any other Lender from its obligation to make available its proportion of the relevant Loan in accordance with this Clause 4.

4.3 **Conflict**

In the event of any conflict or inconsistency between Clause 4.2 (*Certain Funds*) and any other term of a Finance Document, Clause 4.2 (*Certain Funds*) will prevail.

4.4 **Maximum number of Loans**

The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:

- (a) if the Acquisition proceeds by way of Scheme, more than one (1) Loan would be outstanding; or
- (b) if the Acquisition proceeds by way of Offer, more than fifteen (15) Loans would be outstanding.

5. **UTILISATION**

5.1 **Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 9 a.m. two Business Days before the proposed Utilisation Date.

5.2 **Completion of a Utilisation Request**

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

5.3 **Currency and amount**

- (a) The currency specified in the Utilisation Request must be sterling.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of £2,000,000 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.
- (b) The amount of each Lender's participation in the relevant Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by no later than 11 a.m. two Business Days before the Utilisation Date.

5.5 **Cancellation of Commitment**

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

6. **REPAYMENT**

6.1 **Repayment**

The Borrower shall repay the Loans in full on the Termination Date.

6.2 **Reborrowing**

The Borrower may not reborrow any part of the Facility which is repaid.

6.3 **Extension of the Facility**

The Termination Date shall be extended for an additional three (3) months from the Initial Termination Date at the request of the Borrower, if:

- (a) the Borrower issues an Extension Request to the Agent no less than 20 Business Days and not more than 60 days before the Initial Termination Date;
- (b) the Borrower pays to the Agent (for the account of each Lender) an extension fee, which shall be payable on or prior to the Initial Termination Date, computed at a rate of 0.0875% flat on the Total Commitments that are to be extended; and
- (c) no Event of Default has occurred and is continuing or would occur as a consequence of such extension.

7. **PREPAYMENT AND CANCELLATION**

7.1 **Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans made to it on:
 - (i) the last day of the current Interest Period for each Loan occurring after the Agent has notified the Borrower; or
 - (ii) if earlier, the date specified by that Lender (if any) in the notice delivered to the Agent under paragraph (a) above (being no earlier than the last day of any applicable grace period permitted by law),

and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.

7.2 Change of control

- (a) If any person or group of persons acting in concert (other than UBS Switzerland AG and its Affiliates) gains control of the Parent:
- (i) the Borrower shall promptly notify the Agent upon becoming aware of that event;
 - (ii) a Lender shall not be obliged to fund a Utilisation; and
 - (iii) if a Lender (in its absolute discretion) so requires and notifies the Agent within 15 Business Days of the Borrower notifying the Agent of the event, the Agent shall, by not less than 5 days' notice to the Borrower:
 - (A) cancel the Commitments of that Lender; and
 - (B) declare the participation of that Lender in all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents immediately due and payable,at which time the Commitments of that Lender will be cancelled and all such participations in outstanding Loans and amounts will become immediately due and payable.
- (b) For the purpose of paragraph (a) above **control** means:
- (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the relevant entity; or
 - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the relevant entity; and/or
 - (ii) the holding beneficially of more than 50% of the issued share capital of the relevant entity (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).
- (c) For the purpose of Clause 7.2(a) above **acting in concert** means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate through acquisition of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent as further described in article 135 para.1 of the Swiss Federal Financial Infrastructure Act and article 33 in conjunction with article 12 of the Ordinance of the Swiss Financial Market Supervisory Authority to the Swiss Federal Financial Infrastructure Act.

7.3 Mandatory Prepayment: Disposals, Debt or Equity Issue Proceeds

- (a) For the purposes of this Clause 7.3 and Clause 7.4 (*Application of mandatory prepayments*):
- "Debt or Equity Issue"** means:

- (i) the incurrence by any member of the Group of Financial Indebtedness by way of a loan, an issue of bonds, notes, debentures, loan stock or similar instruments; and
- (ii) an issue of shares in the share capital of a member of the Group in connection with the Acquisition and for the explicit purpose of funding or refinancing the consideration payable in connection with the Acquisition and the related fees, costs and expenses, stamp, registration and other Taxes incurred in connection with the Acquisition.

"Debt or Equity Proceeds" means the cash proceeds raised from a Debt or Equity Issue, net of Taxes and all costs, expenses, commissions and fees reasonably incurred or to be incurred in connection with such Debt or Equity Issue, excluding the proceeds of any Financial Indebtedness which:

- (i) is incurred pursuant to a Liquidity Facility;
- (ii) is incurred pursuant to intra-day or overnight borrowing facilities between a member of the Group and one or more financial institutions;
- (iii) arises under a cash management arrangement, cash pooling facility, corporate credit card, clearing or overdraft facility with one or more financial institution (s) to which a member of the Group is a party;
- (iv) is incurred pursuant to a working capital facility entered into by a member of the Group, and where the aggregate principal amount of all Financial Indebtedness thereunder does not exceed EUR 200,000,000 (or its equivalent in other currency or currencies); or
- (v) is incurred to renew, replace, repay or refinance Existing Debt, and for the same or lesser amounts as the Financial Indebtedness being renewed, replaced, repaid or refinanced (plus any amount reasonably incurred to fund any fees, costs or expenses (including any prepayment or break fees) in connection with such refinancing).

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

"Disposal Proceeds" means the consideration receivable for any Disposal made by any member of the Group except for Excluded Disposal Proceeds after deducting:

- (i) all fees, costs and expenses reasonably incurred by any member of the Group with respect to that Disposal; and
- (ii) any Tax paid or estimated by the seller to be or become payable by the seller in connection with that Disposal (as reasonably determined by the seller).

"Excluded Disposal Proceeds" means:

- (i) the proceeds of any Disposal which is of assets made in the ordinary course of business of the disposing entity (including, without limitation, any leases or licenses of assets (including intellectual property), dealings with trade debtors, factoring, reverse factoring, discounting of accounts receivable, or disposals in connection with finance leases, hire purchase arrangements or

- the grant of Security which, in each case, is not prohibited under this Agreement);
 - (ii) the proceeds of any Disposal made between members of the Group;
 - (iii) any Disposal where the proceeds from that Disposal are an amount less than EUR 10,000,000 (or its equivalent in any other currency) (an "**Excluded Disposal**"); or
 - (iv) any Disposal which is not an Excluded Disposal and where the proceeds from that Disposal are an amount which when aggregated with the proceeds of other Disposals which are not Excluded Disposals and are made in the same financial year of the Borrower do not exceed EUR 100,000,000 (or its equivalent in any other currency).
- (b) The Borrower shall prepay Loans and cancel Available Commitments in amounts equal to the following amounts, at the times and in the order of application contemplated in Clause 7.4 (*Application of mandatory prepayments*) from:
- (i) the amount of Disposal Proceeds; and
 - (ii) the amount of Debt or Equity Proceeds.

7.4 Application of mandatory prepayments

- (a) Subject to paragraph (c) below, where any Disposal Proceeds or Debt or Equity Proceeds are received by a member of the Group and one or more Loans are outstanding, the Borrower shall notify the Agent promptly following such receipt and apply (or shall procure the application of) such Disposal Proceeds or Debt or Equity Proceeds in prepayment of Loans outstanding. Any such prepayment shall be made promptly on (or as soon as reasonably practicable following) receipt of such Disposal Proceeds or Debt or Equity Proceeds by that member of the Group and in any event within 20 Business Days of such receipt. An amount of the Commitments equal to such prepayment shall be automatically cancelled on the date of such prepayment. If the amount of the Disposal Proceeds or Debt or Equity Proceeds exceeds the outstanding amount under the Facility and once the Facility is repaid in full in accordance with this paragraph (a), the remaining Disposal Proceeds or Debt or Equity Proceeds shall be applied by the Borrower to cancel the Available Facility in an amount equal to the remaining Disposal Proceeds or Debt or Equity Proceeds (and the Available Commitment of the Lenders will be cancelled rateably).
- (b) Subject to paragraph (c) below, where any Disposal Proceeds or Debt or Equity Proceeds are received by a member of the Group and no Loan is outstanding at that time but the Available Facility has not been irrevocably cancelled in full, the Borrower shall notify the Agent promptly following receipt of such Disposal Proceeds or Debt or Equity Proceeds and immediately upon such notification the Available Facility shall be cancelled in an amount equal to such Disposal Proceeds or Debt or Equity Proceeds.
- (c) During the Certain Funds Period,
- (i) to the extent any Disposal Proceeds or Debt or Equity Proceeds are required to be applied in prepayment of any Loan pursuant to paragraph (a) above; or

- (ii) to the extent any Disposal Proceeds or Debt or Equity Proceeds are required to be applied in cancellation of any Available Facility pursuant to paragraph (a) or (b) above,

such proceeds shall only be applied in prepayment of any Loan or in cancellation of any Available Facility with the prior written consent of the Financial Advisor (in such amounts and on such conditions as is approved by the Financial Advisor) and the Borrower shall use reasonable endeavours to put in place any arrangements requested by the Financial Advisor in order to facilitate such consent. In the event that the Financial Advisor does not approve the cancellation of any Available Facility and/or the prepayment of any outstanding Loans during the Certain Funds Period in accordance with this paragraph (c), immediately after the expiry of the Certain Funds Period the Borrower shall apply an amount equal to the amount of any Disposal Proceeds and/or Debt or Equity Proceeds received by any member of the Group during the Certain Funds Period to prepay any Loan outstanding and cancel any Available Facility in accordance with paragraph (a) above, or cancel any Available Facility in accordance with paragraph (b) above.

- (d) Any Disposal Proceeds or Debt or Equity Proceeds received by a member of the Group in a currency other than sterling shall, for the purposes of determining the amount by which the Available Facility is cancelled or a Loan is prepaid, pursuant to Clause 7.3, be notionally converted into sterling using the Agent's spot rate of exchange for the purchase of sterling on the date on which the relevant proceeds were first notified to the Agent as being received by the relevant member of the Group (or, if no such rate is available, such other rate of exchange on or about the date of such conversion as the Agent and the Borrower agree (each acting reasonably and in good faith)).

7.5 **Voluntary cancellation**

The Borrower may, if it gives the Agent not less than five 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 £5,000,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lenders rateably.

7.6 **Voluntary prepayment of Loans**

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

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

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under Clause 8.5 (*Minimum interest*) or Clause 12.2(c) (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's

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

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loans together with any accrued interest and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) an Obligor becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on three Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to, subject to compliance with the Swiss Non-Bank Rules, an Eligible Institution which confirms its willingness to assume and does assume all of the obligations of the transferring Lender in accordance with Clause 22 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 22.10 (*Pro rata interest settlement*)) and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

7.8 **Right of cancellation in relation to a Defaulting Lender**

- (a) If any Lender becomes a Defaulting Lender, the Borrower 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.

7.9 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with all accrued interest on the amount prepaid, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.10 **Application of prepayments**

Any prepayment of a Loan (other than a prepayment to a single Lender pursuant to Clause 7.1 (*Illegality*), Clause 7.2 (*Change of control*) or Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.

7.11 **Application of cancellations**

Any cancellation pursuant to Clause 7.3 (*Mandatory Prepayment: Disposals, Debt or Equity Issue Proceeds*) or Clause 7.5 (*Voluntary cancellation*) shall be applied pro rata to each Lender's Available Commitment.

8. **INTEREST**

8.1 **Calculation of interest**

- (a) The rate of interest on each Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:

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

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period.

8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is one per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 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. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notifications

- (a) The Agent shall promptly upon an Interest Payment being determinable notify:
- (i) the Borrower of that Interest Payment;
 - (ii) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the relevant Loan; and
 - (iii) the relevant Lenders and the Borrower of each applicable rate of interest relating to the determination of that Interest Payment.

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.2 (*Cost of funds*).

- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

- (c) The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest relating to a Loan to which Clause 10.2 (*Cost of funds*) applies.
- (d) This Clause 8.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

8.5 **Minimum interest**

- (a) When entering into this Agreement, the Parties have assumed in bona fide that the interest payable under this Agreement is not and will not become subject to any Tax Deduction on account of Swiss Withholding Tax.
- (b) Notwithstanding paragraph (a) above, if a Tax Deduction in relation to Swiss Withholding Tax is required by law in respect of any interest payable under a Finance Document and should it be unlawful for an Obligor to comply with Clause 12.2 (*Tax gross-up*) for any reason, where this would otherwise be required by the terms of Clause 12.2 (*Tax Gross-Up*) (taking into account the exclusions in Clause 12.2(d) (*Tax Gross-Up*)), and if the gross-up is effectively not paid, then:
 - (i) the applicable interest rate in relation to that interest payment shall be the interest rate which would have applied to that interest payment as provided for by Clause 8.1 (*Calculation of interest*) or otherwise in this Agreement or any other Finance Document, divided by 1 minus the rate at which the relevant Tax Deduction is required to be made (where the rate at which the relevant Tax Deduction is required to be made is for this purpose expressed as a fraction of 1);
 - (ii) that Obligor shall:
 - (A) pay the relevant interest at the adjusted rate in accordance with subparagraph (i) above;
 - (B) make the Tax Deduction on the interest so recalculated; and
 - (C) all references to a rate of interest under the Finance Documents shall be construed accordingly.
- (c) To the extent that interest payable under a Finance Document becomes subject to Swiss Withholding Tax, each relevant Lender and the relevant Obligor/s shall promptly cooperate in completing any procedural formalities (including submitting forms and documents required by the appropriate Tax authority) to the extent possible and necessary (i) for the relevant Obligor/s to obtain authorization to make interest payments without them being subject to Swiss Withholding Tax and (ii) to ensure that any person which is entitled to a full or partial refund under any applicable double taxation treaty is so refunded. The relevant Obligor shall provide the Finance Parties with such documents and information required for applying for a refund of such Swiss Withholding Tax and, in the event Swiss Withholding Tax is refunded by the Swiss Federal Tax Administration to a Lender, the relevant Lender shall forward, after deduction of costs, such amount to the relevant Obligor.
- (d) Nothing in this Clause 8.5 (*Minimum interest*) shall interfere with each Lender's right to arrange its tax affairs in whatever manner it thinks fit and, without limiting the foregoing, no Lender shall be under any obligation to claim any Swiss Withholding Tax refund in priority to any other claims, reliefs, credits or deductions available to it.

9. INTEREST PERIODS

9.1 Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Agent by the Borrower not later than 9 a.m. two Business Days before the first day of the relevant Interest Period for the Loan.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be the period specified in the Reference Rate Terms.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of any period specified in the Reference Rate Terms or of any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) No Interest Period shall be longer than three Months.

9.2 Non-Business Days

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

9.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods relate to Loans which end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single 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 the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Interest calculation if no RFR or Central Bank Rate

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Loan; and
- (b) **"Cost of funds will apply as a fallback"** is specified in the Reference Rate Terms, Clause 10.2 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Cost of funds

- (a) If this Clause 10.2 (*Cost of funds*) applies to a Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the applicable Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this Clause 10.2 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 10.2 applies the Agent shall, as soon as is practicable, notify the Borrower.

11. FEES

11.1 Commitment fee

- (a) The Borrower shall pay (or procure the payment of) a commitment fee to the Agent (for the account of each Lender) computed at the rate of:
 - (i) 0% of the applicable Margin on that Lender's Available Commitment in respect of the period from (and including) the date of this Agreement to (but excluding) the date falling 2 Months after the date of this Agreement (or to (but including) the last day of the Availability Period (if earlier));
 - (ii) 15% of the applicable Margin on that Lender's Available Commitment in respect of the period from (and including) the date falling 2 Months after the date of this Agreement to (but excluding) the date falling 4 Months after the date of this Agreement (or to (but including) the last day of the Availability Period (if earlier)); and
 - (iii) 30% the applicable Margin on that Lender's Available Commitment in respect of each successive period of three Months falling during the Availability Period with the first such period commencing on (and including) the date falling 4 Months after the date of this Agreement and each subsequent period starting on (and including) the day after the last day of the preceding three Month period and ending on (but excluding) the date falling three Months after the first day of such period (or ending on (but including) the last day of the Availability Period (if earlier)).
- (b) The accrued commitment fee shall be computed and is payable:
 - (i) on the last day of each period specified in paragraph (a) above;
 - (ii) on the last day of the Availability Period; and

- (iii) if any Commitment is cancelled, on the cancelled amount at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on the Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

11.2 Arrangement fee

The Borrower shall pay to the Mandated Lead Arranger or the Original Lender (for its own account) an arrangement fee in the amount and at the times agreed in a Fee Letter.

11.3 Funding fee

The Borrower pay to the Agent (for the account of each Lender) a funding fee in the amount and at the times agreed in a Fee Letter (the "**Funding Fee**").

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

- (a) In this Agreement:

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.

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 the Borrower to a Finance Party under Clause 8.5 (*Minimum interest*), Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

Treaty Lender means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty; and
- (ii) does not carry on a business in Switzerland through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

Treaty State means a jurisdiction having a double taxation agreement (a **Treaty**) with Switzerland which makes provision for full exemption from tax imposed by Switzerland on interest.

- (b) Unless a contrary indication appears, in this Clause 12 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

12.2 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 Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall promptly notify the Borrower and the relevant Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) An Obligor shall not be required to make an increased payment to a specific Lender (but to all others) under paragraph (c) above (or under Clause 8.5 (*Minimum Interest*)) by reason of a Tax Deduction on account of Swiss Withholding Tax in relation to interest payments by an Obligor in connection with the Finance Documents which is due to a breach of the Swiss Ten Non-Bank Rule solely caused by such specific Lender as a consequence of one of the following events:
 - (i) if a Lender:
 - (A) having confirmed at the time that it became a Lender that it is a Swiss Qualifying Bank, ceases to be a Swiss Qualifying Bank; or
 - (B) having confirmed at the time that it became a Lender that it is, for purposes of Swiss Withholding Tax, a single Swiss Non-Qualifying Bank, ceases to be a single Swiss Non-Qualifying Bank (other than as a result of it becoming a Swiss Qualifying Bank), and

other than, in each case, as a result of any change after the date that it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or any published practice or published concession of any relevant taxation authority; and/or
 - (ii) if a Lender fails to comply with its obligations under Clause 22 (*Changes to the Lenders*) and/or under Clause 12.5 (*Lender Status Confirmation*).
- (e) If an Obligor is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g) A Treaty Lender and an Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

12.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party

determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
- (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 12.2(d) (*Tax gross-up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by a Party.
 - (iii) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower and the relevant Obligor.
 - (iv) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Agent.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

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

12.5 Lender Status Confirmation

- (a) For purposes of the Swiss Withholding Tax, the Original Lender confirms at the date of this Agreement that it is a Swiss Qualifying Bank.

- (b) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall, for the purposes of Swiss Withholding Tax, indicate, in the Transfer Certificate, Assignment Agreement or Increase Confirmation or other documentation which it executes on becoming a Party which of the following categories it falls in at the time of becoming a Lender and for the benefit of the Agent and without liability to any Obligor:
- (i) a Swiss Qualifying Bank; or
 - (ii) a single Swiss Non-Qualifying Bank.

12.6 Stamp taxes

The Borrower 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, except for any such stamp duty, registration and other similar Taxes payable in respect of an assignment or transfer of a Loan (or part thereof) by that Finance Party unless such assignment or transfer takes place at the request of an Obligor or when an Event of Default is continuing.

12.7 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 VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term **representative member** to have the same meaning as in the Value Added Tax Act 1994).
- (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.

12.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to the other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that Party's compliance with any other laws, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to subparagraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraphs (a)(i)

and (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.9 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 Borrower and the Agent, and the Agent shall notify the other Finance Parties.

13. INCREASED COSTS

13.1 Increased Costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower 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;
 - (ii) compliance with any law or regulation made after the date of this Agreement;
or
 - (iii) the implementation or application of or compliance with Basel III or CRD IV or any law or regulation implementing Basel III (including, without limitation, CRD IV) (whether that implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Agreement:
Increased Costs means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (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.

13.3 Exceptions

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost:
 - (i) is attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) is attributable to a FATCA Deduction required to be made by a Party;
 - (iii) is compensated for by Clause 12.3(a) (*Tax indemnity*) (or would have been compensated for under Clause 12.3(a) (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3(b) (*Tax indemnity*) applied); or
 - (iv) is attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13 (*Increased Costs*):
 - (i) **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";
 - (ii) **CRD IV** means:
 - (A)
 - I. 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 amending Regulation (EU) No 648/2012 as it forms part of the domestic law of the United Kingdom by virtue

of the European Union (Withdrawal) Act 2018 (the **Withdrawal Act**);

- II. the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020 (the **Withdrawal Agreement Act**)) implemented 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;
- III. direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the Withdrawal Agreement Act) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and

(B)

- I. 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
- II. 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; and

(iii) **Tax Deduction** has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

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

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

14.2 Other indemnities

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

- (a) the occurrence of any Event of Default;
- (b) 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 26 (*Sharing Among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Agent

The Borrower 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) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

14.4 Acquisition indemnity

- (a) In this Clause 14.4, "**Indemnified Person**" means each Finance Party, any of their respective Affiliates and each of their (or their respective Affiliates') respective directors, officers, employees and agents. Any Indemnified Person may rely on this Clause 14.4 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (b) The Borrower shall, within three Business Days of demand, indemnify each Indemnified Person against any cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against that Indemnified Person in each case arising out of or in connection with any action, claim, investigation or proceeding commenced or threatened (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights) in relation to the Acquisition and/or the use of the proceeds of the Facility.
- (c) The Borrower will not be liable under paragraph (b) above for any cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against an

Indemnified Person if that cost, expense, loss or liability results directly from the gross negligence or wilful misconduct of that Indemnified Person.

- (d) No Finance Party shall have any duty or obligation, whether as fiduciary for any Indemnified Person or otherwise, to recover any payment made or required to be made under this Clause 14.4.
- (e) The Borrower agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Borrower or any of its Affiliates for or in connection with anything referred to in this Clause 14.4 except for any such cost, expense, loss or liability incurred by the Borrower that results directly from any breach by that Indemnified Person of any Finance Document which is in each case finally judicially determined to have resulted directly from the gross negligence or wilful misconduct of that Indemnified Person.
- (f) Notwithstanding paragraph (e) above, no Indemnified Person shall be responsible or have any liability to the Borrower or any of its Affiliates or anyone else for consequential losses or damages.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, 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 7.1 (*Illegality*), Clause 12 (*Tax Gross Up and Indemnities*) or Clause 13 (*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.

15.2 Limitation of liability

- (a) The Borrower 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 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Borrower shall promptly on demand pay the Agent and the Mandated Lead Arranger the amount of all costs and expenses (including legal fees subject to any pre-agreed caps (if applicable)) 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.

16.2 **Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 27.11 (*Change of currency*),

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

16.3 **Enforcement and preservation costs**

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

17. **GUARANTEE AND INDEMNITY**

17.1 **Guarantee and indemnity**

The Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 **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.

17.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the

liability of the Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 **Waiver of defences**

The obligations of the Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 17 (without limitation and whether or not known to it or any Finance Party) including:

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

17.5 **Immediate recourse**

The 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 the Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 **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 the Guarantor shall not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 17.

17.7 Deferral of the Guarantor's 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, the Guarantor will not 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 17:

- (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 the Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*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 the 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 27 (*Payment mechanics*).

17.8 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.

17.9 Guarantee Limitations: Switzerland

- (a) If and to the extent a Swiss Obligor becomes liable under this Agreement or any other Finance Document for obligations of any other Obligor (other than the wholly owned direct or indirect subsidiaries of such Swiss Obligor) (the "**Restricted Obligations**") and if complying with such obligations would constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*Gewinnausschüttung*) by such Swiss Obligor or would otherwise be restricted under Swiss law and practice then applicable, such Swiss Obligor's aggregate liability for Restricted Obligations shall be limited to the maximum amount permitted by applicable Swiss law at the time it becomes liable (the "**Freely Disposable Amount**").
- (b) This limitation shall only apply to the extent it is a requirement under applicable law at the time the Swiss Obligor is required to perform Restricted Obligations under the

Finance Documents. Such limitation shall not free the Swiss Obligor from its obligations in excess of the Freely Disposable Amount, but merely postpone the performance date thereof until such times when the Swiss Obligor is allowed to perform these again.

- (c) If the enforcement of the obligations of the Swiss Obligor under this Agreement or any other Finance Document would be limited due to the effects referred to in this Clause 17.9, the Swiss Obligor shall further, to the extent permitted by applicable law and Swiss accounting standards and upon request by the Agent, (i) write up or sell any of its assets that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of sale, however, only if such assets are not necessary for the Swiss Obligor's business (*nicht betriebsnotwendig*) and (ii) reduce its share capital to the minimum allowed under then applicable law.
- (d) The Swiss Obligor and any holding company of the Swiss Obligor which is a party to a Finance Document shall procure that the Swiss Obligor will take and will cause to be taken all and any action as soon as reasonably practicable but in any event within 30 Business Days from the request of the Agent, including, without limitation, (i) the passing of any shareholders' resolutions to approve any payment or other performance under this Agreement or any other Finance Documents, (ii) the provision of an audited interim balance sheet, (iii) the provision of a determination by the Swiss Obligor of the Freely Disposable Amount based on such audited interim balance sheet, (iv) the provision of a confirmation from the Auditors of the Swiss Obligor that a payment of the Swiss Obligor under the Finance Documents in an amount corresponding to the Freely Disposable Amount is in compliance with the provisions of Swiss corporate law which are aimed at protecting the share capital and legal reserves, and (v) the obtaining of any other confirmations which may be required as a matter of Swiss mandatory law in force at the time the Swiss Obligor is required to make a payment or perform other obligations under this Agreement or any other Finance Document, in order to allow a prompt payment in relation to Restricted Obligations with a minimum of limitations.
- (e) If so required under applicable law (including tax treaties) at the time it is required to make a payment under this Agreement or any other Finance Document, the Swiss Obligor:
 - (i) shall use its best efforts to ensure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including tax treaties) rather than payment of the tax;
 - (ii) shall deduct the Swiss Withholding Tax at such rate (being 35 per cent. on the date hereof) as in force from time to time if the notification procedure pursuant to sub-paragraph (i) above does not apply; or shall deduct the Swiss Withholding Tax at the reduced rate resulting after discharge of part of such tax by notification if the notification procedure pursuant to sub-paragraph (i) applies for a part of the Swiss Withholding Tax only; and shall pay within the time allowed any such taxes deducted to the Swiss Federal Tax Administration; and
 - (iii) shall promptly notify the Agent that such notification or, as the case may be, deduction has been made, and provide the Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the

case may be, such taxes deducted have been paid to the Swiss Federal Tax Administration.

- (f) In the case of a deduction of Swiss Withholding Tax, the Swiss Obligor shall use its best efforts to ensure that any person that is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment under this Agreement or any other Finance Document, will, as soon as possible after such deduction:
 - (i) request a refund of the Swiss Withholding Tax under applicable law (including tax treaties), and
 - (ii) pay to the Agent upon receipt any amount so refunded.
- (g) Without derogation to paragraph (b) above and to the extent the Swiss Obligor is required to deduct Swiss Withholding Tax pursuant to this Agreement or any other Finance Document, and if the Freely Disposable Amount is not fully utilised, the Swiss Obligor will be required to pay an additional amount so that after making any required deduction of Swiss Withholding Tax, the aggregate net amount paid to the Finance Parties is equal to the amount which would have been paid if no deduction of Swiss Withholding Tax had been required, provided that the aggregate amount paid (including the additional amount) shall in any event be limited to the Freely Disposable Amount available from time to time.

18. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement.

18.1 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business in all material respects as it is being conducted.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (howsoever described) under any such agreement or instrument, in each case to an extent which has or would reasonably be expected to have a Material Adverse Effect.

18.4 **Power and authority**

It has the power to enter into, exercise its rights under, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

18.5 **Validity and admissibility in evidence**

All Authorisations required:

- (a) to enable it lawfully to enter into and exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect, or will, when required, be obtained or effected and are in full force and effect to the extent required at the date the representation and warranty in this Clause 18.5 is made or deemed to be repeated, subject to the Legal Reservations.

18.6 **Governing law and enforcement**

- (a) The governing law specified in each Finance Document will be recognised and enforced in its jurisdiction of incorporation, subject to the Legal Reservations.
- (b) Any enforceable civil judgment for a monetary claim obtained in England in relation to a Finance Document will be recognised and declared enforceable upon request in its jurisdiction of incorporation, subject to the Legal Reservations.

18.7 **Deduction of Tax**

Subject to Clause 18.17 (*Compliance with Swiss Non-Bank Rules*), it is not required to make any Tax Deduction from any payment it may make under any Finance Document.

18.8 **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

18.9 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or would reasonably be expected to have a Material Adverse Effect.

18.10 **No misleading information**

- (a) Subject to paragraph (b) below, all written factual information provided by it or any member of the Group to a Finance Party in connection with the Finance Documents was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given.
- (b) The representation and warranty made in paragraph (a) above with respect to any report or other materials prepared by a third party adviser is made by each Obligor to the best of its knowledge after making reasonable enquiries provided that no member of the Group shall be obliged to review or make enquiry in relation to matters within the technical or professional expertise of the third party adviser preparing such report or other materials.

18.11 **Financial statements**

- (a) The Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) The financial statements most recently delivered to the Agent (which include the Original Financial Statements) fairly represent the Group's financial condition as at the end of the relevant financial year and operations during the relevant financial year (in each case on a consolidated basis), except to the extent disclosed to the Agent in writing to the contrary.
- (c) There has been no material adverse change in the business or consolidated financial condition of the Group, since the date of the Original Financial Statements.

18.12 **No proceedings pending or threatened**

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which are reasonably likely to be adversely determined and, if adversely determined, would reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any member of the Group in writing.
- (b) No judgment or order of a court, arbitral body or agency which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any member of the Group.

18.13 **Ranking**

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

18.14 **Sanctions**

- (a) Neither it nor any of its Subsidiaries, nor any directors, officers or, to the best of its knowledge, any employee, of it or any of its Subsidiaries is a Restricted Person.
- (b) The Group has instituted and maintained policies and procedures designed to promote and achieve compliance with Sanctions.

- (c) The representations and warranties in paragraphs (a) and (b) above shall not apply to or operate for the benefit of the Obligors, any member of the Group or any Finance Party to the extent that such representations and warranties would violate, or expose any such entity or any of its directors, officers or employees to any liability under, any anti-boycott or blocking law, regulation or statute that is in force from time to time in the European Union (and/or any of its member states) and is applicable to such entity (including, to the extent applicable, EU Regulation (EC) 2271/96 and Section 7 of the German Foreign Trade Ordinance (Verordnung zur Durchführung des Außenwirtschaftsgesetzes (Außenwirtschaftsverordnung – AWV)).

18.15 **Anti-bribery and corruption**

- (a) Each Obligor is conducting its business in compliance with all Anti-Corruption Laws.
- (b) The Group has instituted and maintained policies and procedures designed to promote and achieve compliance with Anti-Corruption Laws.

18.16 **Anti-money laundering**

- (a) The operations of each Obligor are in material compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulation thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over it (collectively, the "**AML Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any member of the Group with respect to the AML Laws is pending or, to the best knowledge of each Obligor, threatened.
- (b) The Group has instituted and maintained policies and procedures designed to promote and achieve compliance with AML Laws.

18.17 **Compliance with Swiss Non-Bank Rules**

- (a) The Borrower is in compliance with the Swiss Non-Bank Rules, provided that this representation shall not be breached if the Swiss Ten Non-Bank Rules is breached solely by reason of:
 - (i) a Lender (having confirmed at the time that it became a Lender that it is, for purposes of Swiss Withholding Tax, a Swiss Qualifying Bank) ceasing to be a Swiss Qualifying Bank;
 - (ii) a Lender (having confirmed at the time that it became a Lender that it is, for purposes of Swiss Withholding Tax, a single Swiss Non-Qualifying Bank) ceasing to be a single Swiss Non-Qualifying Bank;
 - (iii) a confirmation given by that Lender under Clause 12.5 (*Lender Status Confirmation*) above or in any Transfer Certificate, Assignment Agreement or Increase Confirmation or other documentation which it executes on becoming a Lender under this Agreement regarding the status for the purposes of the Swiss Non-Bank Rules being incorrect as per such date; or
 - (iv) that Lender not having complied with its obligations under Clause 22 (*Changes to the Lenders*).
- (b) For purposes of compliance with the Swiss Twenty Non-Bank Rules, the number of Lenders under this Agreement which are Swiss Non-Qualifying Banks shall be

deemed to be five (5), irrespective of whether or not there are, at any time, less than five (5) Lenders which are Swiss Non-Qualifying Banks.

18.18 Repetition

- (a) Subject to paragraph (b) below, the representations set out in this Clause 18 are made by each Obligor only on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period, except for the representations and warranties set out at Clause 18.10 (*No misleading information*) and Clause 18.11(b) (*Financial statements*) which are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date such information was provided or the date on which the most recent financial statements were delivered to the Agent.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 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.

19.1 Financial statements

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

- (a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years, its audited consolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 120 days after the end of the first half of each of its financial years, its consolidated financial statements for that financial half year.

19.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Parent pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director as fairly presenting its financial condition as at the date at which those financial statements were drawn up.
- (b) The Parent shall procure that the Original Financial Statements and each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared in accordance with IFRS consistently applied, 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, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Agent:
 - (i) a description of any change necessary for those financial statements to reflect IFRS, accounting practices and reference periods 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 make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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

19.3 Information: miscellaneous

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

- (a) all documents dispatched by it to its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, which if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group, and which could reasonably be expected to have a Material Adverse Effect; and
- (d) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request (subject to any confidentiality obligations binding on that member of the Group).

19.4 Notification of default

- (a) Each Obligor shall promptly notify the Agent of any Default (and the steps, if any, being taken to remedy it) upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.5 Use of websites

- (a) An Obligor 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 that Obligor 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 relevant Obligor 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 relevant Obligor 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 relevant Obligor accordingly and that Obligor shall supply the information to the Agent (in sufficient copies for each Paper

Form Lender) in paper form. In any event an Obligor shall 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 an Obligor and the Agent.
- (c) An Obligor 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 Obligor 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 an Obligor notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by that Obligor 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. Each Obligor shall comply with any such request within ten Business Days.

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

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and

be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

20. GENERAL UNDERTAKINGS

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

20.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) on request by the Agent, supply certified copies to the Agent of,

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

20.2 Compliance with laws

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

20.3 Negative pledge

In this Clause 20.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group shall), create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no other member of the Group 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 it or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms (being terms which do not meet any requirement for de-recognition under IFRS);
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

(i) any Security or Quasi-Security over or affecting any asset of the Group in existence as at the date of this Agreement or in connection with the refinancing of the liabilities secured by such Security or Quasi-Security provided that the principal amount secured by such Security or Quasi-Security (including pursuant to any refinancing) is not increased after the date of this Agreement;

(ii) any Security or Quasi-Security of a member of the Target Group which is outstanding as at the date of this Agreement or which is created prior to the Acquisition Completion Date and any Security or Quasi-Security that is created either in order to comply with the requirements of such Security or Quasi-Security or the liabilities secured thereby or in connection with the refinancing of the liabilities secured by any such Security or Quasi-Security provided that the principal amount secured by such Security or Quasi-Security is not increased pursuant to such refinancing;

(iii) any netting or set-off arrangement entered into by a member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(iv) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:

(A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or

(B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

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

(v) any lien arising by operation of law and in the ordinary course of trading;

(vi) any Security arising under the general terms and conditions of banks or Sparkassen (*Allgemeine Geschäftsbedingungen der Banken oder Sparkassen*) with whom any member of the Group maintains a banking relationship;

(vii) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:

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

- (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (C) the Security or Quasi-Security is removed or discharged within six months of the date of acquisition of such asset;
- (viii) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (C) the Security or Quasi-Security is removed or discharged within six months of that company becoming a member of the Group;
- (ix) any Security or Quasi-Security entered into pursuant to any Finance Document;
- (x) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (xi) any Security or Quasi-Security created by a member of the Group which that member of the Group also creates in favour of the Finance Parties on substantially equivalent terms on a pari passu basis; or
- (xii) any Security or Quasi-Security created by a member of the Group securing indebtedness, obligations or liabilities not permitted in any of the other paragraphs above, the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness, obligations or liabilities which have the benefit of Security given by any member of the Group and permitted only pursuant to this paragraph (xii) does not exceed EUR 200,000,000 (or its equivalent in any other currency).

20.4 Merger

- (a) No Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above does not apply to any amalgamation, demerger, merger or corporate reconstruction involving an Obligor on a solvent basis where the surviving entity or the entity retaining all of the assets the subject of the amalgamation, demerger, merger or corporate reconstruction is that Obligor from the date of completion of the relevant transaction.

20.5 Change of business

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

20.6 Sanctions

- (a) The Borrower shall not (and shall procure that none of its Subsidiaries shall) use, lend, contribute or otherwise make available all or any part of the proceeds of any Loan or other transaction contemplated by this Agreement:
 - (i) to finance or facilitate any trade, business or other activities involving, or for the benefit of, any Restricted Person, or in any Sanctioned Country; or
 - (ii) in any other manner that would result in any person, including but not limited to a Finance Party, being in breach of any Sanctions or becoming a Restricted Person.
- (b) The undertakings in paragraph (a) and (b) above shall not apply to or operate for the benefit of the Obligors, any member of the Group or any Finance Party to the extent that such representations and warranties would violate, or expose any such entity or any of its directors, officers or employees to any liability under, any anti-boycott or blocking law, regulation or statute that is in force from time to time in the European Union (and/or any of its member states) and is applicable to such entity (including, to the extent applicable, EU Regulation (EC) 2271/96 and Section 7 of the Section 7 of the German Foreign Trade Ordinance (Verordnung zur Durchführung des Außenwirtschaftsgesetzes (Außenwirtschaftsverordnung – AWW)).

20.7 Compliance with Swiss Non-Bank Rules

- (a) The Borrower shall be in compliance with the Swiss Non-Bank Rules, provided that this undertaking shall not be breached if the Swiss Ten Non-Bank Rule is breached solely by reason of:
 - (i) a Lender (having confirmed at the time that it became a Lender that it is, for purposes of Swiss Withholding Tax, a Swiss Qualifying Bank) ceasing to be a Swiss Qualifying Bank and/or a Lender (having confirmed at the time that it became a Lender that it is, for purposes of Swiss Withholding Tax, a single Swiss Non-Qualifying Bank) ceasing to be a single Swiss Non-Qualifying Bank;
 - (ii) a confirmation given by that Lender under Clause 12.5 (*Lender Status Confirmation*) above or in any Transfer Certificate, Assignment Agreement or Increase Confirmation or other documentation which it executes on becoming a Lender under this Agreement regarding the status for the purposes of the Swiss Non-Bank Rules being incorrect as per such date; or
 - (iii) that Lender not having complied with its obligations under Clause 22 (*Changes to the Lenders*).
- (b) For purposes of compliance with the Swiss Twenty Non-Bank Rules, the number of Lenders under this Agreement which are Swiss Non-Qualifying Banks shall be deemed to be five (5), irrespective of whether or not there are, at any time, less than five (5) Lenders which are Swiss Non-Qualifying Banks.

20.8 Acquisition undertakings

- (a) The Borrower shall comply in all material respects with the Takeover Code (subject to any waiver or dispensation granted by the Panel) and all applicable laws or regulations relating to the Acquisition, save where non-compliance could not reasonably be expected to be materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents.
- (b) Unless otherwise agreed by the Majority Lenders, and without prejudice to paragraph (c) below, the Borrower shall:
- (i) if the Acquisition is effected by way of the Offer, ensure that the terms and conditions of the Offer Documents are not materially inconsistent with the terms and conditions of the Offer as contained in the Announcement, save for any amendments required by the Panel or any regulatory or governmental authority or as required in order to satisfy the terms of the Takeover Code;
 - (ii) if the Acquisition is effected by way of the Scheme, ensure that the terms and conditions of the Scheme Documents are not materially inconsistent with the terms and conditions of the Scheme as contained in the Announcement, save for any amendments required by the Panel or any regulatory or governmental authority or as required in order to satisfy the terms of the Takeover Code;
 - (iii) if the Acquisition is effected by way of the Scheme, within 2 (two) Business Days of receipt (to the extent an Obligor receives a copy of the Scheme Court Order from the Target), deliver a copy of the Scheme Court Order to the Agent;
 - (iv) if the Acquisition is effected by way of the Offer, not reduce the acceptance threshold below 50% of the voting shares in the capital of the Target plus one such share (the "**Minimum Acceptance Threshold**") (other than to the extent such reduction is required by the Panel); and
 - (v) not without the written consent of the Agent, allow to be issued on its behalf any press release or other publicity which refers to the Facility or any Finance Party unless required by law, the Takeover Code, the Financial Conduct Authority, the AIM Rules or the Panel. In that case, the Borrower shall (in each case, to the extent permitted by law, regulation, applicable stock exchange rules and the provisions of the Takeover Code) notify the Agent as soon as practicable upon becoming aware of the requirement, shall consult with the Agent on the terms of reference and shall have regard to any comments of the Agent.
- (c) Subject to paragraph (d) below, the Borrower shall:
- (i) not amend or waive any material term or condition of any Scheme; and
 - (ii) not amend or waive any material term or condition of any Offer,
- as the case may be, contained in the relevant Announcement or any Scheme Circular or, as the case may be, Offer Documents, in a manner which would be materially prejudicial to the interests of the Lenders (taken as a whole) other than any amendment or waiver:

- (A) required by the Panel or the Court or reasonably determined by the Borrower (acting on the advice of its legal advisers) as being necessary to comply with the requirements of the Takeover Code, the Panel or the Court or any other relevant regulatory body or applicable law or regulation;
 - (B) relating to the Acquisition where such waiver does not relate to a condition which the Borrower reasonably considers that it would be entitled, in accordance with Rule 13.5(a) of the Takeover Code, to invoke so as to cause the Acquisition not to proceed, to lapse, or be withdrawn;
 - (C) subject to paragraph (e) below, increasing the price to be paid for the Shares;
 - (D) if the Acquisition is intended to be implemented by way of a Scheme, extending the latest date before which the Court Meeting, the Target General Meeting and/or the Court Hearing must have taken place, or the latest date on which the Scheme Effective Date must have occurred, or, if the Acquisition is intended to be implemented by way of an Offer, extending the period in which holders of Shares may accept the Offer; or
 - (E) otherwise made with the consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed).
- (d) For the avoidance of doubt, in the event that:
- (i) the Target has issued a Scheme Circular or the Borrower has announced that it intends to implement the Acquisition by way of a Scheme, nothing in paragraph (c) above shall prevent the Borrower from subsequently implementing the Acquisition by way of an Offer; and
 - (ii) the Borrower has published an Offer Document or announced that it intends to implement the Acquisition by way of an Offer, nothing in paragraph (c) above shall prevent the Borrower from subsequently implementing the Acquisition by way of a Scheme.
- (e) The Borrower shall not increase, or do anything which would result in an increase of the purchase price for the Shares specified in the Announcement, other than an increase:
- (i) with the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed); or
 - (ii) which is entirely funded by the Borrower using (a) cash in hand of the Group; (b) the proceeds from any utilisation of any Existing Debt by a member of the Group; or (c) the proceeds from any subscription of shares in an Obligor.
- (f) The Borrower shall provide the Agent with such information as it may reasonably request regarding the status and progress of the Acquisition (including, without limitation, the current level of acceptances in respect of any Offer) (in each case, subject to any confidentiality, regulatory or other restrictions relating to the supply of such information) and shall notify the Agent promptly after becoming aware that:

- (i) if the Acquisition is effected by means of a Scheme, the Scheme Court Order has been issued and a copy has been delivered to the Registrar;
- (ii) if the Acquisition is effected by means of an Offer:
 - (A) the Offer Documents have been sent to the shareholders of the Target; and
 - (B) the Offer has become, or been declared, unconditional in all respects.
- (g) If the Scheme or the Offer, as applicable, lapses or is withdrawn (or the Borrower switches to an Offer or a Scheme, as applicable), the Borrower shall promptly and in any event not later than within five Business Days of such event, notify the Agent.
- (h) The Borrower shall not take any action which would require it to make a mandatory offer for the shares in the Target pursuant to Rule 9 of the Takeover Code.
- (i) If the Acquisition is intended to be implemented by way of an Offer and the Borrower becomes entitled to implement the Squeeze-Out Procedure, the Borrower shall give Squeeze-Out Notices to the holders of Shares promptly on becoming so entitled.

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 21 is an Event of Default (save for Clause 21.11 (*Acceleration*) and Clause 21.12 (*Clean-up Period*)).

21.1 Non-payment

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

- (a) administrative or technical error; or
- (b) a Disruption Event,

and payment is made within three Business Days of its due date.

21.2 Other obligations

An Obligor does not comply with any term of any Finance Document (other than those referred to in Clause 21.1 (*Non-payment*) above) unless the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (a) the Agent giving notice to the Borrower and (b) the Borrower or the relevant Obligor becoming aware of the failure to comply.

21.3 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on its behalf under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the circumstances giving rise to the misrepresentation or breach of warranty are capable of remedy and are remedied within 20 Business Days of the earlier of (a) the Agent giving notice to the Borrower and (b) the Borrower or the relevant Obligor becoming aware of the misrepresentation.

21.4 **Cross payment default and cross acceleration**

- (a) Any Financial Indebtedness of any member of the Group:
 - (i) is not paid when due nor within any originally applicable grace period; or
 - (ii) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
 - (iii) any commitment for any such Financial Indebtedness is cancelled or suspended by a creditor of a member of the Group as a result of an event of default (however described).
- (b) No Event of Default shall occur pursuant to paragraph (a) above if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraph (a) above is less than EUR 200,000,000 (or its equivalent in any other currency or currencies).

21.5 **Insolvency**

- (a) A member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any member of the Group.
- (c) Any Swiss Obligor is over-indebted (*überschuldet*) within the meaning of article 725b et seq. CO, unless creditors have subordinated their claims sufficient to eliminate such over-indebtedness in accordance with article 725b et seq. CO.

21.6 **Insolvency proceedings**

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of a member of the Group which is not an Obligor;
- (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
- (d) enforcement of any Security over any assets of any member of the Group provided that the aggregate value of any such assets subject to enforcement exceeds EUR 200,000,000 (or its equivalent in any other currency or currencies),

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

This Clause 21.6 shall not apply to:

- (i) any winding-up petition which is frivolous or vexatious and is withdrawn, discharged, stayed or dismissed within 30 Business Days of commencement;
- (ii) any summons for payment (*Zahlungsbefehl*) issued against any member of the Group against which the relevant member of the Group has raised an objection (*Rechtsvorschlag*) for as long as such objection is not set aside (*provisorische oder definitive Rechtsöffnung*); or
- (iii) an intra-group reorganisation on a solvent basis not involving an Obligor which otherwise complies with the terms of this Agreement.

21.7 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group having an aggregate value of more than EUR 200,000,000 (or its equivalent in any other currency or currencies) and which is not discharged within 15 Business Days.

21.8 **Ownership of the Borrower**

The Borrower is not or ceases to be a wholly-owned Subsidiary of the Parent.

21.9 **Unlawfulness**

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

21.10 **Repudiation**

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

21.11 **Acceleration**

Subject to Clause 4.2 (*Certain Funds*), 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 Borrower:

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

21.12 Clean-Up Period

Notwithstanding any other provision of any Finance Document, any breach of any representation or warranty, any breach of any undertaking or other term of a Finance Document or any Default which in each case constitutes a Clean-Up Default and which occurs during the Clean-Up Period will be deemed not to be a breach of representation or warranty, a breach of undertaking or other term or a Default (as the case may be) and will not have any of the consequences that such a breach of representation or warranty, breach of undertaking or other term of a Finance Document or Default would otherwise have under this Agreement if:

- (a) it would have been (if it were not for this Clause 21.12) a breach of representation or warranty, a breach of covenant or a Default only by reason of circumstances relating exclusively to the Target Group (or any obligation of an Obligor to procure or ensure in relation to a member of the Target Group);
- (b) it is capable of remedy and reasonable steps are being taken to remedy it;
- (c) the circumstances giving rise to it have not been procured by or approved by any Obligor; and
- (d) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the end of the Clean-Up Period, there shall be a breach of representation or warranty, breach of covenant or undertaking or Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

Subject to this Clause 22, a Lender (the **Existing Lender**) may:

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

under the Finance Documents 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**).

22.2 Conditions of assignment or transfer

- (a) Prior to the expiry of the Certain Funds Period, the prior written consent of the Borrower (which shall be at the Borrower's sole and absolute discretion) is required for any assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) by an Existing Lender unless the assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) is made at a time when a Major Default is continuing.
- (b) On and following the expiry of the Certain Funds Period, in respect of any transfer or assignment (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) in relation to the Facility, the prior written consent of the Borrower is required for an assignment or transfer (or any voting sub-

participation or other derivative transaction having a similar effect or similar voting sub-contract) by an Existing Lender unless:

- (i) the assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) is to another Lender or to an Affiliate of a Lender (provided that such Affiliate is a Swiss Qualifying Bank; or
 - (ii) the assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) is made at a time when an Event of Default is continuing.
- (c) On and following the expiry of the Certain Funds Period, the consent of the Borrower to an assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) must not be unreasonably withheld or delayed. It is not unreasonable for the Borrower to withhold its consent if, following such assignment or transfer (or any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract), the Swiss Non-Bank Rules would be violated. On and following the expiry of the Certain Funds Period, the Borrower will be deemed to have given its consent ten Business Days after the Lender has requested it in accordance with Clause 29 (*Notices*) unless consent is expressly refused by the Borrower within that time.
- (d) An assignment will only be effective on:
- (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (e) A transfer will only be effective if the procedure set out in Clause 22.5 (*Procedure for transfer*) is complied with.
- (f) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change (including by way of any voting sub-participation or other derivative transaction having a similar effect or similar voting sub-contract) occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or Clause 13.1 (*Increased Costs*),

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

- (g) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

22.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of GBP 3,000.

22.4 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 Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

22.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 22.2 (*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 delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 22.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **Discharged Rights and Obligations**);
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Mandated Lead Arranger 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**.

22.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 22.2 (*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 delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 22.10 (*Pro rata interest settlement*), on the Transfer Date:

- (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Assignment Agreement; and
- (iii) the New Lender shall become a Party as a **Lender** and will be bound by obligations equivalent to the Relevant Obligations.
- (iv) Lenders may utilise procedures other than those set out in this Clause 22.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 22.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*).

22.7 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower**

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

22.8 **Exposure transfers**

Nothing in this Agreement shall prevent any Lender from entering into any risk exposure transfer arrangement (including by means of assignments) with any person in relation to this Agreement (including, for the avoidance of doubt, with sub-participants or other risk transferees and including, for the avoidance of doubt, with persons that are Swiss Non-Qualifying Banks), provided that under such arrangement through the life of such arrangement:

- (a) the relationship between the Lender and the third party is that of a debtor and creditor (including during the bankruptcy or similar event affecting the Lender or an Obligor);
- (b) the third party has no proprietary interest in the benefit of this Agreement or in any monies received by the Lender under or in relation to this Agreement;
- (c) there is no transfer of voting rights from the Lender to the third party; and
- (d) the third party under no circumstances will (other than permitted assignments and transfers under this Clause 22 (*Changes to the Lenders*)):
 - (i) be subrogated to, or substituted in respect of, the Lender's claims under this Agreement; or
 - (ii) otherwise have any contractual relationship with, or rights against, an Obligor under or in relation to this Agreement.

22.9 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 22, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its

rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents;
- (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents; or
- (iii) result in a breach of the Swiss Ten Non-Bank Rule.

22.10 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 22.5 (*Procedure for transfer*) or any assignment pursuant to Clause 22.6 (*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) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period; and
- (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:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 22.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

In this Clause 22.10, references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

23. NO CHANGE TO THE OBLIGORS

23.1 No assignment or transfer by Obligors

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

24. ROLE OF THE AGENT AND THE MANDATED LEAD ARRANGER

24.1 Appointment of the Agent

- (a) The Mandated Lead Arranger and the Lenders appoint the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the other Finance Parties authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

24.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (e) Without prejudice to the remainder of this Clause 24.2 (*Instructions*), in the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.

- (f) The Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Finance Documents.

24.3 Duties of the Agent

- (a) The duties of the Agent under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 22.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Mandated Lead Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (h) The Agent shall be entitled to deal with money paid to it by any person for the purposes of this Agreement in the same manner as other money paid to a banker by its customers except that it shall not be liable to account to any person for any interest or other amounts in respect of the money.

24.4 Role of the Mandated Lead Arranger

Except as specifically provided in the Finance Documents, the Mandated Lead Arranger does not have any obligations of any kind to any other Party under or in connection with any Finance Document.

24.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Mandated Lead Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

24.6 Business with the Group

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

24.7 Rights and discretions

- (a) The Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (iii) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Borrower (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 and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent, (and so separate from any lawyers instructed by the Lenders) if the Agent, in its reasonable opinion, deems this to be desirable.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or

losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct (as applicable).
- (g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Mandated Lead Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (k) The Agent may refrain, without liability, from doing anything that would or might in its reasonable opinion be contrary to any law of any state or jurisdiction (including but not limited to the United States or any jurisdiction forming a part of it and England & Wales) or any directive or regulation of any agency of any such state or jurisdiction and may without liability do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

24.8 **Responsibility for documentation**

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Mandated Lead Arranger, an Obligor or any other person given in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

24.9 No duty to monitor

The Agent shall not be bound to enquire:

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

24.10 Exclusion of liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct;
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for 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:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph (b) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Mandated Lead Arranger to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,

on behalf of any Finance Party and each Finance Party confirms to the Agent and the Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Mandated Lead Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

24.11 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent within three Business Days of demand, against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 27.12 (*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).

24.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom or Switzerland as successor by giving notice to the Lenders and the Borrower.

- (b) Alternatively the Agent may resign by giving 30 days' notice to Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom or Switzerland).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 24 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The resignation notice of the Agent shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (f) above) but shall remain entitled to the benefit of Clause 24.11 (*Lenders' indemnity to the Agent*), and this Clause 24 (and any fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' 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.
- (i) The Agent shall resign in accordance with this Clause (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 12.8 (*FATCA information*) and the Borrower 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 12.8 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date: or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

24.13 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.

24.14 Relationship with the Lenders

- (a) Subject to Clause 22.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 29.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address, department and officer by that Lender for the purposes of Clause 29.2 (*Addresses*) and Clause 29.6(a) (*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.

24.15 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Mandated Lead Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (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 Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy 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 any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

24.16 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.

25. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

26. SHARING AMONG THE FINANCE PARTIES

26.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with Clause 27 (*Payment Mechanics*) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents 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 27 (*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 27.7 (*Partial payments*).

26.2 **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 27.7 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

26.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 26.2 (*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.

26.4 **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 which has received a share of the relevant Sharing Payment pursuant to Clause 26.2 (*Redistribution of payments*) 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.

26.5 **Exceptions**

- (a) This Clause 26 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

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

27. PAYMENT MECHANICS

27.1 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, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

27.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to*) and Clause 27.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

27.3 Distributions to an Obligor

The Agent may (with the specific prior written consent of the Obligor or in accordance with Clause 28 (*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.

27.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:

- (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
- (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

27.5 Amounts paid in error

- (a) In this Clause: "**Erroneous Payment**" means a payment of an amount by the Agent to another Finance Party which the Agent determines (in its sole discretion) was made in error.
- (b) If the Agent pays an amount to another Finance Party and the Agent notifies that Finance Party that such payment was an Erroneous Payment then the Finance Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) Neither:
 - (i) the obligations of any Finance Party to the Agent; nor
 - (ii) the remedies of the Agent,(whether arising under this Clause 27.5 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (c), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Finance Party).
- (d) All payments to be made by a Finance Party to the Agent (whether made pursuant to this Clause 27.5 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

27.6 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 27.1 (*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 a bank which is acceptable to the Majority Lenders and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower 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 27.6 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 24.12 (*Resignation of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 27.2 (*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.

27.7 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under 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 or the Mandated Lead Arranger 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
 - (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 subparagraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

27.8 **No set-off by Obligors**

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

27.9 **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

27.10 **Currency of account**

- (a) Subject to paragraphs (b) and (c) below, sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

27.11 **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 Borrower); 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 Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

27.12 **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 Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

- (b) the Agent shall not be obliged to consult with the Borrower 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 Borrower 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 33 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including 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 27.12; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (e) above.

28. SET-OFF

Subject to Clause 4.2 (*Certain Funds*), 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.

29. NOTICES

29.1 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 email or letter.

29.2 Addresses

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

- (a) in the case of the Borrower and the Parent, that identified with its name below;
- (b) in the case of the Agent, that identified with its name below; and
- (c) in the case of each other Finance Party, that notified in writing to the Agent on or prior to the date on which it becomes a Party,

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

29.3 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 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; or
 - (ii) if by email or any other electronic communication, when received in legible form,

and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*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 Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

29.4 Notification of address

Promptly upon receipt of notification of an address or change of address pursuant to Clause 29.2 (*Addresses*) or changing its own address, the Agent shall notify the other Parties.

29.5 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.

29.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means to the extent that the two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) 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

- (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
- (d) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 29.6.

29.7 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

30. **CALCULATIONS AND CERTIFICATES**

30.1 **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.

30.2 **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

30.3 **Day count convention and interest calculation**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
 - (i) on the basis of the actual number of days elapsed and a year of 365 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
 - (ii) subject to paragraph (b) below, without rounding.

- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

31. 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.

32. 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 of any such right or remedy or constitute an election to affirm the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

33. AMENDMENTS AND WAIVERS

33.1 Required consents

- (a) Subject to Clause 33.2 (*All Lender matters*) and Clause 33.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 33.
- (c) Paragraph (c) of Clause 22.10 (*Pro rata interest settlement*) shall apply to this Clause 33.

33.2 All Lender matters

- (a) Subject to Clause 33.4 (*Changes to the Reference Rates*), an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:
 - (i) the definition of "Majority Lenders", "Restricted Person", "Sanctions" or "Sanctions List" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iv) a change in currency of payment of any amount under the Finance Documents;
 - (v) an increase in any Commitment (except in relation to an increase in the Commitments in accordance with Clause 2.2 (*Increase*)), or an extension of

the Availability Period, or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;

- (vi) a change to the Borrower or the Guarantor;
- (vii) the nature or scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and indemnity*);
- (viii) any provision which expressly requires the consent of all the Lenders; or
- (ix) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 7.2 (*Change of control*), Clause 7.4 (*Application of mandatory prepayments*), Clause 7.10 (*Application of prepayments*), Clause 22 (*Changes to the Lenders*), Clause 23 (*No change to the Obligors*), Clause 26 (*Sharing Among the Finance Parties*), this Clause 33 (*Amendments and Waivers*), Clause 38 (*Governing Law*) or Clause 39.1 (*Jurisdiction of English courts*),

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

33.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent or the Mandated Lead Arranger (each in their capacity as such) may not be effected without the consent of the Agent or the Mandated Lead Arranger (as the case may be).

33.4 Changes to the Reference Rates

- (a) Subject to Clause 33.3 (*Other exceptions*), any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Reference Rate; and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
 - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Reference Rate;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

(b) Any amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

- (i) relates to the use of a risk-free reference rate on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- (ii) is issued on or after the date of this Agreement,

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

(c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or paragraph (b) above within 20 Business Days (or such longer time period in relation to any request which the Borrower and the Agent may agree) of that request being made:

- (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

(d) In this Clause 33.4:

(i) **"RFR Replacement Event"** means:

(A) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders and the Borrower materially changed;

(B)

I.

(a) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or

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

provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;

II. the administrator of the RFR publicly announces that it has ceased or will cease to provide the RFR permanently

- or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
- III. the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or
 - IV. the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
- (C) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- I. the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
 - II. the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the "RFR Contingency Period" in the Reference Rate Terms; or
- (D) in the opinion of the Majority Lenders and the Borrower, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.
- (ii) **"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.
- (iii) **"Replacement Reference Rate"** means a reference rate which is:
- (A) formally designated, nominated or recommended as the replacement for the RFR by:
 - I. the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); or
 - II. any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the **"Replacement Reference Rate"** will be the replacement under paragraph II above;
 - (B) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or
 - (C) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to the RFR.

33.5 Disenfranchisement of Defaulting Lenders

- (a) In ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, any Defaulting Lender's Commitments and/or participations shall not be included when ascertaining whether a certain percentage of total commitments and/or participations has been obtained to an amendment or waiver.
- (b) For the purposes of this Clause 33.5, the Agent may assume that the following Lenders are Defaulting Lenders:
- (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of **Defaulting Lender** has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

33.6 Replacement of a Defaulting Lender

- (a) Subject to compliance with the Swiss Non-Bank Rules, the Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 10 Business Days' prior written notice to the Agent and such Lender:
- (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
 - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender; or
 - (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 22 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a **Replacement Lender**) selected by the Borrower, which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 22 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 22.10 (*Pro rata interest settlement*) and other amounts payable in relation thereto under the Finance Documents; or

- (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (A) above.
- (b) Alternatively, the Borrower may prepay the relevant Defaulting Lender's participation in the Loans together with any accrued interest and/or cancel the relevant Defaulting Lender's Available Commitments in accordance with Clause 7.8 (*Right of cancellation in relation to a Defaulting Lender*).
- (c) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 33.6 shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than 45 days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (d) The Defaulting Lender shall perform the checks described in subparagraph (c)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

34. CONFIDENTIALITY

34.1 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 34.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

34.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to

maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom subparagraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including any person appointed under Clause 24.14 (*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 subparagraphs (b)(i) or (ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22.9 (*Security over Lenders' rights*);
 - (viii) who is a Party, a member of the Group or any related entity of the Borrower; or
 - (ix) with the consent of the Borrower;

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

- (A) in relation to subparagraphs (b)(i), (ii) and (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 subparagraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to subparagraphs (b)(v), (vi) and (vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom subparagraphs (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

34.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 38 (*Governing Law*);
 - (vi) the names of the Agent and the Mandated Lead Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;

- (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Termination Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Borrower, 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 Facility 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 Agent shall notify the Borrower and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

34.4 **Waiver**

The Borrower hereby releases the Finance Parties and its Affiliates from banking secrecy and all other confidentiality obligations (including any applicable Swiss banking secrecy obligation) for the purposes of any disclosure permitted by Clause 34.2 (*Disclosure of Confidential Information*) and, to the extent required, for entering into, and the administration, maintenance and enforcement of, the Finance Documents (or any other agreements or documents ancillary thereto), for the performance of its obligations or the enjoyment of its rights thereunder or to the extent that any such act requires the transfer of data or information to third parties.

34.5 **Entire agreement**

This Clause 34 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.

34.6 **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.

34.7 **Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 34.2(b)(v) (*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 34 (*Confidentiality*).

34.8 Continuing obligations

The obligations in this Clause 34 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

35. CONFIDENTIALITY OF FUNDING RATES

35.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the Borrower pursuant to Clause 8.4 (*Notifications*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent and each Obligor may disclose any Funding Rate to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall

be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the relevant Lender.

35.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to Clause 35.1(c)(ii) (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 35.

35.3 No Event of Default

No Event of Default will occur under Clause 21.2 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 35.

36. CONTRACTUAL RECOGNITION OF BAIL-IN

- (a) Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:
 - (i) any Bail-In Action in relation to any such liability, including (without limitation):
 - (A) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (B) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (C) a cancellation of any such liability; and

(ii) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

(b) In this Clause 36:

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or

any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and

- (c) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

37. 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.

38. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

39. ENFORCEMENT

39.1 Jurisdiction of English courts

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England sitting in London have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a **Dispute**).
- (b) The Parties agree that the courts of England sitting in London are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

39.2 **Service of process**

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

- (a) irrevocably appoints SIX Financial Information UK Limited whose registered office is at 4th Floor Exchequer Court, 33 St. Mary Axe, London, England, EC3A 8AA (Attn. Kerry Delaney) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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

**SCHEDULE 1
THE ORIGINAL LENDER**

Name of Original Lender	Commitment
UBS Switzerland AG	£240,000,000
Total	£240,000,000

SCHEDULE 2 CONDITIONS PRECEDENT

PART 1 - CONDITIONS PRECEDENT TO SIGNING

1. Corporate documentation

- 1.1. An electronic copy or other copy of the constitutional documents of each Obligor and an electronic copy or other copy of the shareholder and ultimate beneficial owner register of the Borrower.
- 1.2. An electronic copy or other copy of a resolution of the board of directors of each Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3. An electronic copy or other copy of a unanimous resolution of the shareholders of the Borrower approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
- 1.4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5. A certificate of each Obligor (signed by an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
- 1.6. A certificate of an authorised signatory of each Obligor certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Finance Documents

- 2.1. This Agreement.
- 2.2. The executed Fee Letter.

3. Legal opinions

- 3.1. A legal opinion of Herbert Smith Freehills LLP, legal advisers to the Mandated Lead Arranger and the Agent in England, substantially in the form distributed to the Original Lender prior to signing this Agreement.
- 3.2. A legal opinion of Walder Wyss Ltd, legal advisers to the Mandated Lead Arranger and the Agent in Switzerland, substantially in the form distributed to the Original Lender prior to signing this Agreement.

4. Acquisition Documents

A copy of the substantially final draft of the Announcement.

5. Other documents and evidence

- 5.1. The Original Financial Statements.
- 5.2. Evidence that any process agent referred to in Clause 39.2 (*Service of process*) has accepted its appointment.
- 5.3. A group structure chart assuming the Acquisition Completion Date has occurred and provided that such group structure chart shall not be required to be in a form and substance satisfactory to the Agent.
- 5.4. Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) (other than the Funding Fee referred to in Clause 11.3 (*Funding fee*)) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date (and this condition can be satisfied by delivery to the Agent of an executed copy of the Fee Letter).
- 5.5. Evidence required by the Original Lender for the purpose of any "know your customer" requirements.

PART 2 – CONDITIONS PRECEDENT TO FIRST UTILISATION

1. Evidence of Completion of the Acquisition

A certificate from the Borrower (signed by a director) addressed to the Agent:

- (a) attaching copies of the issued press release made by or on behalf of the Borrower announcing the Scheme (or the Offer) and the Scheme Documents (or Offer Documents) (provided that it is acknowledged that such documents do not have to be in form and substance satisfactory to the Agent for the purpose of this condition precedent if there is no breach of Clause 20.8 (*Acquisition undertakings*));
- (b) confirming the Scheme Effective Date has occurred or, where the Acquisition has proceeded by way of an Offer, confirming that the Unconditional Date has occurred; and
- (c) confirming that no material term or condition of the Scheme (or Offer) has been waived or amended in any respect in breach of the terms of this Agreement without the consent of the Majority Lenders.

2. Other documents and evidence

Evidence that the amount of the Funding Fee that is payable on the first Utilisation of the Facility then due from the Borrower pursuant to Clause 11.3 (*Funding fee*) has been paid or will be paid by the first Utilisation Date (and this condition will be satisfied as a deduction from the proceeds of the first Utilisation of the Facility).

SCHEDULE 3

REQUESTS

PART 1

UTILISATION REQUEST

From: [The Borrower]

To: [•]

Dated: [•]

**[The Borrower] - £[•] Facility Agreement
dated [•] 2024 (the Agreement)**

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

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Currency of Loan: Sterling

Amount: [] or, if less, the Available Facility

Interest Period: []
3. We confirm that each condition specified in Clause 4.2 (*Certain Funds*) 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 Borrower]

PART 2

FORM OF EXTENSION REQUEST

From: [The Borrower]

To: [•] as Agent

Dated: [•]

**[The Borrower] - £[•] Facility Agreement
dated [•] 2024 (the Agreement)**

1. We refer to the Agreement. This is an Extension Request.
2. Terms defined in the Agreement shall have the same meaning in this notice.
3. Pursuant to Clause 6.3 (*Extension of the Facility*) of the Agreement, we hereby request an extension of three (3) months to the Initial Termination Date, so that the Termination Date applicable to the Facility following such extension shall be [•].
4. We confirm that on the date of this Extension Request, no Event of Default has occurred and is continuing or would occur as a consequence of the extension.
5. We agree that, pursuant to Clause 6.3 (*Extension of the Facility*) of the Agreement, and as a condition to the extension becoming effective, the Borrower will, on or prior to the Termination Date, pay to the Agent (for the account of each Lender whose Commitments are subject to the extension) the extension fee required pursuant to Clause 6.3(b) (*Extension of the Facility*), in the amount of £[•].
6. This Extension Request and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....

authorised signatory for
[The Borrower]

**PART 3
SELECTION NOTICE**

From: [The Borrower]

To: [•] as Agent

Dated: [•]

**[The Borrower] - £[•] Facility Agreement
dated [•] 2024 (the Agreement)**

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in the Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on []*.
3. [We request that the above Loan(s) be divided into [] Loans with the following amounts and Interest Periods:]**

or
4. [We request that the next Interest Period for the above Loan(s) is []].***
5. This Selection Notice is irrevocable.
6. This Selection Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....

authorised signatory for
[The Borrower]

* Insert details of all Loans which have an Interest Period ending on the same date.

** Use this option is division of Loans is requested.

*** Use this option is sub-division is not required.

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: [•] as Agent

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

Dated:

[*The Borrower*] - £[•] Facility Agreement dated [●] 2024 (the Agreement)

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 22.5 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation in accordance with Clause 22.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participation[s] in the Loans under the Agreement as specified in the Schedule;
 - (b) The proposed Transfer Date is []; and
 - (c) The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.4 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - (a) [a Swiss Qualifying Bank; or]
 - (b) [a Swiss Non-Qualifying Bank;]¹
- [5/6]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- [6/7]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [7/8]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

¹ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

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

[The Agent]

By:

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: [•] as Agent and [*the Borrower*] as Borrower

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

Dated:

[*The Borrower*] - £[•] Facility Agreement dated [●] 2024 (the Agreement)

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 22.6 (*Procedure for assignment*):
 - (a) the Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in the Loans under the Agreement as specified in the Schedule;
 - (b) the Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participation[s] in the Loans under the Agreement specified in the Schedule; and
 - (c) the New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph 2(b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.4 (*Limitation of responsibility of Existing Lenders*).
7. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - (a) [a Swiss Qualifying Bank; or]
 - (b) [a Swiss Non-Qualifying Bank;]²
- [8/9]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) [and, upon delivery in accordance with Clause 22.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*) to the Borrower] of the assignment referred to in this Assignment Agreement.

² Delete as applicable – each New Lender is required to confirm which of these three categories it falls within

[10/11]. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.

[11/12]. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[12/13]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

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

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

[Agent]

By:

SCHEDULE 6

FORM OF INCREASE CONFIRMATION

To: [•] as Agent and [the Borrower]

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

Dated:

**[The Borrower] - £[•] Facility
Agreement dated [●] 2024 (the Facility Agreement)**

1. We refer to the Facility Agreement. This agreement (the "Agreement") shall take effect as an Increase Confirmation for the purpose of the Facility Agreement. Terms defined in the Facility 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 Facility 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 Facility 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 party to the relevant Finance Documents as a Lender.
6. The Facility Office and address and attention details for notices to the Increase Lender for the purposes of Clause 29.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (h) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - (a) [a Swiss Qualifying Bank; or]
 - (b) [a Swiss Non-Qualifying Bank;]³
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.
11. This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.
12. This Agreement has been entered into on the date stated at the beginning of this Agreement.

³ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[insert relevant details]

[Facility office address 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 Facility Agreement by the Agent and the Increase Date is confirmed as [].

Agent

By:

**SCHEDULE 7
REFERENCE RATE TERMS**

CURRENCY: Sterling.

Cost of funds as a fallback

Cost of funds will apply as a fallback.

Definitions

Additional Business Days: An RFR Banking Day.

Business Day Conventions (definition of "Month" and Clause 9.2 (Non-Business Days)): (a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:

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

(ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

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

(b) If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

Central Bank Rate: The Bank of England's Bank Rate as published by the Bank of England from time to time.

Central Bank Rate Adjustment: In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Agent or any other Finance Party which agrees to do so in place of the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

Central Bank Rate Spread: In relation to any RFR Banking Day, the difference, expressed as a percentage per annum) calculated by the Agent (or by any other Finance Party which agrees to do so in place of the Agent) of:

- (a) the RFR for that RFR Banking Day; and
- (b) the Central Bank Rate prevailing at close of business on that RFR Banking Day.

Daily Rate:

The "**Daily Rate**" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day;
- (b) if the RFR for that RFR Banking Day is not available, the Historic RFR for that RFR Banking Day; or
- (c) if paragraph (b) above applies but the Historic RFR for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
 - (i) the Central Bank Rate for that RFR Banking Day ; and
 - (ii) the applicable Central Bank Rate Adjustment; or
- (d) if paragraph (c) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
 - (i) the most recent Central Bank Rate for a day which is no more than 5 RFR Banking Days before that RFR Banking Day; and
 - (ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

Lookback Period:

Five RFR Banking Days.

Relevant Market:

The sterling wholesale market.

Reporting Day:

The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

RFR:

The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

RFR Banking Day:

A day (other than a Saturday or Sunday) on which banks are open for general business in London.

RFR Contingency Period

30 days.

Interest Periods

Length of Interest Period in absence of selection (Clause 9.1(c) (*Selection of Interest Periods*)): 1 Month.

Periods capable of selection as Interest Periods (Clause 9.1 (*Interest Periods*)): 1 or 3 Months.

Reporting Times

Deadline for Lenders to report their cost of funds in accordance with Clause 10.2 (*Cost of funds*) Close of business on the Reporting Day for the relevant Loan.

SCHEDULE 8
DAILY NON-CUMULATIVE COMPOUNDED RFR RATE

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

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

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

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

"**dcc**" means 365 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

"**n_i**" means the number of calendar days from, and including, that RFR Banking Day "i" up to, but excluding, the following RFR Banking Day; and

the "**Unannualised Cumulative Compounded Daily Rate**" for any RFR Banking Day (the "**Cumulated RFR Banking Day**") during that Interest Period is the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

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

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

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

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

the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to four decimal places) calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{DailyRate_{i-LP} \times n_i}{dcc} \right) - 1 \right] \times \frac{dcc}{tn_i}$$

where:

"**d₀**" means the number of RFR Banking Days in the Cumulation Period;

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

"**i**" means a series of whole numbers from one to d_0 , each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

"**DailyRate**_{**i**-LP}" means, for any RFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the Lookback Period prior to that RFR Banking Day "**i**";

"**n_i**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;

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

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

SIGNATORIES

Borrower

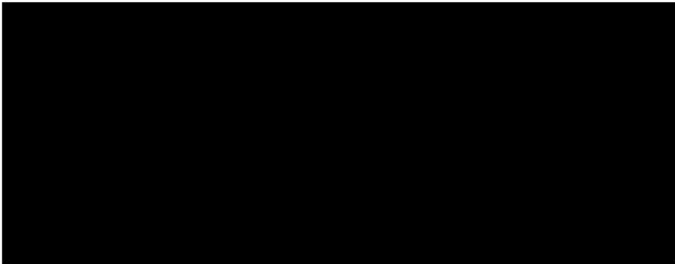
SIX EXCHANGE GROUP AG

By 

Name: Thomas Wellauer

By:.....

Name: Søren Mose

Address for notices: 

Attention:

Email:



SIGNATORIES

Borrower

SIX EXCHANGE GROUP AG

By:.....

Name: Thomas Wellauer



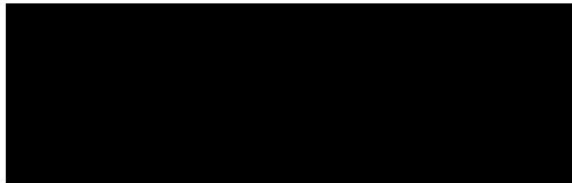
By:

Name: Søren Mose

Address for notices:

Attention:

Email:



Parent and Guarantor

SIX GROUP AG

By:



Name: Johannes Dijsselhof

By

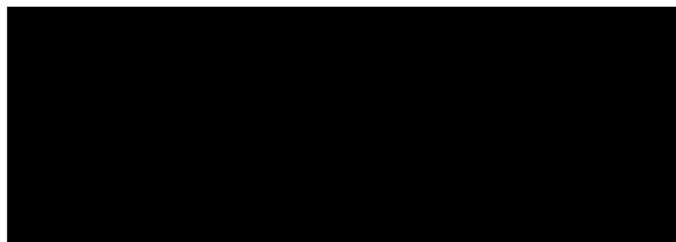


Name: Daniel Schmucki

Address for notices:

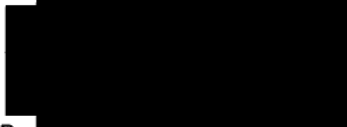
Attention:

Email:



Mandated Lead Arranger

UBS SWITZERLAND AG

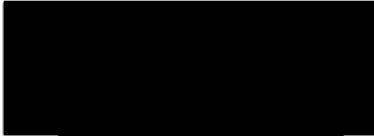

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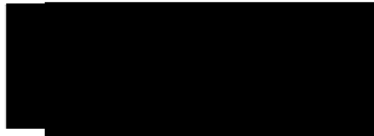


The Original Lender

UBS SWITZERLAND AG



By:



By:



Agent

Signed for and on behalf of **UBS SWITZERLAND AG**

[Redacted]
By:

[Redacted]
By:

Address for notices:
Attention:

E-mail:

[Redacted]

[Redacted]