

Dated 30 March 2022

**AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.
as the Company and the Original Guarantor**

**AGILITY MAYAN HOLDING W.L.L.
as the Original Borrower**

**THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1
as the Original Lenders**

**BARCLAYS BANK PLC
as Mandated Lead Arranger and Bookrunner**

and

**BARCLAYS BANK PLC
as Facility Agent**

**£480,000,000
ACQUISITION TERM LOAN FACILITY**

**Slaughter and May
One Bunhill Row
London
EC1Y 8YY
(RWB/AAXS)**

5776203706

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THIS AGREEMENT is dated 30 March 2022

BETWEEN:

- (1) **AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.** (the “**Company**” and the “**Original Guarantor**”);
- (2) **AGILITY MAYAN HOLDING W.L.L.**, a company incorporated in Bahrain with registration number 96038-1 and its commercial address at Flat 123, Building 283, Road 1704, Block 317, Diplomatic Area (the “**Original Borrower**”);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Parties*) with the titles as set out in that Schedule (whether acting individually, or together the “**Arrangers**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Parties*) as original lenders (in this capacity the “**Original Lenders**”); and
- (5) **BARCLAYS BANK PLC** as facility agent of the other Finance Parties (the “**Facility Agent**”).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

“**Accession Agreement**” means a letter, substantially in the form of Schedule 6 (*Form of Accession Agreement*), with such amendments as the Facility Agent and the Company may agree.

“**Acquisition**” means the acquisition of the Target Shares by the Purchaser which may be effected by any means (including, without limitation, pursuant to an Offer or Scheme and, if applicable, a Squeeze-Out or market purchases following the closing of any Offer and/or any Squeeze-Out). For the avoidance of doubt, the first Utilisation will be applied for the acquisition of Target Shares by the Purchaser pursuant to a Scheme or Offer (as applicable).

“**Acquisition Costs**” means:

- (a) any refinancing, repayment, conversion or redemption of any Existing Target Group Debt or any amount required to finance the Target and its Subsidiaries;
- (b) all fees, claims (including settlements thereof), costs, expenses or stamp, registration, transfer or other Taxes or other amounts incurred by (or required to be paid by) any member of the Group under or in connection with the acquisition of the Target Preference Shares, the Acquisition or the Acquisition Documents or any refinancing, repayment, redemption or financing referred to in paragraph (a); and

- (c) any integration or reorganisation costs resulting from the Acquisition or any amounts payable to third parties in connection with, or as a result of, the Acquisition.

“Acquisition Documents” means: (i) in relation to an Offer, the Offer Documentation; or (ii) in relation to a Scheme, the Scheme Documentation.

“Additional Borrower” means a member of the Group which becomes a Borrower after the date of this Agreement.

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

“Additional Guarantor” means a member of the Group which becomes a Guarantor after the date of this Agreement.

“Additional Obligor” means an Additional Borrower or an Additional Guarantor.

“Administrative Party” means each of the Arrangers and the Facility Agent.

“Affiliate” means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

“Agency Fee Letter” means the agency fee letter dated on or about the date of this Agreement entered into between the Facility Agent and the Company.

“ALP Entity” means any Subsidiary of the Company which:

- (a) is established by the Company or its Subsidiaries on or after the date of this Agreement; or
- (b) was established by the Company or its Subsidiaries before the date of this Agreement, provided that its profits (aggregated with any other Subsidiary of the Company established by the Company or its Subsidiaries before the date of this Agreement which became an ALP Entity after the date of this Agreement in accordance with a notification pursuant to this definition) represent less than US\$10,000,000 of Consolidated EBITDA for the most recently completed Measurement Period,

and, in each case, is or was (as the case may be) established for the dominant purpose of the development of warehouse units and/or warehouse parks, provided that the Facility Agent is notified of such entities by the Company in the Compliance Certificate issued following the designation of such entities by the Company as an “ALP Entity”.

“ALP Group” means:

- (a) Agility DistriParks FZE and each of its Subsidiaries from time to time;
- (b) S2 for management and development of lands and real estate Co. S.P.C. and each of its Subsidiaries from time to time;

- (c) ALP India Group; and
- (d) any ALP Entity.

“ALP India Group” means:

- (a) Agility Infrastructure 1;
- (b) Agility Infrastructure 2;
- (c) Agility Infrastructure 3;
- (d) Agility Infrastructure 4; and
- (e) Agility Infrastructure 5,

including each of their Subsidiaries from time to time.

“ALP Projects” means the development of land, owned or leased by a member of the ALP Group, into warehouse units and/or warehouse parks.

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction applicable to the Company or its Subsidiaries in the relevant jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all laws, rules and regulations of any jurisdiction applicable to the Company or its Subsidiaries in the relevant jurisdiction from time to time concerning or relating to money laundering.

“Applicable Principles” means generally accepted accounting principles in the jurisdiction of incorporation of the Company, including IFRS.

“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.

“Assignment Agreement” means an agreement substantially in the form set out in Schedule 11 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“Availability Period” means the period from and including the date of this Agreement to and including the date which is one month prior to the Maturity Date (or such later date as the Facility Agent and the Company may agree).

“Available Commitment” means a Lender's Commitment under the Facility minus (subject as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under the Facility; and

- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under the Facility on or before the proposed Utilisation Date.

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

“Bail-In Legislation” means 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.

“Base Currency” means Pound Sterling.

“Base Currency Amount” means in relation to a Utilisation, the amount specified in the Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Facility Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Facility Agent receives the Request in accordance with the terms of this Agreement) as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation.

“Basel II” means the second Basel Accord issued by the Basel Committee on Banking Supervision.

“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”.

“Borrower” means the Original Borrower or an Additional Borrower.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are open for general business in London and for notice purposes only, Kuwait City, and:

- (a) the principal financial centre of the country of each currency in which the Facility is disbursed; or

(b) in relation to:

- (i) any date for payment or purchase of an amount relating to a Loan or Unpaid Sum; or
- (ii) the determination of the first day or the last day of a Term for a Loan or Unpaid Sum, or otherwise in relation to the determination of the length of such a Term),

which is an Additional Business Day relating to that Loan or Unpaid Sum.

“Cash Equivalent Securities” means all tradeable securities of the type held in any Cash Equivalent Securities Custody Accounts.

“Cash Equivalent Securities Custody Account 1” means the custody account or accounts with a reputable custody provider which the Company notifies to the Facility Agent on or prior to the signing of this Agreement and any other replacement or additional custody account or accounts which the Company notifies as being the Cash Equivalent Securities Custody Account 1 from time to time.

“Cash Equivalent Securities Custody Account 2” means the custody account or accounts with a reputable custody provider which the Company notifies to the Facility Agent on or prior to the signing of this Agreement and any other replacement or additional custody account or accounts which the Company notifies as being the Cash Equivalent Securities Custody Account 2 from time to time.

“Cash Equivalent Securities Custody Account 3” means the custody account or accounts with a reputable custody provider which the Company notifies to the Facility Agent on or prior to the signing of this Agreement and any other replacement or additional custody account or accounts which the Company notifies as being the Cash Equivalent Securities Custody Account 3 from time to time.

“Cash Equivalent Securities Custody Account 4” means the custody account or accounts with a reputable custody provider which the Company notifies to the Facility Agent on or prior to the signing of this Agreement and any other replacement or additional custody account or accounts which the Company notifies as being the Cash Equivalent Securities Custody Account 4 from time to time.

“Cash Equivalent Securities Custody Accounts” means the Cash Equivalent Securities Custody Account 1, the Cash Equivalent Securities Custody Account 2, the Cash Equivalent Securities Custody Account 3, the Cash Equivalent Securities Custody Account 4 and the Other Cash Equivalent Securities Custody Accounts.

“Cash Equivalent Securities Holding Company” means any Group company which owns Cash Equivalent Securities.

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

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

“Certain Funds Loan” means a Loan made or to be made during the Certain Funds Period.

“Certain Funds Period” means the period from (and including) the date of this Agreement to (and including) the earliest of:

- (a) where the Acquisition proceeds by way of a Scheme, the date on which the Scheme lapses (including, subject to exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or is withdrawn in writing in each case, in accordance with its terms (other than (i) where such lapse or withdrawal is as a result of the exercise of the Purchaser’s right to effect a switch from the Scheme to an Offer; or (ii) it is otherwise to be followed within 30 Business Days by an Offer Press Release or Scheme Press Release (as the case maybe) by the Purchaser to implement the Acquisition by a different offer or scheme (as applicable) in accordance with the terms of this Agreement);
- (b) where the Acquisition is to be consummated pursuant to an Offer, the date on which the Offer lapses, terminates or is withdrawn in writing in accordance with the terms of the applicable Acquisition Document (other than (i) where such lapse, termination or withdrawal is as a result of the exercise of the Purchaser’s right to effect a switch from the Offer to a Scheme; or (ii) it is otherwise to be followed within 30 Business Days by an Offer Press Release or Scheme Press Release (as the case maybe) by the Purchaser to implement the Acquisition by a different offer or scheme (as applicable) in accordance with this Agreement);
- (c) the date on which the Facility has been utilised in full; and
- (d) the date falling 12 months from the date of this Agreement,

or, in each case, such later time as may be agreed between the Company and the Facility Agent (acting reasonably and in good faith), provided that for the avoidance of doubt, a switch from a Scheme to an Offer or from an Offer to a Scheme (or any amendments to the terms or conditions of a Scheme or an Offer) shall not constitute a lapse, termination or withdrawal for the purposes of this definition.

“Clean-Up Period” means the period of 120 days from and including the Closing Date.

“Closing Date” means the First Utilisation Date.

“Code” means the United States Internal Revenue Code of 1986.

“Commitment” means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Commitment” in Schedule 1 (*Original Parties*) and the amount of any other Commitment transferred to it under this Agreement or that Lender’s increased Commitment pursuant to Clause 2.4 (*Increase*); and

- (b) in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement or incurred or committed to by it pursuant to Clause 2.4 (*Increase*),

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

“Compliance Certificate” means a certificate substantially in the form of Schedule 5 (*Form of Compliance Certificate*) setting out, among other things, calculations of the financial covenants and confirmation of any Subsidiary of the Company designated by the Company as an ALP Entity since the date of the previous Compliance Certificate.

“Compounded Reference Rate” means, in relation to any RFR Banking Day during the Term 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 or the Cumulative Compounded RFR Rate, a document which:

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

“Confidential Information” means all information relating to the Company, any Obligor, the Group, the Target Group, the shareholders of the Target, the Acquisition, 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 35 (*Confidential Information*); 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 paragraph (A) or (B) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group 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 Lender's funding rate notified pursuant to Clause 11.3(d)(i).

"Confidentiality Undertaking" means a confidentiality undertaking substantially in the form as set out in Schedule 9 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Facility Agent.

"Court" means the Court of Session at Parliament House, Parliament Square, Edinburgh EH1 1RQ, Scotland.

"Court Order" means the order of the Court sanctioning the Scheme.

"CRD IV" means:

- (a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; and
- (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

"Cumulative Compounded RFR Rate" means, in relation to a Term for a Loan, the percentage rate per annum determined by the Facility Agent (or by any other Finance Party which agrees to determine that rate in place of the Facility Agent) in accordance with the methodology set out in Schedule 16 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

"Customer Inventory Financing" means a financing of a member of the Group where the principal amount of the Financial Indebtedness is unconditionally contractually reimbursable to that member of the Group by customers and such Financial Indebtedness does not benefit from any Security Interest other than over the goods which are the subject of such customer inventory financing and which ranks *pari passu* with, or is fully subordinated to, the indebtedness owing to the Finance Parties under the Finance Documents.

"Daily Non-Cumulative Compounded RFR Rate" means, in relation to any RFR Banking Day during a Term for a Loan, the percentage rate per annum determined by the

Facility Agent (or by any other Finance Party which agrees to determine that rate in place of the Facility Agent) in accordance with the methodology set out in Schedule 15 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

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

“Default” means:

- (a) an Event of Default; or
- (b) any event or circumstance specified in Clause 21 (*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 Facility Agent or the Company (which has notified the Facility Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.3 (*Advance of Loan*);
- (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.

“Designated Financial Covenant Cash Equivalent Securities” means in relation to any Measurement Period, the Cash Equivalent Securities which have been designated as the “Designated Financial Covenant Cash Equivalent Securities” in the most recent Compliance Certificate delivered by the Company on or prior to the expiry of that Measurement Period.

“Designated Financial Covenant CES Amount” has the meaning given to it in subparagraph (d) of the definition of **“Consolidated Cash and Cash Equivalents”** in Clause 19.1 (*Definitions*).

“Disposals Account” has the meaning given to that term in Clause 20.6 (*Disposals*).

“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.

“Drawdown Representations” means the Repeating Representations and the representations in Clause 17.21 (*Information*).

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

“Effective Date” means, if the Acquisition is effected by way of Scheme, the date on which a copy of the Court Order sanctioning the Scheme is duly delivered on behalf of the Target to the Registrar of Companies and the Scheme takes effect in accordance with section 899 of the Companies Act 2006.

“Election” means any notification by the Company to the Facility Agent of a decision to switch from a Scheme to an Offer (or from an Offer to a Scheme) pursuant to Clause 18.9 (*Notification of Election*).

“Eligible Institution” means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company.

“Environmental Approval” means any authorisation required by an Environmental Law.

“Environmental Claim” means any claim by any person in connection with:

- (a) a breach, or alleged breach, of an Environmental Law;
- (b) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to any living organism or the environment; or

- (c) any other environmental contamination.

“Environmental Law” means any law or regulation concerning:

- (a) the protection of health and safety;
- (b) the environment; or
- (c) any emission or substance which is capable of causing harm to any living organism or the environment.

“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.

“Event of Default” means an event specified as such in Clause 21 (*Default*).

“Excluded Group Company” means each entity falling into (a) to (e) (inclusive) of the definition of “Group”.

“Existing Group” means the Group other than the Target Group.

“Existing Target Group Debt” means any indebtedness owed by the Target Group to third parties as at the Closing Date.

“Extended Maturity Date” means the date falling 18 months after the First Utilisation Date, and if the relevant date is not a Business Day, the immediately preceding Business Day.

“Extension Request Notice” has the meaning given to it in Clause 2.3 (*Extension Option*).

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

“Facility Agent's Spot Rate of Exchange” means:

- (a) the Facility Agent's spot rate of exchange; or
- (b) (if the Facility Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Facility Agent (acting reasonably),

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

“Facility Office” means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Facility 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; or

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

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (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 paragraph (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 the Agency Fee Letter, the Underwriting Fee Letter, the Participation and Funding Fee Letter and any other letter entered into in connection with this Agreement between the Lenders and the Company (or the Facility Agent and the Company) setting out the amount of certain fees payable in connection with this Agreement.

“Finance Document” means:

- (a) this Agreement;
- (b) a Fee Letter;
- (c) a Request;

- (d) a Transfer Certificate;
- (e) an Extension Request Notice;
- (f) a Compliance Certificate;
- (g) an Accession Agreement;
- (h) a Resignation Request;
- (i) any Reference Rate Supplement;
- (j) any Compounding Methodology Supplement;
- (k) the Syndication Letter; or
- (l) any other document designated as such by the Facility Agent and the Company.

“Finance Party” means a Lender or an Administrative Party.

“Financial Covenant Cash Equivalent Securities” means any Cash Equivalent Securities that as at the last day of the most recent Measurement Period (i) are not subject to any Security Interest; and (ii) are not owned by a Cash Equivalent Securities Holding Company whose shares are subject to any Security Interest, provided that if the aggregate amount of Cash Equivalent Securities which fall within this definition is greater than the aggregate Cash Equivalent Securities held in (A) Cash Equivalent Securities Custody Account 1; and (B) subject to compliance with sub-clause (d) of Clause 20.20 (*Super Restricted Cash Equivalent Securities*), Cash Equivalent Securities Custody Account 2, on the date of this Agreement (the **“Maximum Financial Covenant Cash Equivalent Securities Amount”**), then the Financial Covenant Cash Equivalent Securities that are capable of being Designated Financial Covenant Cash Equivalent Securities shall be restricted to the amount of the Maximum Financial Covenant Cash Equivalent Securities Amount.

“Financial Indebtedness” means (without double-counting) any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit (including any dematerialised equivalent);
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share unless it is not capable of being redeemed before the date falling two years after the Maturity Date;
- (e) any agreement treated as a lease in accordance with Applicable Principles;
- (f) receivables sold or discounted otherwise than on a non-recourse basis;

- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is deferred for a period of more than 180 days and is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
- (k) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs; or
- (l) any moneys raised as a result of any Islamic Financing Transaction.

“First Request” means the Request requesting a Loan or Loans to be made on the First Utilisation Date.

“First Utilisation Date” means the date on which the Borrower first receives funds under the Facility as a result of Utilisation of the Facility by it.

“Fitch” means Fitch Ratings Limited or any successor to its rating business.

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

“Group” means the Company and its Subsidiaries and those companies which are consolidated with the Company in accordance with the Applicable Principles, but excluding:

- (a) each member of the Korek Group;
- (b) each member of the Tristar Group;
- (c) each member of the UPAC Group;
- (d) each Project Finance Company; and
- (e) each member of the ALP Group.

“Guarantor” means the Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 27.7 (*Resignation of an Obligor (other than the Company)*).

“Holding Company” of any other person, means a company in respect of which that other person is a Subsidiary.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002.

“Impaired Agent” means the Facility 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 Facility Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Facility 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 Facility 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 Facility 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 10 (*Form of Increase Confirmation*).

“Increase Lender” has the meaning given to that term in Clause 2.4 (*Increase*).

“Increased Cost” means:

- (a) an additional or increased cost;
- (b) a reduction in the rate of return from the Facility or on its overall capital; or
- (c) a reduction of an amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates, but only to the extent attributable to the Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

“Information Package” means, together, the documents in the form approved by the Company concerning the Original Obligors and the Target Group which, at the request of the Company and on its behalf, were prepared in relation to this transaction and provided to the Lenders.

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Intellectual Property” means:

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

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

“Intra Group Debt” means any indebtedness owed by a member of the Group to another member of the Group.

“Islamic Financing Transaction” means any financing transaction implemented using an Islamic law Shari'a compliant structure including by means of commodity murabaha, ijara, musharakah or mudarabah.

“Korek Group” means Alcazar Capital Partners (Cayman Islands) and each of its Subsidiaries from time to time.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a “Lender” in accordance with Clause 2.4 (*Increase*) or Clause 27 (*Changes to the Parties*),

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

“Liquidity Date” means in relation to any Liquidity Event, the date of occurrence of that Liquidity Event.

“Liquidity Event” means the raising of funds by any member of the Group from any person who is not a member of the Group by disposing, selling or collateralising (including by way of secured loan or hedging transaction) any Super Restricted Cash Equivalent Securities or shares in a Cash Equivalent Securities Holding Company which holds only Super Restricted Cash Equivalent Securities.

“Liquidity Proceeds” means in relation to any Liquidity Event, the cash proceeds from that Liquidity Event raised by any member of the Group whether received by the Company or any other member of the Group, after deducting:

- (a) all fees and transaction costs and expenses (in each case, plus any applicable VAT thereon) incurred in connection with the raising of those proceeds; and
- (b) any Taxes paid or reasonably estimated by the relevant member of the Group to be or become payable as a result of the raising of such proceeds (or transferring such proceeds to that member of the Group),

provided that if the aggregate amount of Liquidity Proceeds received from that Liquidity Event exceeds the portion of the Designated Financial Covenant CES Amount relating to the Super Restricted Cash Equivalent Securities forming part of the Designated Financial Covenant Cash Equivalent Securities which are proposed to be sold for the Measurement Period ending immediately before the relevant Liquidity Date, then the Liquidity Proceeds shall be restricted to that portion of the Designated Financial Covenant CES Amount.

“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 applicable Reference Rate Terms.

“Major Event of Default” means any event or circumstance with respect to the Borrower and, if applicable, the Company, and in respect of paragraphs (d) and (e) below, the Purchaser (and not, for the avoidance of doubt, relating to or with respect to (i) any procurement obligations of any member of the Group other than the Borrower and the Company; or (ii) the Target or any of its Subsidiaries) constituting an Event of Default under any of:

- (a) Clause 21.2 (*Non-payment*) to the extent such event or circumstance relates to non-payment of principal amounts, interest or fees to the Finance Parties under the Finance Documents;
- (b) Clause 21.3 (*Breach of other obligations*) insofar as it relates to a breach of any Major Undertaking;
- (c) Clause 21.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation only;
- (d) Clause 21.6 (*Insolvency*), provided that for the purposes of this sub-paragraph (d), the reference to ‘any creditor’ in sub-clause (d) of Clause 21.6 (*Insolvency*) will be read as “its creditors generally (or any class of them)”;
- (e) Clause 21.7 (*Insolvency proceedings*) other than sub-clause (a)(ii) of Clause 21.7 (*Insolvency proceedings*), provided that for the purposes of this sub-paragraph (e), the reference to ‘any of its creditors’ in sub-clause (a)(i) of Clause 21.7 (*Insolvency proceedings*) will be read as “its creditors generally (or any class of them)”;

- (f) Clause 21.8 (*Creditors' process and final judgments*), provided that for the purposes of this sub-paragraph (f), the provision set out in Clause 21.8 (*Creditors' process and final judgments*) will be read as follows:

"Creditors' process and final judgments"

- (a) *Any attachment, sequestration, distress, execution or analogous event affects any asset(s) of an Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group, having an aggregate value of at least \$200,000,000, and is not discharged within 14 days unless:*
- (i) *it is being contested in good faith with due diligence; or*
- (ii) *the relevant member of the Group has sufficient funds available to meet any related liability.*
- (b) *Any final judgment is delivered against:*
- (i) *any Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group in any litigation, arbitration or administrative proceedings where the value of such judgment exceeds \$100,000,000 and is not paid in accordance with the terms of the judgment; or*
- (ii) *any member of the Group where such judgment has, or is reasonably likely to have, a Material Adverse Effect."; and*
- (g) Clause 21.10 (*Effectiveness of Finance Documents*), provided that for the purposes of this sub-paragraph (g), the words "or evidences an intention to repudiate a Finance Document" in sub-paragraph (b) of Clause 21.10 (*Effectiveness of Finance Documents*) shall stand deleted.

"Major Representation" means a representation with respect to the Borrower and, if applicable, the Company (and not, for the avoidance of doubt, relating to or with respect to (i) any procurement obligations of any member of the Group other than the Borrower and the Company; or (ii) the Target or any of its Subsidiaries) under any of:

- (a) Clause 17.2 (*Status*);
- (b) Clause 17.3 (*Powers and authority*);
- (c) Clause 17.4 (*Legal validity*);
- (d) Clause 17.5 (*Non-conflict*) other than sub-clause (c) of Clause 17.5 (*Non-conflict*); and
- (e) Clause 17.7 (*Authorisations*), provided that for the purposes of this sub-paragraph (e), the words "or desirable" in sub-paragraph (b) of Clause 17.7 (*Authorisations*) shall stand deleted.

“Major Undertaking” means, insofar as it applies to the Borrower and, if applicable, the Company, and in respect of paragraph (g) below, the Purchaser (and not, for the avoidance of doubt, relating to or with respect to (i) any procurement obligations of any member of the Group other than the Borrower and the Company; or (ii) the Target or any of its Subsidiaries) under any of:

- (a) Clause 20.5 (*Negative pledge*);
- (b) Clause 20.6 (*Disposals*);
- (c) Clause 20.7 (*Financial Indebtedness*);
- (d) Clause 20.9 (*Mergers*);
- (e) Clause 20.10 (*Acquisitions*);
- (f) Clause 20.14 (*Guarantee*); and
- (g) Clause 20.22 (*The Acquisition*) other than sub-clauses (d), (g) and (i) of Clause 20.22 (*The Acquisition*).

“Majority Lenders” means:

- (a) until the Total Commitments have been reduced to zero, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}\%$ of the Total Commitments (or, if the Total Commitments have been reduced to zero and there are no Loans then outstanding, aggregated more than $66\frac{2}{3}\%$ of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than $66\frac{2}{3}\%$ of all the Loans then outstanding.

“Margin” means:

- (a) for the period from (and including) the date of this Agreement to (and including) the date falling six months from the First Utilisation Date, 0.80 per cent per annum;
- (b) for the period from (but excluding) the date falling six months from the First Utilisation Date to (and including) the date falling nine months after the First Utilisation Date (the **“First Margin Step-up Date”**), 1.05 per cent per annum;
- (c) for the period from (but excluding) the First Margin Step-up Date to (and including) the date falling three months after the First Margin Step-up Date (the **“Second Margin Step-up Date”**), 1.30 per cent per annum;
- (d) to the extent that the Original Maturity Date is extended in accordance with Clause 2.3 (*Extension Option*), for the period from (but excluding) the Second Margin Step-up Date to (and including) the date falling three months after the

Second Margin Step-up Date (the “**Third Margin Step-up Date**”), 1.55 per cent per annum; and

- (e) to the extent that the Original Maturity Date is extended in accordance with Clause 2.3 (*Extension Option*), for the period from (but excluding) the Third Margin Step-up Date to (and including) the date falling three months after the Third Margin Step-up Date, 1.80 per cent per annum.

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

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the ability of the Obligors (taken together) to comply with their payment or financial covenant obligations under this Agreement (taking into account any resources actually (or which can be made) available to any Borrower or any Guarantor by any other member of the Group); or
- (b) the validity or enforceability of this Agreement.

“**Maturity Date**” means the Original Maturity Date or, if an Extension Request Notice has been received in accordance with Clause 2.3 (*Extension Option*) then, with effect from the Original Maturity Date, the Extended Maturity Date.

“**Mayan VIII Agreement**” means the US\$800,000,000 multicurrency revolving credit facilities agreement dated 19 January 2021 (as amended and restated by an amendment and restatement agreement dated 23 December 2021) entered into between, *inter alia*, the Borrower, the Company, HSBC Bank PLC acting as the facility agent and the lenders named therein.

“**Mayan VIII Majority Lenders**” has the meaning given to it in sub-clause (d)(i) of Clause 20.20 (*Super Restricted Cash Equivalent Securities*).

“**Measurement Period**” means a period of 12 months ending on the last day of a financial half-year of the Company.

“**Moody's**” means Moody's Investors Service Limited or any successor to its rating business.

“**Net Disposal Proceeds**” has the meaning given to that term in Clause 20.6 (*Disposals*).

“**New Lender**” has the meaning given to that term in Clause 27.2 (*Assignments and transfers by Lenders*).

“**Obligor**” means a Borrower or a Guarantor.

“**Offer**” means a takeover offer (within the meaning of section 974 of the Companies Act 2006) made by the Purchaser to effect the Acquisition substantially on the same terms as set out in the Offer Press Release, to acquire the Target Shares not already owned by the

Purchaser, as that offer may be amended, supplemented or replaced from time to time in accordance with this Agreement.

“Offer Document” means an offer document to be issued by the Purchaser (or on its behalf) to the holders of the Target Shares in respect of an Offer.

“Offer Documentation” means the Offer Document, the Offer Press Release and any other document despatched to the holders of the Target Shares setting out the terms and conditions of an Offer by the Purchaser (or on its behalf) and any document designated as part of the Offer Documentation by the Facility Agent and any Obligor.

“Offer Press Release” means a press release issued by the Purchaser (or on its behalf) announcing a firm intention to make an Offer in accordance with Rule 2.7 of the Takeover Code.

“Optional Currency” means any currency (other than the Base Currency) in which a Loan may be denominated under this Agreement in accordance with Clause 6 (*Optional Currencies*).

“Original Financial Statements” means the audited consolidated financial statements of the Company for the year ended 2020.

“Original Maturity Date” means:

- (a) if the Facility has been utilised (in whole or in part) on or prior to the last day of the Certain Funds Period, the date falling 12 months from the First Utilisation Date; or
- (b) if the Facility has not been utilised on or prior to the last day of the Certain Funds Period, the last day of the Certain Funds Period.

“Original Obligor” means the Original Borrower or the Original Guarantor.

“Other Cash Equivalent Securities Custody Accounts” means the custody account or accounts with reputable custody providers (other than the Cash Equivalent Securities Custody Account 1, the Cash Equivalent Securities Custody Account 2, the Cash Equivalent Securities Custody Account 3 and the Cash Equivalent Securities Custody Account 4) which the Company notifies to the Facility Agent on or prior to the signing of this Agreement and any other replacement or additional custody account or accounts which the Company notifies as being an Other Cash Equivalent Securities Custody Account from time to time.

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

“Participation and Funding Fee Letter” means the participation and funding fee letter dated on or around the date of this Agreement between the Facility Agent and the Company.

“Party” means a party to this Agreement.

“Project Assets” has the meaning given to it in paragraph (a) of the definition of “Project Finance Debt”.

“Project Finance Company” means a direct or indirect Subsidiary of the Company in respect of which:

- (a) all or substantially all of its business comprises Project Assets; and
- (b) at least 95% of its Financial Indebtedness owed to non-Group companies is Project Finance Debt,

and any other Subsidiary of the Company approved as such by the Majority Lenders.

“Project Finance Debt” means any Financial Indebtedness of a member of the Group or any other Subsidiary of the Company (the **“Relevant Member”**) in connection with a project for the acquisition, construction, development, ownership and/or operation of its assets where the recourse of any provider of that Financial Indebtedness is limited to:

- (a) the assets comprising that project (the **“Project Assets”**); and
- (b) if the Relevant Member is a Project Finance Company, the shareholding or other interest of any other member(s) of the Group in it,

provided that recourse to any member of the Group to make, or give a guarantee or indemnity in respect of equity contributions and/or subordinated shareholder loans to the Relevant Member shall not constitute Project Finance Debt.

“Purchaser” means GIL International Holdings V Limited.

“Purchaser HoldCo” means at any time, the immediate Holding Company of the Purchaser at that time.

“Quasi-Security” means any arrangement or transaction described in Clause 20.5(c) (*Negative pledge*).

“Reem Mall Project” means the development of the Reem Mall, Reem Island, Abu Dhabi by Al Farwaniya Property Development (a partnership between National Real Estate Company, the Company and members of the UPAC Group).

“Reference Rate Supplement” means, in relation to any currency, a document which:

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

“Reference Rate Terms” means, in relation to:

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

the terms set out for that currency, and (where such terms are set out for different categories of Loan, Unpaid Sum or accrual of commission or fees in that currency) for the category of that Loan, Unpaid Sum or accrual, in Schedule 14 (*Reference Rate Terms*) or in any Reference Rate Supplement.

“Relevant Asset” has the meaning given to in paragraph (b)(ix) of Clause 20.7 (*Financial Indebtedness*).

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

“Repeating Representations” means the representations in Clauses 17.2 (*Status*), 17.3 (*Powers and authority*), 17.4 (*Legal validity*), 17.5 (*Non-conflict*), 17.6 (*No default*), 17.13 (*Immunity*), 17.14 (*Jurisdiction/governing law*), 17.22 (*Sanctions*) and 17.23 (*Anti-Corruption*).

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

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

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

“Request” means a request for a Loan, substantially in the form of Part 1 (*Form of Request For Drawdown*) of Schedule 3 (*Forms of Request*).

“Resignation Request” means a letter in the form of Schedule 8 (*Form of Resignation Request*), with such amendments as the Facility Agent and the Company may agree.

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

“Restricted Cash Equivalent Securities” has the meaning given to it in Clause 20.21 (*Restricted Cash Equivalent Securities*).

“Restricted Securities Disposals Account” means an account into which all Net Financial Indebtedness Proceeds (as defined in Clause 20.21 (*Restricted Cash Equivalent Securities*)) and Net Disposal Proceeds relating to disposals of Restricted Cash Equivalent Securities (as the case may be), must be deposited by the Company in accordance with Clause 20.21 (*Restricted Cash Equivalent Securities*) and the amounts standing to the credit of which may only be withdrawn and used in accordance with Clause 20.21 (*Restricted Cash Equivalent Securities*).

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

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

“S&P” means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or any successor to its rating business.

“Sanctioned Country” means a country or territory which is at the relevant time the subject of comprehensive country-wide or territory-wide Sanctions (including, as at the date of this Agreement, Cuba, Crimea, Donetsk and Luhansk regions of Ukraine, Iran, North Korea and Syria).

“Sanctions” means trade, economic or financial sanctions or embargoes imposed, administered or enforced from time to time by (a) the United States government and administered by the Office of Foreign Assets Control of the United States Department of Treasury or any other United States Government Authority or Department, (b) the United Nations Security Council or (c) the European Union.

“Sanctions List” means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) maintained by (a) the United States government and administered by the Office of Foreign Assets Control of the United States Department of Treasury or any other United States Government Authority or Department, (b) the United Nations Security Council or (c) the European Union, each as amended, supplemented or substituted from time to time.

“Scheme” means any scheme of arrangement proposed to be effected under Part 26 of the Companies Act 2006 to be proposed by the Target to its shareholders in connection with the Acquisition substantially on the terms and conditions set out in the Scheme Press Release and the Scheme Circular, as the same may be amended, supplemented or replaced from time to time in accordance with this Agreement.

“Scheme Circular” means the document to be issued by or on behalf of the Target and sent to, amongst others, the holders of the Target Shares setting out the proposal for the Scheme and containing the recommendation to the shareholders of the Target of the Scheme by the board of directors of the Target.

“Scheme Documentation” means the Scheme Circular, the Scheme Press Release, the Court Order and any other document despatched to the shareholders of the Target generally in relation to the Scheme by or on behalf of the Target (where such document is available to the Purchaser) and any document designated as part of the Scheme Documentation by the Facility Agent and any Obligor.

"Scheme Press Release" means a press release in the agreed form, made by or on behalf of the Target and the Purchaser announcing a firm intention to implement the Acquisition by way of a Scheme in accordance with Rule 2.7 of the Takeover Code.

"Security Interest" means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

"Selection Notice" means a notice substantially in the form set out in Part 3 of Schedule 3 (*Forms of Request*) given in accordance with Clause 10 (*Terms*).

"Signing Date" means the date of this Agreement.

"Specified Time" means a day or time determined in accordance with Schedule 12 (*Timetables*).

"Squeeze-Out" means an acquisition of the outstanding Target Shares which are the subject of the applicable Offer and that the Purchaser has not acquired or unconditionally contracted to acquire pursuant to the applicable Offer, in accordance with the procedures contained in sections 979 to 982 of the Companies Act 2006.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership, and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"Super Majority Lenders" means:

- (a) until the Total Commitments have been reduced to zero, a Lender or Lenders whose Commitments aggregate to 80% or more of the Total Commitments (or, if the Total Commitments have been reduced to zero and there are no Loans then outstanding, aggregated to 80% or more of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate to 80% or more of all the Loans then outstanding.

"Super Restricted Cash Equivalent Securities" has the meaning given to it in Clause 20.20 (*Super Restricted Cash Equivalent Securities*).

"Super Restricted Securities Disposals Account" means an account into which all Liquidity Proceeds must be deposited by the Company in accordance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and the amounts standing to the credit of which may only be withdrawn and used in accordance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*).

"Syndication Date" has the meaning given to it in the Syndication Letter.

"Syndication Letter" means a syndication letter entered into on or around the date of this Agreement between the Company and Barclays Bank PLC as bookrunner.

"Takeover Code" means the City Code on Takeovers and Mergers published by the Takeover Panel and as amended from time to time.

"Takeover Panel" means the UK Panel on Takeovers and Mergers.

"Target" means John Menzies PLC, a public limited company registered in Scotland whose company number is SC034970 and registered address is 2 Lochside Avenue, Edinburgh Park, Edinburgh, EH12 9DJ, Scotland.

"Target Group" means the Target and its Subsidiaries.

"Target Preference Shares" means the preference shares in the capital of the Target.

"Target Shares" means the ordinary shares in the capital of the Target.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

"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 a payment made by an Obligor to a Finance Party in any way relating to a Tax Deduction or under any indemnity given by that Obligor in respect of Tax under any Finance Document.

"Term" means each period determined under this Agreement by reference to which interest on a Loan or an overdue amount is calculated.

"Total Commitments" means the aggregate of the Commitments of all Lenders, being the total amount specified as such in Schedule 1 (*Original Parties*), as at the date of this Agreement and as the same may be increased by the operation of Clause 2.4 (*Increase*).

"Total Restricted Cash Equivalent Securities" means the Restricted Cash Equivalent Securities and the Super Restricted Cash Equivalent Securities.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 7 (*Form of Transfer Certificate*), with such amendments as the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Company.

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

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

- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“Tristar Group” means:

- (a) Tri Star Transport (LLC) (Dubai, UAE); and
- (b) provided that Tri Star Transport (LLC) (Dubai, UAE) is a Subsidiary of Tristar Holdings Limited (DIFC, Dubai), Tristar Holdings Limited (DIFC, Dubai),

and each of their Subsidiaries from time to time.

“U.K.” means the United Kingdom.

“UK Bail-In Legislation” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) 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).

“Underwriting Fee Letter” means the underwriting fee letter dated on or around the date of this Agreement between the Facility Agent and the Company.

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

“UPAC Group” means PWC Aviation Services Co. KSC(C) (Kuwait) and each of its Subsidiaries from time to time.

“USD” means United States Dollars, the lawful currency for the time being of the United States of America.

“Utilisation” means a Loan.

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

“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; and
- (b) in relation to any UK Bail-In Legislation:
 - (i) 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

- (ii) any similar or analogous powers under that UK Bail-In Legislation.

1.2 Construction

- (a) The following definitions have the meanings given to them in Clause 19.1 (*Definitions*):

- (i) acceptable bank;
- (ii) Consolidated Cash and Cash Equivalents;
- (iii) Consolidated EBITDA;
- (iv) Consolidated Interest Payable;
- (v) Consolidated Interest Receivable;
- (vi) Consolidated Net Interest Payable;
- (vii) Consolidated Total Borrowings;
- (viii) Consolidated Total Net Borrowings;
- (ix) Exceptional Items;
- (x) Gearing Ratio; and
- (xi) Measurement Period.

- (b) In this Agreement, unless the contrary intention appears, a reference to:

- (i) an “**amendment**” includes a supplement, novation, restatement or re-enactment and “**amended**” will be construed accordingly;
- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iii) an “**authorisation**” includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
- (iv) “**disposal**” means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and “**dispose**” will be construed accordingly;

- (v) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;
 - (vi) **"know your customer requirements"** are the identification checks that a Finance Party requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
 - (vii) a **"person"** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation 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 of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a **"currency"** is a reference to the lawful currency for the time being of the relevant country;
 - (x) a **"Default"** being outstanding means that it has not been remedied or waived;
 - (xi) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (xii) a Clause, a SubClause or a Schedule is a reference to a Clause or SubClause of, or a schedule to, this Agreement;
 - (xiii) a **"Party"** or any other person includes its successors in title, permitted assigns and permitted transferees;
 - (xiv) a **"Finance Document"** or another document is a reference to that Finance Document or other document as amended; and
 - (xv) a time of day is a reference to London time.
- (c) 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 Facility Agent after consultation with the Company.

- (d) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (e) Any Reference Rate Supplement relating to a currency overrides anything relating to that currency in:
 - (i) Schedule 14 (*Reference Rate Terms*); or
 - (ii) any earlier Reference Rate Supplement.
- (f) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
 - (i) Schedule 15 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 16 (*Cumulative Compounded RFR Rate*), as the case may be; or
 - (ii) any earlier Compounding Methodology Supplement.
- (g) Unless the contrary intention appears, a reference to a month or months is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
 - (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
 - (iii) notwithstanding sub-paragraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

The above rules will only apply to the last month of any period.

- (h) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) and, notwithstanding any term of any Finance Document, no consent of any third party is required for any variation (including any release or compromise of any liability) or termination of any Finance Document.
- (i) Unless the contrary intention appears:

- (i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;
 - (ii) unless otherwise defined, a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement; and
 - (iii) any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of an Obligor is or may be outstanding under the Finance Documents.
- (j) The headings in this Agreement do not affect its interpretation.

1.3 Currency symbols and definitions

- (a) “\$”, “US\$” and “dollars” denote the lawful currency of the United States of America.
- (b) “£”, “GBP” and “sterling” denote the lawful currency of the United Kingdom.
- (c) “€”, “EUR” and “euro” denote the single currency of the Participating Member States.

2. THE FACILITY

2.1 Facility

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

2.2 Nature of a Finance Party's 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 Facility Agent on its behalf) is a debt owing to that Finance Party by that Obligor.

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

2.3 Extension Option

- (a) Not less than 10 days before the Original Maturity Date and provided that the First Utilisation Date has occurred, the Borrowers may by way of written notice to the Facility Agent substantially in the form set out in Part 2 (*Form of Extension Request Notice*) of Schedule 3 (*Forms of Request*) to this Agreement (an “**Extension Request Notice**”), require the Lenders to extend the Maturity Date for the Facility to the Extended Maturity Date.
- (b) The Facility Agent shall promptly notify each Lender upon receipt of any Extension Request Notice. The extension of the Maturity Date pursuant to this Clause 2.3 shall not require the consent of any Finance Party.
- (c) If, prior to the Original Maturity Date, the Extension Request Notice has been delivered in accordance with this Clause 2.3, the Maturity Date shall be extended on the Original Maturity Date to the Extended Maturity Date, and all references in this Agreement to the Maturity Date shall be construed as references to the Extended Maturity Date.
- (d) The Borrowers shall pay to each Lender an extension fee of 0.10 per cent. of such Lender's Commitment as at the Original Maturity Date within 2 Business Days from the effectiveness of the extension.

2.4 Increase

- (a) Subject to the terms of this Clause 2.4, the Company may, at any time prior to the end of the Availability Period in respect of the Facility, by giving no less than 30 days prior written notice to the Facility Agent, request that the Commitments relating to any Facility be increased (and the Commitments shall be so increased) by an amount in the Base Currency which shall be, for the Facility, no less than GBP zero (or such other amount which may be agreed from time to time between the Company, the Lenders and any additional lenders that are to provide commitments in respect of the increased amount) and the aggregate of any such increase shall be no more than GBP zero (or such other amount which may be agreed from time to time between the Company, the Lenders and any additional lenders that are to provide commitments in respect of the increased amount) (the “**Increase Amount**”), as follows:
 - (i) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an “**Increase Lender**”) selected by the Company (each of which shall not be a member of the Group and shall not be an Excluded Group Company) and 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;

- (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;
 - (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;
 - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
 - (v) any increase in the Commitments relating to the Facility shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments will only be effective:
- (i) at 11.00 a.m. three Business Days following the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, on the Facility 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 Facility Agent shall promptly notify the Company 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 Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) The Company shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent in connection with any increase in Commitments under this Clause 2.4.
- (e) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Facility Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 27.2(g) (*Assignments and transfers by Lenders*) if the increase was a transfer pursuant to Clause 27.3 (*Procedure for transfer by way of novation*) and if the Increase Lender was a New Lender.

- (f) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a Fee Letter.
- (g) Clause 27.5 (*Limitation of responsibility of Existing Lender*) shall apply mutatis mutandis in this Clause 2.4 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**” was a reference to a “**transfer**”.

3. PURPOSE

3.1 Loans

- (a) The proceeds of the initial Loans under the Facility aggregating up to:
 - (i) the amounts specified in the Acquisition Documents as being payable by any member of the Group in connection with the Acquisition, along with any stamp duty payable in connection with the acquisition of the Target Shares;
 - (ii) the amounts payable in connection with the acquisition of the Target Preference Shares; and
 - (iii) any costs and taxes payable in connection with paragraphs (i) and (ii) above,

may be used towards financing or refinancing:

- (A) amounts payable by any member of the Group under or in connection with the Acquisition Documents for acquisition of the Target Shares, along with any stamp duty payable in connection with the acquisition of the Target Shares;
- (B) the amounts payable in connection with the acquisition of the Target Preference Shares; and
- (C) the payment of costs and taxes payable in connection with paragraphs (A) and (B) above,

provided that the proceeds of the initial Loans may only be applied towards the purpose described in paragraphs (B) and (C) above after or at the same time as the proceeds being applied towards the purpose described in paragraph (A) above

- (b) The proceeds of each subsequent Loan (made for the purposes set out in this sub-paragraph (b)) may only be made after all Loans proposed to be used for the purposes set out in sub-paragraph (a) above have been utilised and each such Loan may be used towards financing or refinancing:
 - (i) Acquisition Costs;
 - (ii) the acquisition (only following any offer by the Purchaser under the Offer Documents becoming or being declared unconditional) by the Purchaser or any other member of the Group of any Target Shares on any stock exchange on which any Target Shares are listed or in any other manner which is not set out in the Offer Documents (including, without limitation, market purchases and/or any Squeeze-Out); and
 - (iii) the payment of interest and transaction costs under the Finance Documents.

3.2 No obligation to monitor

No Finance Party is bound to monitor or verify the utilisation of the Facility.

4. CONDITIONS PRECEDENT

4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with Clause 5.3 (*Advance of Loan*) in relation to any Request if, on or before the Utilisation Date for the Request, the Facility Agent has notified the Company that it has received all of the documents and evidence set out in Part 1 (*To Be Delivered Before The First Utilisation Date*) of Schedule 2 (*Conditions Precedent Documents*), in form and substance satisfactory to it. The Facility Agent must give this notification to the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Utilisation during the Certain Funds Period

Notwithstanding any other term of any Finance Document:

- (a) subject to paragraph (b) below, during the Certain Funds Period none of the Finance Parties shall be entitled to:
 - (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Loan;

- (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 it may have to the extent to do so would prevent or limit the making of a Certain Funds Loan;
- (iii) refuse to participate in the making of a Certain Funds Loan;
- (iv) exercise any right of set-off or counterclaim in respect of a Certain Funds Loan to the extent that to do so would prevent or limit the making of a Certain Funds Loan; or
- (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Loan,

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

- (b) paragraph (a) does not apply in respect of a Finance Party if, and to the extent that, the entitlement of that Finance Party arises because:
 - (i) Clause 4.1 (*Initial conditions precedent*) has not been complied with;
 - (ii) a Major Event of Default has occurred and is continuing or would result from the proposed Utilisation;
 - (iii) any Major Representation is incorrect in any material respect when made or deemed to be made and remains incorrect at the time of exercise of that entitlement by that Finance Party;
 - (iv) the Purchaser ceases to be (directly or indirectly) a wholly owned Subsidiary of the Company during the Certain Funds Period; or
 - (v) Clause 8.1 (*Mandatory prepayment - illegality*) applies in respect of that Finance Party (but only to the extent that this relates to a Lender's ability to fund, issue or maintain its participation in any Loan).

4.3 Further conditions precedent

The obligations of the Lenders to participate in any Loan, other than one to which Clause 4.2 (*Utilisation during the Certain Funds Period*) applies, are subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Loan, the Drawdown Representations are correct in all material respects and that no Default is outstanding or would result from the Loan.

4.4 Maximum number

- (a) Unless the Facility Agent agrees, a Request may not be given if, as a result, there would be more than 5 Loans outstanding.
- (b) Any Loan made by a single Lender under Clause 6.3(b) (*Revocation of currency*) shall be taken into account in this Clause 4.4.

5. UTILISATION - LOANS

5.1 Giving of Requests

- (a) A Borrower may borrow a Loan by giving to the Facility Agent a duly completed Request.
- (b) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request for the first Utilisation under this Facility is 11.00 a.m. one Business Day before the proposed First Utilisation Date.
- (c) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request for any Utilisation (other than the first Utilisation) under this Facility is 11.00 a.m. two Business Days before the proposed Utilisation Date.
- (d) A Request is irrevocable.

5.2 Completion of Requests

A Request for a Loan will not be regarded as having been duly completed unless:

- (a) it identifies the Borrower;
- (b) the Utilisation Date is a Business Day falling within the Availability Period;
- (c) it specifies the purpose of the Loan requested, which for the initial Loan(s) must be for the purposes set out in sub-clause (a) of Clause 3.1 (*Loans*);
- (d) the amount of the Loan requested is:
 - (i) if the currency selected is the Base Currency, a minimum of GBP50,000,000 or an amount which complies with Clause 6 (*Optional Currencies*), the maximum undrawn amount available under the Facility on the proposed Utilisation Date; or
 - (ii) such other amount as the Facility Agent may agree; and
- (e) the proposed currency and Term comply with this Agreement.

Multiple Loans may be requested in a Request where the proposed Utilisation Date is the Closing Date. Only one Loan may be requested in each subsequent Request.

5.3 Advance of Loan

- (a) The Facility Agent must promptly notify each Lender of the details of the requested Loan and the amount of its share in the Loan.
- (b) The amount of each Lender's share of the Loan will be its pro rata share on the proposed Utilisation Date, save that, on the first Utilisation of the Facility on or following an Increase Lender providing a Commitment, the amount of each Lender's share of the Loan in question will be such an amount so as to ensure that the aggregate of each Lender's drawdown amounts under Loans outstanding (including the Loan being requested) are in the same proportion as each Lender's Commitment to the Total Commitments under the Facility.
- (c) No Lender is obliged to advance a Loan if, as a result:
 - (i) its share in the Loans under the Facility would exceed its Commitment for the Facility; or
 - (ii) the Loans under the Facility would exceed the Total Commitments for the Facility.
- (d) If the conditions set out in this Agreement have been met, each Lender must make its share of the Loan available to the Facility Agent for the relevant Borrower through its Facility Office on the Utilisation Date.

6. OPTIONAL CURRENCIES

6.1 Selection

- (a) A Borrower must select the currency of a Loan:
 - (i) (in the case of an initial Utilisation) in its Request; and
 - (ii) (afterwards in relation to a Loan made to it) in a Selection Notice.
- (b) The amount of a Loan requested in an Optional Currency must be in a minimum Base Currency Amount of GBP50,000,000.

6.2 Conditions relating to Optional Currencies

A Loan may be denominated in an Optional Currency for a Term if:

- (a) that Optional Currency is readily available in the amount required and freely convertible into the Base Currency in the wholesale market for that currency at the Specified Time and on the first day of that Term; and
- (b) that Optional Currency is a currency that has been previously approved by all of the Lenders; and
- (c) there are Reference Rate Terms for that currency.

6.3 Revocation of currency

- (a) Notwithstanding any other term of this Agreement, if before the Specified Time a Lender determines that:
 - (i) the Optional Currency requested is not readily available to it in the relevant interbank market in the amount and for the period required; or
 - (ii) participating in a Loan in the proposed Optional Currency might contravene any law or regulation applicable to it,it must give notice to the Facility Agent and the Company to that effect promptly and in any event before 11.00 a.m. on that day.
- (b) In this event, the Lender must participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount) and its participation will be treated as a separate Loan denominated in the Base Currency during that Term.

6.4 Optional Currency equivalents

The equivalent in the Base Currency of a Loan or part of a Loan in an Optional Currency for the purposes of calculating:

- (a) whether any limit under this Agreement has been exceeded;
- (b) the amount of a Loan;
- (c) the amount of any repayment or prepayment of a Loan; or
- (d) the undrawn amount of a Commitment,

is its Base Currency Amount.

6.5 Notification

The Facility Agent must notify the Company of the relevant Base Currency Amount (and the applicable Facility Agent's Spot Rate of Exchange) promptly after they are ascertained.

7. REPAYMENT

7.1 Repayment of Loans

Each Borrower which has drawn a Loan must repay that Loan on the Maturity Date.

7.2 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

8. PREPAYMENT AND CANCELLATION

8.1 Mandatory prepayment - illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Utilisation:

- (a) that Lender, shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Company, each Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 26.3 (*Replacement of a Lender*), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Term for each Utilisation occurring after the Facility Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

8.2 Mandatory prepayment - change of control

- (a) For the purposes of this Clause:

a “**change of control**” occurs if any person or group of persons acting in concert gains control of the Company;

“**acting in concert**” means acting together pursuant to an agreement or understanding (whether formal or informal); and

“**control**” means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

- (b) The Company must promptly notify the Facility Agent if it becomes aware of any change of control.
- (c) Following delivery of a notice as set out in paragraph (b) above, the Company and the Facility Agent shall enter into discussions (for a period of not more than 30 days) with a view to agreeing the terms on which the Commitments will remain available after a change of control. Following such discussions, if a Lender so requires, the Facility Agent shall, not less than 45 days following the occurrence of the change of control, cancel the Commitment of that Lender and declare the participation of the Lender in all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of the Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

8.3 Mandatory prepayment from Monetisation proceeds

(a) In this Clause 8.3:

“Monetisation Event” means the raising of funds by any member of the Group from any person who is not a member of the Group by disposing, selling or collateralising (including by way of secured loan or hedging transaction) any Cash Equivalent Securities (other than the (i) Total Restricted Cash Equivalent Securities; and (ii) any Cash Equivalent Securities disposed of as part of a share buyback program offered by the issuer of such securities), shares in a Cash Equivalent Securities Holding Company (other than the shares in a Cash Equivalent Securities Holding Company which holds any Total Restricted Cash Equivalent Securities) or any treasury shares of the Company.

“Net Monetisation Proceeds” means 70 per cent (or such other amount as the Super Majority Lenders and the Company may agree) of the cash proceeds of any Monetisation Event raised by any member of the Group whether received by the Company or any other member of the Group, after deducting:

- (i) all fees and transaction costs and expenses (in each case, plus any applicable VAT thereon) incurred in connection with:
 - (A) the raising of those proceeds; and
 - (B) the transfer of such proceeds to the Borrower in order to comply with this Clause 8.3; and
 - (ii) any Taxes paid or reasonably estimated by the relevant member of the Group to be or become payable as a result of the raising of such proceeds (or transferring such proceeds to that member of the Group).
- (b) Where Loans have been made under the Facility and any Net Monetisation Proceeds are received by any member of the Group after the Closing Date, the Company shall notify the Facility Agent promptly following such receipt and shall apply (or shall procure the application of) an amount equal to the value of such Net Monetisation Proceeds in prepayment of the Loans selected, and in the proportions determined, by the Company in its sole discretion. Any such prepayment shall be made on or before the earlier of (i) the last day of the relevant Term; and (ii) one month from the date that the Net Monetisation Proceeds are received by that member of the Group.
- (c) Where Loans have been made under the Facility and the amount equal to the value of any Net Monetisation Proceeds exceeds the aggregate outstanding amount of the Loans at that time (the amount of such excess being the **“Excess Net Monetisation Proceeds”**), but the Commitments have not been irrevocably cancelled in full, the Company shall notify the Facility Agent promptly following receipt of such Excess Net Monetisation Proceeds and the Commitments shall be automatically cancelled in an amount equal to such Excess Net Monetisation Proceeds upon the Facility Agent's receipt of such notice.

- (d) Any cancellation of the Commitments in part will be applied against the Commitments of each Lender pro rata.

8.4 Mandatory prepayment from Debt Issuance proceeds

- (a) In this Clause 8.4:

“Debt Issuance” means an issuance by any member of the Group of any public bond, note or other similar debt security on the international debt capital markets to any person who is not a member of the Group (i) which has as its express purpose the repayment or prepayment or refinancing of all or part of the Loans outstanding under the Facility and/or the cancellation of all or part of the available Commitments under the Facility; and (ii) to the extent that such amounts are provided by any person who is not a member of the Group.

“Net Debt Issuance Proceeds” means the cash proceeds of any Debt Issuance (or such other amount as the Super Majority Lenders and the Company may agree) raised by any member of the Group whether received by the Company or any other member of the Group, after deducting:

- (i) all fees and transaction costs and expenses (in each case, plus any applicable VAT thereon) incurred in connection with:
 - (A) the raising of those proceeds; and
 - (B) the transfer of such proceeds to the Borrower in order to comply with this Clause 8.4; and
 - (ii) any Taxes paid or reasonably estimated by the relevant member of the Group to be or become payable as a result of the raising of such proceeds (or transferring such proceeds to that member of the Group).
- (b) Where no Loans have been made under the Facility and any Net Debt Issuance Proceeds are received by any member of the Group after the Closing Date, the Company shall notify the Facility Agent promptly following receipt of such Net Debt Issuance Proceeds and the Commitments shall be automatically cancelled in an amount equal to such Net Debt Issuance Proceeds upon the Facility Agent's receipt of such notice.
 - (c) Where Loans have been made under the Facility and any Net Debt Issuance Proceeds are received by any member of the Group after the Closing Date, the Company shall notify the Facility Agent promptly following such receipt and shall apply (or shall procure the application of) an amount equal to the value of such Net Debt Issuance Proceeds in prepayment of the Loans selected, and in the proportions determined, by the Company in its sole discretion. Any such prepayment shall be made on or before the earlier of (i) the last day of the relevant Term, and (ii) three months from the date that the Net Debt Issuance Proceeds are received by that member of the Group.

- (d) Where Loans have been made under the Facility and the amount equal to the value of any Net Debt Issuance Proceeds received by any member of the Group after the Closing Date exceeds the aggregate outstanding amount of the Loans at that time (the amount of such excess being the “**Excess Net Debt Issuance Proceeds**”), but the Commitments have not been irrevocably cancelled in full, the Company shall notify the Facility Agent promptly following receipt of such Excess Net Debt Issuance Proceeds and the Commitments shall be automatically cancelled in an amount equal to such Excess Net Debt Issuance Proceeds upon the Facility Agent's receipt of such notice.
- (e) Any cancellation of the Commitments in part will be applied against the Commitments of each Lender pro rata.

8.5 Mandatory prepayment from Other Debt proceeds

- (a) In this Clause 8.5:

“**Other Debt Proceeds**” means the proceeds raised by any of the Target, the Purchaser or the Purchaser HoldCo at any time after the First Utilisation Date under (i) any loan agreement entered into by it with a bank or financial institution who is not a member of the Group; or (ii) from issuance by it of any public bond, note or other similar debt security on the international debt capital markets to any person who is not a member of the Group, other than, in each case, any proceeds which have been raised (A) for the purpose of repayment or prepayment of all or part of any existing Financial Indebtedness of any of the Target, the Purchaser or the Purchaser HoldCo; or (B) to meet any working capital requirements of the Target, the Purchaser or the Purchaser HoldCo (as reasonably estimated by the Company) up to the date falling on the expiry of 18 months from the date of incurrence of such Other Debt Proceeds.

“**Net Other Debt Proceeds**” means the cash proceeds of any Other Debt Proceeds (or such other amount as the Super Majority Lenders and the Company may agree) raised by any of the Target, the Purchaser or the Purchaser HoldCo whether received by it or any other member of the Group, after deducting:

- (i) all fees and transaction costs and expenses (in each case, plus any applicable VAT thereon) incurred in connection with:
 - (A) the raising of those proceeds; and
 - (B) the transfer of such proceeds to the Borrower in order to comply with this Clause 8.5; and
 - (ii) any Taxes paid or reasonably estimated by any of the Target, the Purchaser or the Purchaser HoldCo (as the case maybe) to be or become payable as a result of the raising of such proceeds (or transferring such proceeds to the Borrower or any other member of the Group).
- (b) Where no Loans have been made under the Facility and any Net Other Debt Proceeds are received by the Purchaser or the Purchaser HoldCo after the earlier

of (i) the Closing Date; or (ii) the expiry of the Certain Funds Period, the Company shall notify the Facility Agent promptly following receipt of such Net Other Debt Proceeds and the Commitments shall be automatically cancelled in an amount equal to such Net Other Debt Proceeds upon the Facility Agent's receipt of such notice, provided that this sub-clause (b) shall not apply if the relevant Net Other Debt Proceeds have been raised by the Purchaser or the Purchaser HoldCo for market purchases of the Target Shares.

- (c) Where Loans have been made under the Facility and any Net Other Debt Proceeds are received by any of the Target, the Purchaser or the Purchaser HoldCo after the Closing Date, the Company shall notify the Facility Agent promptly following such receipt and shall apply (or shall procure the application of) an amount equal to the value of such Net Other Debt Proceeds in prepayment of the Loans selected, and in the proportions determined, by the Company in its sole discretion. Any such prepayment shall be made on or before the earlier of (i) the last day of the relevant Term, and (ii) three months from the date that the Net Other Debt Proceeds are received by the Target, the Purchaser or the Purchaser HoldCo (as the case maybe).
- (d) Where Loans have been made under the Facility and the amount equal to the value of any Net Other Debt Proceeds received by any of the Target, the Purchaser or the Purchaser HoldCo after the Closing Date exceeds the aggregate outstanding amount of the Loans at that time (the amount of such excess being the “**Excess Net Other Debt Proceeds**”), but the Commitments have not been irrevocably cancelled in full, the Company shall notify the Facility Agent promptly following receipt of such Excess Net Other Debt Proceeds and the Commitments shall be automatically cancelled in an amount equal to such Excess Net Other Debt Proceeds upon the Facility Agent's receipt of such notice.
- (e) Any cancellation of the Commitments in part will be applied against the Commitments of each Lender pro rata.
- (f) Nothing contained in this Clause 8.5 shall apply to the Purchaser HoldCo if the Purchaser HoldCo is the Company.

8.6 Voluntary prepayment

- (a) Subject to paragraph (b) below, the Company may, by giving not less than three RFR Banking Days' prior notice to the Facility Agent, prepay (or ensure that a Borrower prepays) any Loan at any time in whole or in part.
- (b) The Company may prepay any Loan in whole or in part on the same day (which is a Business Day) as providing notice (such notice to be provided no later than 9:00 a.m. on the relevant day) to the Facility Agent, subject to payment to the Facility Agent for the account of the Lenders, on the date of such prepayment, of an amount equal to the Margin that would have accrued on the prepaid amount of the Loan from the date of the prepayment until the date which is three Business Days following the prepayment.

- (c) A prepayment of part of a Loan must be in an amount which reduces the Base Currency Amount of the Loan by a minimum amount of GBP25,000,000 and an integral multiple of GBP1,000,000.
- (d) Any prepayment shall be applied in prepayment of each Loan on a pro rata basis.

8.7 Automatic cancellation

The Commitment(s) of each Lender under the Facility will be automatically cancelled at the close of business on the last day of the Availability Period.

8.8 Voluntary cancellation

- (a) Subject to paragraph (b) below, the Company may, by giving not less than three Business Days' prior notice to the Facility Agent, cancel the unutilised amount of the Total Commitments in respect of the Facility in whole or in part.
- (b) The Company may cancel the unutilised amount of the Total Commitments in respect of the Facility in whole or in part on the same day as providing notice to the Facility Agent, subject to payment to the Facility Agent for the account of the Lenders, on the date of such cancellation, of an amount equal to the commitment fee (as determined in accordance with Clause 23.5 (*Commitment Fee*)) that would have accrued on the cancelled amount of the Total Commitments from the date of the cancellation until the date which is three Business Days following the cancellation.
- (c) Partial cancellation of the Total Commitments in respect of the Facility must be in an amount which reduces the Base Currency Amount of the Total Commitments by a minimum amount of GBP25,000,000 and an integral multiple of GBP1,000,000.
- (d) Any cancellation in part will be applied against the Commitment(s) of each Lender pro rata.

8.9 Involuntary prepayment and cancellation

- (a) If an Obligor is, or will be, required to pay to a Lender in relation to a Loan:
 - (i) a Tax Payment; or
 - (ii) an Increased Cost,

the Company may, while the requirement continues, give notice to the Facility Agent requesting prepayment and cancellation in respect of that Lender's share in such Loan.
- (b) After notification under paragraph (a) above:
 - (i) each Borrower must repay or prepay that Lender's share in each such Loan made to it on the date specified in paragraph (c) below; and

- (ii) the Commitment(s) of the relevant Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's share in a Loan will be:
 - (i) the last day of the current Term for that Loan; or
 - (ii) if earlier, the date specified by the Company in its notification.

8.10 Miscellaneous provisions

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s) and the affected Loans and Commitments. The Facility Agent must notify the Lenders promptly of receipt of any such notice.
- (b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. Subject to paragraph (g) below, no premium or penalty is payable in respect of any prepayment.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Facility Agent (acting on the instructions of the Majority Lenders) may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- (e) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.
- (f) Subject to Clause 2.4 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may subsequently be reinstated.
- (g) No premium or penalty is payable in relation to the prepayment of any number of Loans (or any part thereof) on any single day (such day being a “**Voluntary Prepayment Day**”) made in accordance with Clause 8.6 (*Voluntary prepayment*) above, provided that if prepayments are made under Clause 8.6 (*Voluntary prepayment*) on more than three Voluntary Prepayment Days in any financial year, an aggregate fee of \$3000 will be payable on the prepayments made on each Voluntary Prepayment Day after the first three Voluntary Prepayment Days in that financial year.

8.11 Application of prepayments

Any prepayment of a Utilisation (other than a prepayment pursuant to Clause 8.1 (*Mandatory prepayment - illegality*), Clause 8.2 (*Mandatory prepayment - change of control*), Clause 8.3 (*Mandatory prepayment from Monetisation proceeds*), Clause 8.4 (*Mandatory prepayment from Debt Issuance proceeds*), Clause 8.5 (*Mandatory prepayment from Other Debt proceeds*) or Clause 8.9 (*Involuntary prepayment and cancellation*)) shall be applied pro rata to each Lender's participation in that Utilisation.

9. INTEREST

9.1 Calculation of interest

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

9.2 Payment of interest

Except where it is provided to the contrary in this Agreement, each Borrower must pay accrued interest on each Loan made to it on the last day of its Term.

9.3 Interest on overdue amounts

- (a) If an Obligor fails to pay any amount payable by it under the Finance Documents, it must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) Interest on an overdue amount is payable at a rate determined by the Facility Agent to be one per cent. per annum above 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 this purpose, the Facility Agent may (acting reasonably) select successive Terms of any duration of up to three months.
- (c) Notwithstanding paragraph (b) above, if the overdue amount is a principal amount of a Loan and becomes due and payable before the last day of its current Term, then:
 - (i) the first Term for that overdue amount will be the unexpired portion of that Term; and
 - (ii) the rate of interest on the overdue amount for that first Term will be one per cent. per annum above the rate then payable on that Loan.

After the expiry of the first Term for that overdue amount, the rate on the overdue amount will be calculated in accordance with paragraph (b) above.

- (d) Interest (if unpaid) on an overdue amount will be compounded with that overdue amount at the end of each of its Terms but will remain immediately due and payable.

9.4 Notification of rates of interest

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

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

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

10. TERMS

10.1 Selection

- (a) Each Loan has one Term only.
- (b) A Borrower must select the Term for a Loan in the relevant Request or (if the Loan has already been borrowed) in a Selection Notice.
- (c) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower (or the Company on behalf of a Borrower) to which that Loan was made no later than the Specified Time.
- (d) If a Borrower fails to select a Term for a Loan under paragraph (c) above, that Term will, subject to the other provisions of this Clause, be the period set out in the applicable Reference Rate Terms.
- (e) Subject to the following provisions of this Clause, the Term for each Loan will be one month or three months or any other period agreed by the Company and the Facility Agent.

- (f) Notwithstanding anything contained in sub-clause (e) above, a Borrower shall (by specifying the same in the Request for the relevant Loan), have the right to increase or decrease the Term of any Loan by up to 3 Business Days provided that (i) where exercised, this right is exercised by a Borrower principally for the purpose of aligning dates with its internal hedging arrangements; and (ii) the Term of a Loan cannot end on a day falling after the Maturity Date.
- (g) Prior to the Syndication Date, the Term shall be one Month or such other period as the Facility Agent and the Company may agree.

10.2 No overrunning the Maturity Date

If a Term would otherwise overrun its relevant Maturity Date, it will (subject to Clause 2.3 (*Extension Option*)) be shortened so that it ends on its relevant Maturity Date.

10.3 Non-Business Days

Any rules specified as “Business Day Conventions” in the applicable Reference Rate Terms for a Loan or Unpaid Sum shall apply to each Term for that Loan or Unpaid Sum.

10.4 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Terms:
 - (i) relate to Loans made to the same Borrower; and
 - (ii) end on the same date,
 then on that Borrower (or the Company on its behalf) making a request, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Term.
- (b) Subject to Clause 4.4 (*Maximum number*) if a Borrower (or the Company on its behalf) requests by written notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Term, be so divided into the amounts specified in that notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

11. CHANGES TO THE CALCULATION OF INTEREST

11.1 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 a Term for a Loan; and
- (b) “Cost of funds will apply as a fallback” is specified in the Reference Rate Terms,

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

11.2 Market disruption

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms for that Loan; and
- (b) before the Reporting Time for that Loan, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 40 per cent. of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of that Market Disruption Rate,

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

11.3 Cost of funds

- (a) If this Clause 11.3 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Term shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event by the Reporting Time for that Loan, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 11.3 applies and the Facility Agent or the Company so requires, the Facility Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 11.3 applies pursuant to Clause 11.2 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
 - (ii) a Lender does not notify a rate to the Facility Agent by the relevant Reporting Time,

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

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

11.4 Notification to Company

If Clause 11.3 (*Cost of funds*) applies, the Facility Agent shall, as soon as is practicable, notify the Company.

12. TAXES

12.1 General

In this Clause, “**Tax Credit**” means a credit against any Tax or any relief or remission for Tax (or its repayment).

12.2 Tax gross-up

- (a) Each Obligor must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If an Obligor or a Lender is aware that an Obligor must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the Facility Agent. The Facility Agent must then notify the affected Parties.
- (c) If a Tax Deduction is required by law to be made by an Obligor or the Facility Agent, the amount of the payment due from the Obligor will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.
- (e) Within 30 days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the Obligor making that Tax Deduction or payment must deliver to the Facility Agent for the Finance Party entitled to the payment, evidence satisfactory to that Finance Party (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) Except as provided below, the Company must indemnify each Finance Party against any loss or liability which such Finance Party (in its absolute discretion) determines will be or has been suffered (directly or indirectly) by it for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under a Finance Document.

- (b) Paragraph (a) above does not apply to any Tax assessed on a Finance Party under the laws of the jurisdiction in which:

- (i) the Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Finance Party is treated as resident for tax purposes; or
 - (ii) the 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 by the Finance Party. However, any payment deemed to be received or receivable, including any amount treated as income but not actually received by the Finance Party, such as a Tax Deduction, will not be treated as net income received or receivable for this purpose.

- (c) Paragraph (a) above does not apply to the extent a loss or liability is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) or relates to a FATCA Deduction required to be made by a Party.
- (d) If a Finance Party makes, or intends to make, a claim under paragraph (a) above, it must promptly notify the Company of the event which will give, or has given, rise to the claim.

12.4 Tax Credit

If an Obligor makes a Tax Payment and a Finance Party (in its absolute discretion) determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) it has used and retained that Tax Credit,

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

12.5 Stamp taxes

The Company must pay and indemnify each Finance Party against any stamp duty, stamp duty land tax, registration or other similar Tax payable in connection with the entry into, performance or enforcement of any Finance Document.

12.6 Value added taxes

- (a) Any amount payable under a Finance Document by an Obligor is exclusive of any value added tax or any other Tax of a similar nature which might be chargeable in connection with that amount. If any such Tax is chargeable, the Obligor must

pay to the relevant Finance Party (in addition to and at the same time as paying that amount) an amount equal to the amount of that Tax.

- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party must also at the same time pay and indemnify the Finance Party against all value added tax or any other Tax of a similar nature incurred by the Finance Party in respect of those costs or expenses but only to the extent that the Finance Party (acting reasonably) determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the Tax.

12.7 FATCA Information

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

12.8 FATCA Deduction

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

13. INCREASED COSTS

13.1 Increased Costs

Except as provided below in this Clause, the Company must pay to the Facility Agent for the account of a Finance Party the amount of any Increased Cost incurred by that Finance Party or any of its Affiliates as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation; or
- (b) compliance with any law or regulation made after the date of this Agreement.

13.2 Exceptions

- (a) The Company need not make any payment for an Increased Cost to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for under another Clause or would have been but for an exception to that Clause;
 - (iv) attributable to that Finance Party or its Affiliates wilfully breaching any law or regulation; or
 - (v) implemented under Basel II, Basel III or CRD IV in place on the date of this Agreement or is reasonably foreseeable under Basel II, Basel III or CRD IV on the date of this Agreement.

- (b) To the extent that an Increased Cost is attributable to the introduction, implementation, interpretation, administration or application of any Rule Change, the Parties agree to enter into good faith negotiations and use all commercially reasonable endeavours to mitigate the Increased Cost within 30 days (or such other period as may be agreed between the Parties) of the date of a claim made by a Finance Party in accordance with Clause 13.3 (*Claims*) below. If at the expiry of the 30 day period (or such other period as may be agreed between the Parties) the Parties have failed to successfully mitigate the Increased Cost and the relevant Finance Party confirms that it is also claiming that Increased Cost from other borrowers under similar terms, the Company shall pay to the Facility Agent (for the account of the relevant Finance Party) the amount of such Increased Cost.

- (c) In this Clause 13.2:

“Rule Change” means any announcement, publication, document, directive and/or report promulgated, published or issued on or after the date of this Agreement (including any amendment, supplement, replacement or modification thereto on or before the date of this Agreement or, to the extent substantially consistent with one promulgated, published or issued on or before the date of this Agreement, after the date of this Agreement), whether or not final, which is under or relates to Basel II, Basel III or CRD IV.

13.3 Claims

- (a) If a Finance Party intends to make a claim for an Increased Cost, it must notify the Facility Agent of the circumstances giving rise to and the amount of the claim, following which the Facility Agent will promptly notify the Company.
- (b) Each Finance Party must, as soon as reasonably practicable after a demand by the Facility Agent, provide to the Company a certificate confirming the amount of its Increased Cost.

14. MITIGATION

14.1 Mitigation

- (a) Each Finance Party must, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which result or would result in:
 - (i) any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to Clause 8.1 (*Mandatory prepayment - illegality*);
 - (ii) any Tax Payment or Increased Cost being payable to that Finance Party;
 - (iii) that Finance Party being able to exercise any right of prepayment and/or cancellation under this Agreement by reason of any illegality; or

- (iv) that Finance Party incurring any cost of complying with the minimum reserve requirements of the European Central Bank or any other regulator having jurisdiction over that Finance Party,

including transferring its rights and obligations under the Finance Documents to an Affiliate or changing its Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.
- (c) The Company must indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of any step taken by it under this Clause 14.1.
- (d) No Finance Party is obliged to take any step under this Clause 14.1 if, in its opinion (acting reasonably), to do so might be prejudicial to it.

14.2 Conduct of business by the Finance Parties

No term 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 in respect of Tax 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 computation in respect of Tax.

15. TIMING OF PAYMENTS

If a Finance Document does not provide for when a particular payment is due, that payment will be due within ten Business Days of demand by the relevant Finance Party.

16. GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

Each Guarantor jointly and severally and irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all its obligations under the Finance Documents;
- (b) undertakes with each Finance Party that, whenever a Borrower does not pay any amount when due under any Finance Document, it must immediately on demand by the Facility Agent pay that amount as if it were the principal obligor; and

- (c) indemnifies each Finance Party immediately on demand against any loss or liability suffered by that Finance Party if any payment obligation guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the loss or liability under this indemnity will be equal to the amount that Finance Party would otherwise have been entitled to recover.

The guaranteed obligations under paragraph (a) above include all amounts due under the Finance Documents including, without limitation, all legal fees and expenses payable under Clause 25 (*Expenses*) and all other costs, expenses, reimbursement amounts, indemnities and fees payable by each Borrower under the Finance Documents.

16.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of all sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

- (a) If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of each Guarantor under this Clause will continue as if the discharge or arrangement had not occurred.
- (b) Each Finance Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

16.4 Waiver of defences

The obligations of each Guarantor under this Clause will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Clause (whether or not known to it or any Finance Party). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (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 person;
- (d) 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;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

- (f) any amendment (however fundamental) of a Finance Document or any other document or security; or
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security.

16.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from that Guarantor under this Clause. This waiver applies irrespective of any law or provision of a Finance Document to the contrary.

16.6 Appropriations

Until all amounts which may be or become payable by the Obligors under the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may without affecting the liability of any Guarantor under this Clause:

- (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
- (b) apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (c) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of that Guarantor's liability under this Clause.

16.7 Non-competition

Unless:

- (a) all amounts which may be or become payable by the Obligors under the Finance Documents have been irrevocably paid in full; or
- (b) the Facility Agent otherwise directs,

no Guarantor will, after a claim has been made or by virtue of any payment or performance by it under this Clause:

- (i) be subrogated to any rights, security or moneys held, received or receivable by any Finance Party (or any trustee or agent on its behalf);
- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of that Guarantor's liability under this Clause;

- (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with any Finance Party (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

Each Guarantor must hold in trust for and immediately pay or transfer to the Facility Agent for the Finance Parties any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Facility Agent under this Clause.

16.8 Release of Guarantors' right of contribution

If any Guarantor ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purposes of any sale or other disposal of that Guarantor:

- (a) that Guarantor will be released by each other Guarantor from any liability whatsoever to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor will waive any right it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of any Finance Party under any Finance Document or of any other security taken under, or in connection with, any Finance Document by a Finance Party.

16.9 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.

16.10 Limitations

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance.

17. REPRESENTATIONS

17.1 Representations

The representations set out in this Clause are made by each Obligor or (if it so states) the Company to each Finance Party.

17.2 Status

- (a) It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

17.3 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

17.4 Legal validity

Subject to any general principles of law limiting its obligations and referred to in any legal opinion required under this Agreement, each Finance Document to which it is a party is its legally binding, valid and enforceable obligation.

17.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any document which is binding upon it or any of its assets to an extent which is reasonably likely to have a Material Adverse Effect or result in any liability for any Finance Party.

17.6 No default

- (a) No Default is outstanding or will result from the execution of, or the performance of any transaction contemplated by, any Finance Document; and
- (b) no other event is outstanding which constitutes a default under any document which is binding on it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

17.7 Authorisations

All authorisations:

- (a) required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents; and
- (b) required or desirable to make the Finance Documents to which it is party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected (as appropriate) and are in full force and effect.

17.8 Financial statements

Its audited financial statements most recently delivered to the Facility Agent (which, in the case of the Company at the date of this Agreement, are the Original Financial Statements):

- (a) have been prepared in accordance with Applicable Principles, consistently applied; and
- (b) fairly present its financial condition (consolidated, if applicable) as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those financial statements.

17.9 Litigation

- (a) No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened (other than those proceedings disclosed by the Company to the Facility Agent on or prior to the date of this Agreement) which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.
- (b) No judgment or order of a court, arbitral body or agency which would 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.

17.10 Taxes on payments

All amounts payable by it under the Finance Documents may be made without any Tax Deduction.

17.11 Stamp duties

Subject to any general principles of law referred to in any legal opinion required under this Agreement, no stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of any Finance Document. It is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in its jurisdiction of incorporation.

17.12 Bahrain tax residency

The Original Borrower is resident for tax purposes in Bahrain and not in any other jurisdiction.

17.13 Immunity

- (a) The execution by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes; and

- (b) Subject to any general principles of law referred to in any legal opinion required under this Agreement, it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

17.14 Jurisdiction/governing law

- (a) Subject to any general principles of law referred to in any legal opinion required under this Agreement, its:
 - (i) irrevocable submission under this Agreement to arbitration in London, England under the Rules of Arbitration of the International Chamber of Commerce;
 - (ii) agreement that this Agreement is governed by English law; and
 - (iii) agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of its jurisdiction of incorporation.

- (b) Subject to any general principles of law referred to in any legal opinion required under this Agreement, any judgment or arbitral award obtained in England will be recognised and be enforceable by the courts of its jurisdiction of incorporation.

17.15 Environmental laws

- (a) Each member of the Group is in compliance with Clause 20.11 (*Environmental matters*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in each case in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief, having made due and careful enquiry) is threatened against any member of the Group where that claim has or is reasonable likely, if determined against that member of the Group, to have a Material Adverse Effect.

17.16 Security

No Security Interest exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

17.17 Good title to assets

Each Obligor has a good, valid and marketable title to, or valid leases or licences of, and all appropriate authorisations to use, the assets necessary to carry on its business as presently conducted.

17.18 Pari passu 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.

17.19 Insurance

Each member of the Group is in compliance with Clause 20.12 (*Insurance*) and to the best of its knowledge and belief no circumstances have occurred which would prevent such compliance.

17.20 Insolvency

- (a) No Obligor:
 - (i) is unable to pay its debts as they fall due;
 - (ii) has suspended making payments on any of its debts or announced any intention to do so; or
 - (iii) has, by reason of actual or anticipated financial difficulties, commenced negotiations with any creditor for the rescheduling of any of its indebtedness.
- (b) No formal step or procedure has been taken by or (to the best of its knowledge and belief) with respect to any Obligor:
 - (i) with a view to a moratorium, composition, assignment, judicial management or similar arrangement with any of its creditors; or
 - (ii) to consider or commence any insolvency proceedings or the appointment of any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver and/or manager, administrative receiver, administrator, judicial manager, official receiver or analogous officer.

17.21 Information

Save as disclosed in writing to the Facility Agent, all written factual information provided by the Company or any member of the Group to any Finance Party pursuant to or in connection with the Finance Documents is true and accurate in all material respects and is not misleading in any material respects.

17.22 Sanctions

Neither the Company nor any of its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby nor, in the case of paragraphs (a) and (b) below only, (to the best of its knowledge) any director or officer of the Company or any such Subsidiary is:

- (a) included on a Sanctions List;

- (b) directly or indirectly owned (meaning more than 50% or greater ownership interest) or controlled by, or is acting on behalf of, one or more persons that are on a Sanctions List; or
- (c) located, organised or resident in a Sanctioned Country,

except to the extent that this would not cause the relevant entity or person to be in breach of Sanctions.

17.23 Anti-Corruption

The Company and each of its Subsidiaries have policies in place designed to promote and achieve compliance with Anti-Corruption Laws and Sanctions laws applicable to it.

17.24 Anti-Money Laundering

The Company and each of its Subsidiaries have policies in place designed to promote and achieve compliance with Anti-Money Laundering Laws.

17.25 Ownership of Original Borrower

The Original Borrower is a wholly-owned Subsidiary of the Company.

17.26 Acquisition Documents

As at the date of this Agreement and the Closing Date:

- (a) if the Acquisition proceeds by way of a Scheme, the Scheme Documentation contains (or will contain) all the material terms of the Scheme; and
- (b) if the Acquisition proceeds by way of an Offer, the Offer Documentation contains (or will contain) all the material terms of the Offer,

as at the date on which they are published.

17.27 Cash Equivalent Securities Custody Accounts

As at the date of this Agreement, the statement made by the authorised signatory of the Company under the certificate provided to the Facility Agent pursuant to paragraph 4 of Section E (*Other documents and evidence*) of Part 1 (*To Be Delivered Before The First Utilisation Date*) of Schedule 2 (*Conditions Precedent Documents*) is true and correct in all material respects.

17.28 Times for making representations

- (a) The representations set out in this Clause are made by each Original Obligor on the date of this Agreement.
- (b) Unless a representation is expressed to be given at a specific date, each representation set out in this Clause is deemed to be repeated by each Additional

Obligor and the Company on the date that such Additional Obligor becomes an Obligor.

- (c) The Drawdown Representations are made by each Obligor on the date of each Request and on each Utilisation Date.
- (d) The Repeating Representations are made by each Obligor on the first day of each Term.
- (e) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

18. INFORMATION COVENANTS

18.1 Financial statements

- (a) Subject to Clause 18.7 (*Use of websites*) below, the Company must supply to the Facility Agent in sufficient copies for all the Lenders:
 - (i) its audited consolidated financial statements for each of its financial years;
 - (ii) its interim consolidated financial statements for the first half-year of each of its financial years;
 - (iii) the consolidated management accounts of the Group for each of its financial years, to be provided as soon as available or within 180 days of the end of the relevant financial period;
 - (iv) the interim consolidated management accounts of the Group for the first half-year of each of its financial years, to be provided as soon as available or within 90 days of the end of the relevant financial period;
 - (v) if requested by the Facility Agent, to the extent they are produced, the financial statements (audited if available) of each other Obligor for each of its financial years; and
 - (vi) if requested by the Facility Agent, to the extent they are produced, the interim financial statements of each other Obligor for the first half-year of each of its financial years.
- (b) All financial statements must be supplied as soon as they are available and:
 - (i) in the case of audited financial statements, within 180 days; and
 - (ii) in the case of interim financial statements, within 90 days,of the end of the relevant financial period.

18.2 Form of financial statements

- (a) The Company must ensure that each set of financial statements supplied under this Agreement:
 - (i) gives (if audited) a true and fair view of, or (if unaudited) fairly represents, the financial condition (consolidated or otherwise) of the relevant person as at the date to which those financial statements were drawn up; and
 - (ii) is prepared in accordance with accounting principles and practices generally accepted in its jurisdiction of incorporation, consistently applied.
- (b) The Company must notify the Facility Agent of any change to the manner in which its audited consolidated financial statements are prepared.
- (c) If requested by the Facility Agent, the Company must supply to the Facility Agent:
 - (i) a full description of any change notified under paragraph (b) above; and
 - (ii) sufficient information to enable the Finance Parties to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Facility Agent under this Agreement.
- (d) If requested by the Facility Agent or the Company, the Parties must enter into discussions for a period of not more than 30 days with a view to agreeing any amendments required to be made to this Agreement to place the Company and the Lenders in the same position as they would have been in if the change had not happened. Any agreement between the Company and the Facility Agent will be, with the prior consent of the Majority Lenders, binding on all the Parties.
- (e) If no agreement is reached under paragraph (d) above on the required amendments to this Agreement, the Company must supply with each set of its financial statements sufficient information to enable the Lenders to make a proper comparison between the covenant position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Lenders under this Agreement.

18.3 Compliance Certificate

- (a) The Company must supply to the Facility Agent a Compliance Certificate:
 - (i) in the case of each Compliance Certificate relating to audited financial statements, within 180 days; and
 - (ii) in the case of each Compliance Certificate relating to interim financial statements, within 90 days,

of the end of the relevant financial period, other than for the financial half-year ending on 30 June 2022.

- (b) A Compliance Certificate must be signed by two authorised signatories of the Company and, in the case of a Compliance Certificate supplied with its annual audited consolidated financial statements, its auditors.

18.4 Information - miscellaneous

Subject to Clause 18.7 (*Use of websites*) below, the Company must supply to the Facility Agent (in sufficient copies for all the Lenders) if the Facility Agent so requests:

- (a) copies of all documents despatched by the Company to its shareholders (or any class of them) or its creditors generally or any class of them at the same time as they are despatched;
- (b) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending and which would reasonably be expected, if adversely determined, 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 would reasonably be expected to have a Material Adverse Effect; and
- (d) promptly on request, such further information regarding the financial condition and operations of the Group (including management information) as any Finance Party through the Facility Agent may reasonably request.

18.5 Notification of Default

- (a) Unless the Facility Agent has already been so notified by another Obligor, each Obligor must notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Facility Agent, the Company must supply to the Facility Agent a certificate, signed by two of its authorised signatories on its behalf, certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being taken to remedy it.

18.6 Year end

The Company must not change its financial year end.

18.7 Use of websites

- (a) Except as provided below, the Company may deliver any information under this Agreement to the Facility Agent (on behalf of the Lenders) by posting it onto www.agility.com (the “**Website**”), provided that:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

- (ii) both the Company and the Facility Agent are aware of any password specifications, if any, for the Website; and
- (iii) the information is in a format previously agreed between the Company and the Facility Agent.

If any Lender (a **"Paper Form Lender"**) does not agree to the delivery of information electronically then the Facility Agent shall notify the Company accordingly and the Company shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Lender with the address of and any relevant password specifications for the Website.
- (c) The Company must promptly upon becoming aware of its occurrence, notify the Facility Agent if:
 - (i) the Website cannot be accessed due to technical failure;
 - (ii) any password specifications for the Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Website is amended; or
 - (v) the Company becomes aware that the Website or any information posted onto the Website is or has been infected by any electronic virus or similar software.

If the circumstances in sub-paragraphs (i) or (v) above occur, the Company must supply any information required under this Agreement in paper form until the Facility Agent is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Website. The Company shall comply with any such request within ten Business Days.

18.8 Know your customer requirements

- (a) Subject to paragraph (b) below, each Obligor must promptly on the request of any Finance Party supply to that Finance Party any documentation or other evidence which is reasonably requested by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party

or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.

- (b) An Obligor is only required to supply any information under paragraph (a) above, if the necessary information is not already available to the Finance Party and the requirement arises as a result of:
 - (i) the introduction of any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor or any change in the composition of shareholders of an Obligor where a shareholder is not an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a person that is not a Lender before that assignment or transfer.
- (c) Each Lender must promptly on the request of the Facility Agent supply to the Facility Agent any documentation or other evidence which is reasonably required by the Facility Agent to carry out and be satisfied with the results of all applicable know your customer requirements. Each Lender confirms to the Facility Agent and the other Finance Parties that it has made (and shall continue to make) its own independent investigations and assessments with respect to its own know your customer requirements and that it has satisfied its own know your customer requirements in connection with this Agreement and has not relied exclusively on any information provided to it by the Facility Agent or any other Finance Party.

18.9 Notification of Election

- (a) At any time following the publication of the Scheme Press Release but prior to the Effective Date, the Purchaser may switch from the Scheme and commence an Offer, in which case all of the provisions in this Agreement relating to an Offer will apply.
- (b) At any time following a switch from the Scheme to an Offer pursuant to paragraph (a) above, the Purchaser may switch to a Scheme and/or Offer, in which case all of the relevant provisions in this Agreement relating to the Scheme or an Offer will apply.
- (c) The Company shall give notice to the Facility Agent prior to commencing an Offer pursuant to paragraph (a) above or a Scheme or Offer pursuant to paragraph (b) above.

19. FINANCIAL COVENANTS

19.1 Definitions

In this Clause:

“Consolidated Cash and Cash Equivalents” means, at any time:

- (a) cash in hand or on deposit with any acceptable bank;
- (b) certificates of deposit, maturing within one year after the relevant date of calculation, issued by an acceptable bank;
- (c) any investment in marketable obligations issued or guaranteed by the government of an agreed country or by an instrumentality or agency of the government of an agreed country;
- (d) an amount equal to 80 per cent. of the average price per Cash Equivalent Security over the last three months of the relevant Measurement Period multiplied by the number of Designated Financial Covenant Cash Equivalent Securities as at the last day of the Measurement Period (such amount being the **“Designated Financial Covenant CES Amount”** for that Measurement Period), with the average price per Cash Equivalent Security being calculated by:
 - (i) taking the daily closing share price in the relevant currency of the entity or entities whose securities constitute Cash Equivalent Securities for each day on which trading has occurred during the last three months of the relevant Measurement Period and converting each such daily closing share price into USD at the daily exchange rate utilised by the Borrower for its accounting purposes; and
 - (ii) then calculating the average of all of the daily closing share prices obtained in (i) above (in USD) to reach a single average value by means of a simple daily average of the days the Cash Equivalent Securities have traded during the last three months of the relevant Measurement Period; or
- (e) any other instrument, security or investment approved by the Majority Lenders,

in each case, to which any member of the Group is beneficially entitled at that time and which is capable of being applied against Consolidated Total Borrowings, except that amounts referred to in paragraphs (a) and (b) above with a BBB+ rated bank or a BBB rated bank shall only be counted to the extent that they do not in aggregate exceed the greater of (i) US\$250,000,000 and (ii) 50 per cent. of Consolidated Cash and Cash Equivalents, provided that no more than the greater of (i) US\$100,000,000 and (ii) 20 per cent. of Consolidated Cash and Cash Equivalents that is held with a BBB rated bank may be counted for the purposes of this calculation.

For this purpose:

- (i) an **“acceptable bank”** is a commercial bank or trust company which:
 - (A) has a rating of A- or higher by S&P or Fitch or A3 or higher by Moody's or a comparable rating from a nationally recognised credit rating agency for its long-term debt obligations;

- (B) is a GCC bank with a rating of BBB+ or higher by S&P or Fitch or Baa1 or higher by Moody's but less than the rating required under paragraph (A) above (or in each case a comparable rating from a nationally recognised credit rating agency for its long-term debt obligations) (a **"BBB+ rated bank"**);
 - (C) is a GCC bank with a rating of BBB by S&P or Fitch or Baa by Moody's (or in each case a comparable rating from a nationally recognised credit rating agency for its long-term debt obligations) (a **"BBB rated bank"**); or
 - (D) has been approved by the Majority Lenders; and
- (ii) an agreed country is the United States of America, the U.K. or a Participating Member State; and
 - (iii) a GCC bank is a commercial bank incorporated in a member state of the Gulf Cooperation Council.

"Consolidated EBITDA" means the consolidated net pre-taxation profits of the Group for a Measurement Period:

- (a) including the net pre-taxation profits of a member of the Group or business or assets acquired during that Measurement Period for the part of that Measurement Period when it was not a member of the Group and/or the business or assets were not owned by a member of the Group; but
- (b) excluding the net pre-taxation profits attributable to any member of the Group or to any business or assets sold during that Measurement Period,

and all as adjusted by:

- (i) adding back Consolidated Net Interest Payable;
- (ii) taking no account of any Exceptional Items;
- (iii) excluding any amount attributable to minority interests (other than any minority interest of a member of the Group) and other non- Group interests;
- (iv) excluding any net pre-taxation profits attributable to assets financed by Project Finance Debt; and
- (v) adding back depreciation and amortisation.

"Consolidated Interest Payable" means all interest and other financing charges (whether, in each case, paid or payable) incurred by the Group in relation to Consolidated Total Borrowings during a Measurement Period.

“Consolidated Interest Receivable” means all interest and other financing charges received or receivable by the Group during a Measurement Period.

“Consolidated Net Interest Payable” means Consolidated Interest Payable less Consolidated Interest Receivable during the relevant Measurement Period.

“Consolidated Total Borrowings” means, at any time, in respect of the Group at such time, the aggregate of the following (without double counting):

- (a) the outstanding principal amount of any moneys borrowed including, for the avoidance of doubt, any amounts raised under any Islamic Financing Transaction;
- (b) the outstanding principal amount of any acceptance under any acceptance credit;
- (c) the outstanding principal amount of any bond, note, debenture, loan stock or other similar instrument;
- (d) lease liabilities as provided for in the relevant financial statements;
- (e) the outstanding principal amount of all moneys owing in connection with the sale or discounting of receivables;
- (f) the outstanding principal amount of any indebtedness arising from any deferred payment agreements arranged primarily as a method of raising finance or financing the acquisition of an asset;
- (g) any fixed or minimum premium payable on the repayment or redemption of any instrument referred to in paragraph (c) above;
- (h) the outstanding principal amount of any indebtedness arising in connection with any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and
- (i) the outstanding principal amount of any indebtedness of any person of a type referred to in the above paragraphs which is the subject of a guarantee, indemnity or similar assurance against financial loss given by a member of the Group,

less any indebtedness which would otherwise be included above and which:

- (i) is Project Finance Debt;
- (ii) is Intra Group Debt;
- (iii) is fully subordinated in respect of the right to receive payment of all fees, interest and other charges, repayments of principal and in respect of the commencement of any enforcement action, whether arising by operation

of law, contract or otherwise, to the rights of the Finance Parties under the Finance Documents;

- (iv) is incurred for the purpose of refinancing other existing indebtedness which is included above but such new indebtedness will not be deducted if the refinancing does not occur within three months of it being incurred;
- (v) is indebtedness of a person who becomes a member of the Group after the date of this Agreement but only for a period of three months from the date it becomes a member of the Group; or
- (vi) is indebtedness falling within sub-paragraph (xii), (xiii) or (xiv) of Clause 20.7(b) (*Financial Indebtedness*).

“Consolidated Total Net Borrowings” means at any time Consolidated Total Borrowings less Consolidated Cash and Cash Equivalents.

“Exceptional Items” means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations or impairment of non-current assets; and
- (c) disposals of assets associated with discontinued operations.

“Gearing Ratio” means the ratio of Consolidated Total Net Borrowings to Consolidated EBITDA.

19.2 Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with the principles applied in connection with the Original Financial Statements.
- (b) Any amount in a currency other than the Base Currency is to be taken into account at its Base Currency Amount calculated on the basis of:
 - (i) the Facility Agent's Spot Rate of Exchange for the purchase of the relevant currency in the relevant foreign exchange market with the Base Currency at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or
 - (ii) if the amount is to be calculated on the last day of a financial period of the Company, the relevant rates of exchange used by the Company in, or in connection with, its financial statements for that period.
- (c) No item must be credited or deducted more than once in any calculation under this Clause.

19.3 Gearing

- (a) The Company must ensure that Consolidated Total Net Borrowings do not, at the end of each Measurement Period, exceed 4.0 to 1 times Consolidated EBITDA for that Measurement Period.
- (b) The covenant set out in sub-clause (a) above will not be tested for the Measurement Period ending on 30 June 2022 and the testing for the covenant set out in sub-clause (a) above will commence from the Measurement Period ending on 31 December 2022.
- (c) In order to be permitted to complete any Liquidity Event, the Company must ensure that the:
 - (i) Consolidated Total Net Borrowings for the Measurement Period ending immediately before such Liquidity Date are adjusted to deduct:
 - (A) from the Consolidated Cash and Cash Equivalents, an amount equal to the portion of the Designated Financial Covenant CES Amount relating to the Super Restricted Cash Equivalent Securities which are proposed to be disposed of or collateralised pursuant to the relevant Liquidity Event; and
 - (B) from the Consolidated Total Borrowings, an amount equal to the Liquidity Proceeds generated from the relevant Liquidity Event which will be applied towards voluntary prepayment of the Onboarded Debt Providers in accordance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*); and
 - (ii) after making such adjustments, the Consolidated Total Net Borrowings (as at that Liquidity Date) do not exceed 4.0 to 1 times Consolidated EBITDA for the Measurement Period ending immediately prior to such Liquidity Date.

20. GENERAL COVENANTS

20.1 General

Each Obligor agrees to be bound by the covenants set out in this Clause relating to it and, where the covenant is expressed to apply to each member of the Group, each Obligor must ensure that each of its Subsidiaries performs that covenant.

20.2 Authorisations

- (a) Each Obligor must promptly obtain, maintain and comply with the terms of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of, any Finance Document.

- (b) Each member of the Group must obtain, maintain and comply with the terms of any authorisation required under any law or regulation to enable it to carry on its business where failure to do so is reasonably likely to have a Material Adverse Effect.

20.3 Compliance with laws

Each member of the Group must comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.

20.4 Pari passu ranking

Each Obligor must ensure that its payment obligations under the Finance Documents rank at least pari passu with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

20.5 Negative pledge

- (a) Except as provided below, no member of the Group may create or allow to exist any Security Interest on any of its assets.
- (b) Paragraph (a) does not apply to:
 - (i) any Security Interest listed in Column 7 of Part 1 (*Permanent Financial Indebtedness And Security*) of Schedule 4 (*Existing Security And Financial Indebtedness Permitted Under The Finance Documents*) and any equivalent Security Interest granted in connection with a re-financing of the relevant Financial Indebtedness, except to the extent the principal amount secured by that Security Interest exceeds the amount stated in the corresponding line of Column 5 of that Part 1;
 - (ii) any Security Interest listed in Column 7 of Part 2 (*Other Existing Security*) of Schedule 4 (*Existing Security And Financial Indebtedness Permitted Under The Finance Documents*) and any equivalent Security Interest granted in connection with a re-financing of the relevant Financial Indebtedness, except to the extent the principal amount secured by that Security Interest exceeds the amount stated in the corresponding line of Column 5 of that Part 2;
 - (iii) any Security Interest comprising a 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 lien arising by operation of law and in the ordinary course of trading;
 - (v) any Security Interest on an asset, or an asset of any person, acquired by a member of the Group after the date of this Agreement but only to the extent that the principal amount secured by that Security Interest has not been incurred or increased in contemplation of, or since, the acquisition,

and is outstanding only for a period of six months from the date of the acquisition or such longer period that may be agreed between the Facility Agent (acting on the instructions of the Majority Lenders) and the Company following good faith negotiations;

- (vi) any Security Interest entered into pursuant to a Finance Document;
- (vii) any Security Interest granted over Project Assets to secure Project Finance Debt and, in respect of any Excluded Group Company, a Security Interest over the shareholding or other interest of any member of the Group in that Excluded Group Company;
- (viii) any Security Interest granted by a member of the Group over any (a) Relevant Assets (as defined in Clause 20.7(b)(ix) (*Financial Indebtedness*)); and (b) any other assets of members of the Group (excluding the Relevant Assets) against which the financiers in respect of such Financial Indebtedness are entitled to have recourse pursuant to Clause 20.7(b)(ix) (*Financial Indebtedness*), in each case to secure Financial Indebtedness permitted under Clause 20.7(b)(ix) (*Financial Indebtedness*);
- (ix) any Security Interests 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;
- (x) any Quasi-Security created by a member of the Group arising as a consequence of any Islamic Financing Transaction provided that:
 - (A) the Quasi-Security only affects the assets which are the subject matter of the financing arrangement;
 - (B) possession of the affected asset remains with a member of the Group and no person outside the Group has any express right to require title to be registered in its name or in the name of any other person outside the Group;
 - (C) no mortgage or other Security Interest is created over the affected asset (or any other asset) by the Borrower or any other person (whether or not such person is a member of the Group);
 - (D) the Quasi-Security arises solely as a consequence of the Financial Indebtedness being provided on a Shari'a compliant basis and not with the intention of preferring the provider of such Financial Indebtedness over any unsecured creditors of any member of the Group; and

- (E) the Financial Indebtedness secured by the relevant Quasi-Security is permitted under Clause 20.7 (*Financial Indebtedness*);
- (xi) any Security Interest granted, in connection with Financial Indebtedness incurred under sub-paragraph (xii), (xiii) or (xiv) of sub-clause (b) of Clause 20.7 (*Financial Indebtedness*) or stock or share lending or other derivative or hedging transaction, in all cases, (i) over all or any of the Cash Equivalent Securities, with the exception of any Designated Financial Covenant Cash Equivalent Securities, or (ii) over the shares of a Cash Equivalent Securities Holding Company, with the exception of the Cash Equivalent Securities Holding Company(s) which held the relevant securities that were Designated Financial Covenant Cash Equivalent Securities;
- (xii) any other Security Interests securing Financial Indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other Financial Indebtedness which has the benefit of any Security Interests given by any member of the Group other than any permitted under paragraphs (i) to (ix) and (xi) above) does not exceed \$300,000,000; or
- (xiii) notwithstanding anything contained in sub-paragraph (xi) above, to the extent the Company is in compliance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and sub-clause (c) of Clause 19.3 (*Gearing*), any Super Restricted Cash Equivalent Securities,

provided that:

- (A) any secured Financial Indebtedness incurred by a Cash Equivalent Securities Holding Company must be secured where the recourse of any creditor is limited (aside from customary representations and warranties) to the Cash Equivalent Securities owned by the relevant Cash Equivalent Securities Holding Company or the shares in the Cash Equivalent Securities Holding Company borrowing such indebtedness; and
 - (B) where any secured Financial Indebtedness is incurred by a Group company and is secured against Cash Equivalent Securities or the shares in any Cash Equivalent Securities Holding Company, then the recourse of any creditor must be limited (aside from customary representations and warranties) to those Cash Equivalent Securities or the shares in that Cash Equivalent Securities Holding Company.
- (c) No member of the Group may:
- (i) sell, transfer or otherwise dispose of any of its assets on terms where it is or may be leased to or reacquired or acquired by a member of the Group or any of its related entities;

- (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts;
- (iv) purchase any assets on retention of title terms; or
- (v) enter into any other preferential arrangement having a similar effect,

in circumstances where the transaction is entered into primarily as method of raising Financial Indebtedness or of financing the acquisition of an asset except to the extent that such Financial Indebtedness or financing is permitted under sub-clause (b) of Clause 20.7 (*Financial Indebtedness*).

- (d) Paragraph (c) does not apply to sale and lease back or sale and repurchase arrangements made on arm's length terms where the net proceeds received by the member of the Group from those arrangements are applied in full to prepay all or part of any Financial Indebtedness (other than Financial Indebtedness which is fully subordinated to that of the Lenders).

20.6 Disposals

In this Clause:

"Disposals Account" means the account designated as the escrow account with the Facility Agent over which the Company and the Facility Agent have joint signing rights; and

"Net Disposal Proceeds" means the gross disposal proceeds of all or any part of a member of the Group's assets less:

- (i) any taxes payable in connection with that disposal; and
 - (ii) the reasonable costs and expenses associated with that disposal.
- (a) Except as provided below, no member of the Group may, either in a single transaction or in a series of transactions and whether related or not, dispose of all or any substantial part of its assets.
 - (b) Subparagraph (a) above does not apply to any disposal:
 - (i) of stock or cash made in the ordinary course of trading of the disposing entity;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash);
 - (iii) made with the prior consent of the Majority Lenders;

- (iv) arising as a result of any Security Interests permitted by Clause 20.5 (*Negative pledge*);
- (v) where the Company notifies the Facility Agent that the net proceeds of that disposal will be applied within 12 months of the date on which such net proceeds are received by the relevant Group member(s), in permanent prepayment of Financial Indebtedness (other than Financial Indebtedness which is fully subordinated to that of the Lenders) or reinvestment in the Group's business, and the net proceeds are so applied within such 12 month period;
- (vi) by a member of the Group which is not an Obligor to another member of the Group and for no greater than fair market value if to an Obligor;
- (vii) by an Obligor to another Obligor;
- (viii) for cash of obsolete or redundant vehicles, plant and equipment;
- (ix) constituting Intra Group Debt or any dividend or distribution between members of the Group or dividends paid outside the Group in the ordinary course of business;
- (x) of any shares or other interests in any Excluded Group Company;
- (xi) of any Consolidated Cash and Cash Equivalents for cash or in exchange for other interests which once exchanged would constitute Consolidated Cash and Cash Equivalents;
- (xii) made as a result of any Islamic Financing Transaction incurred by a member of the Group which is permitted under Clause 20.7 (*Financial Indebtedness*) and provided further that such disposal does not create a Security Interest or Quasi-Security which is not permitted under Clause 20.5 (*Negative pledge*);
- (xiii) of any Cash Equivalent Securities, including the Designated Financial Covenant Cash Equivalent Securities, as part of a share buyback program offered by the issuer of such securities;
- (xiv) subject to Clause 8.3 (*Mandatory prepayment from Monetisation proceeds*), Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and Clause 20.21 (*Restricted Cash Equivalent Securities*) (in each case, to the extent applicable), of any other Cash Equivalent Securities (including pursuant to a stock or share lending or other derivative or hedging transaction), with the exception of the Designated Financial Covenant Cash Equivalent Securities;
- (xv) subject to Clause 8.3 (*Mandatory prepayment from Monetisation proceeds*), Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and Clause 20.21 (*Restricted Cash Equivalent Securities*) (in each case, to the extent applicable), of any shares in a Cash Equivalent Securities

Holding Company, with the exception of a Cash Equivalent Securities Holding Company which holds the Designated Financial Covenant Cash Equivalent Securities;

- (xvi) where the higher of the market value and consideration receivable (when aggregated with the higher of the market value and consideration for any other disposal not allowed under the preceding subparagraphs) does not exceed \$150,000,000 or its equivalent (the “**Total Disposal Limit**”) in any financial year of the Company (for the avoidance of doubt the proceeds of the disposal of shares as prescribed in the above subparagraphs (xiii), (xiv) or (xv) shall not be included when calculating the Total Disposal Limit); or
- (xvii) notwithstanding anything contained in sub-paragraphs (xiii), (xiv) and (xv) above, to the extent the Company is in compliance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and sub-clause (c) of Clause 19.3 (*Gearing*), any Super Restricted Cash Equivalent Securities.

(c)

- (i) A member of the Group may make a disposal (other than of Cash Equivalent Securities) for full value exceeding the Total Disposal Limit and which is not otherwise permitted by subparagraph (b) above, provided that the Net Disposal Proceeds are immediately paid into the Disposals Account following which the Company and the Facility Agent (acting on the instructions of the Majority Lenders) shall enter into discussions in good faith as to how the Net Disposal Proceeds should be applied.
- (ii) If the Company and the Facility Agent (acting on the instructions of the Majority Lenders) fail to reach an agreement by the date falling 60 days after the relevant disposal, then the Facility Agent and the Company shall apply the Net Disposal Proceeds in prepayment of the Loans by the date falling no later than 65 days after the date of the relevant disposal which shall be treated as a voluntary prepayment in accordance with Clause 8.6 (*Voluntary prepayment*).
- (iii) Any amounts of interest accrued on amounts standing to the credit of the Disposals Account shall be transferred to such account as the Company may specify.

20.7 Financial Indebtedness

- (a) Except as provided below, no member of the Group may incur any Financial Indebtedness.
- (b) Subject to compliance with Clause 8.4 (*Mandatory prepayment from Debt Issuance proceeds*), Clause 8.5 (*Mandatory prepayment from Other Debt proceeds*), Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and

Clause 20.21 (*Restricted Cash Equivalent Securities*) (each to the extent applicable), paragraph (a) above does not apply to:

- (i) any Financial Indebtedness incurred under, or expressly permitted under, the Finance Documents;
- (ii) any Financial Indebtedness owed by an Obligor which does not benefit from any Security Interest (which, for the avoidance of doubt, excludes any Quasi-Security permitted under this Agreement) and which ranks pari passu with, or is fully subordinated to, the indebtedness owing to the Finance Parties under the Finance Documents;
- (iii) any Intra Group Debt;
- (iv) any Financial Indebtedness of any person acquired by a member of the Group after the date of this Agreement which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or its maturity date extended in contemplation of, or since, that acquisition, and (other than where a Security Interest exists in relation to such Financial Indebtedness under Clause 20.5(b)(v) and the Majority Lenders have consented, such consent not to be unreasonably withheld, that such Financial Indebtedness may remain outstanding without limitation by this Clause 20.7(b)(iv)) outstanding only for a period of six months from the date of acquisition or such longer period that may be agreed between the Facility Agent (acting on the instructions of the Majority Lenders) and the Company following good faith negotiations;
- (v) any derivative transaction permitted by Clause 20.13 (*Treasury transactions*);
- (vi) any Customer Inventory Financing;
- (vii) Project Finance Debt incurred by any member of the Group;
- (viii) any Financial Indebtedness incurred for the purpose of refinancing existing Financial Indebtedness;
- (ix) any Financial Indebtedness (excluding Project Finance Debt) incurred in relation to the acquisition, development or improvement of any asset (together the “**Relevant Assets**”) of a member of the Group after the date of this Agreement provided that the aggregate maximum principal amount of such Financial Indebtedness does not exceed \$150,000,000 and the value of assets of members of the Group (excluding the Relevant Assets) against which the financiers in respect of such Financial Indebtedness have recourse does not in aggregate exceed \$100,000,000 and it shall be assumed for the purpose of calculating the value of assets so secured that such value shall not exceed the principal amount, at any time, of the Financial Indebtedness in respect of which such assets are secured;

- (x) any Financial Indebtedness incurred in relation to the realisation or implementation of any ALP Project up to an amount of US\$500,000,000 provided that to the extent such Financial Indebtedness would otherwise constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement, any such Financial Indebtedness shall not constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement;
- (xi) any credit support (including a guarantee or guarantees) provided to support the Reem Mall Project as permitted under sub-paragraph (b)(ix) of Clause 20.10 (*Acquisitions*), provided that to the extent that such credit support would otherwise constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement, any such acquisitions or investments shall not constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement;
- (xii) any Financial Indebtedness incurred by a Cash Equivalent Securities Holding Company, provided that in respect of any Financial Indebtedness falling within this sub-paragraph, such Financial Indebtedness is either (a) unsecured with no recourse to the Group (other than the relevant borrower of such indebtedness), or (b) secured where the recourse of any creditor is limited (aside from customary representations and warranties) to the Cash Equivalent Securities (other than the Designated Financial Covenant Cash Equivalent Securities) or the shares in any Cash Equivalent Securities Holding Company (with the exception of the Cash Equivalent Securities Holding Company(s) which holds the securities that are Designated Financial Covenant Cash Equivalent Securities);
- (xiii) any Financial Indebtedness incurred by a Group company (other than a Cash Equivalent Securities Holding Company which held the Designated Financial Covenant Cash Equivalent Securities) which is secured, and the recourse of any creditor is limited (aside from customary representations and warranties) to the Cash Equivalent Securities (other than the Designated Financial Covenant Cash Equivalent Securities) or the shares in any Cash Equivalent Securities Holding Company (with the exception of the Cash Equivalent Securities Holding Company(s) which holds the Designated Financial Covenant Cash Equivalent Securities);
- (xiv) any Financial Indebtedness incurred by a Group company pursuant to a stock or share lending or other derivative or hedging transaction, related to Cash Equivalent Securities (other than the Designated Financial Covenant Cash Equivalent Securities);
- (xv) any Financial Indebtedness incurred under any lease granted to any member of the Group;
- (xvi) any other Financial Indebtedness which in aggregate does not exceed \$400,000,000 or its equivalent at any time; or

- (xvii) notwithstanding anything contained in sub-paragraphs (xii), (xiii) and (xiv) above, to the extent the Company is in compliance with Clause 20.20 (*Super Restricted Cash Equivalent Securities*) and sub-clause (c) of Clause 19.3 (*Gearing*), any Super Restricted Cash Equivalent Securities,

provided that:

- (A) any Financial Indebtedness incurred by a Cash Equivalent Securities Holding Company must be (x) unsecured with no recourse to the Group (other than the relevant Cash Equivalent Securities Holding Company borrowing such indebtedness), or (y) secured where the recourse of any creditor is limited (aside from customary representations and warranties) to the Cash Equivalent Securities owned by the relevant Cash Equivalent Securities Holding Company or the shares in the Cash Equivalent Securities Holding Company (borrowing such indebtedness; and
- (B) where any Financial Indebtedness is incurred by a Group company and is secured against Cash Equivalent Securities or the shares in any Cash Equivalent Securities Holding Company, then the recourse of any creditor must be limited (aside from customary representations and warranties) to those Cash Equivalent Securities or the shares in that Cash Equivalent Securities Holding Company.

20.8 Change of business

The Company must ensure that no substantial change is made to the general nature of the business of the Company or the Group (including, for this purpose, the Excluded Group Companies) from that carried on at the date of this Agreement where it is reasonably likely to have a Material Adverse Effect.

20.9 Mergers

No Obligor may enter into any amalgamation, demerger, merger or reconstruction otherwise than:

- (a) under an intra-Group re-organisation of a member of the Group which is not an Obligor on a solvent basis;
- (b) a merger involving an Obligor provided such Obligor is the surviving entity and such merger does not adversely affect the ability of that Obligor to perform its obligations under this Agreement, the validity or enforceability of this Agreement against that Obligor or any right or remedy of any Finance Party in respect of this Agreement;
- (c) any other transaction agreed by the Majority Lenders; or

- (d) any sale, lease, transfer or other disposal permitted pursuant to Clause 20.6 (*Disposals*).

20.10 Acquisitions

- (a) Except as provided below, no member of the Group may make any acquisition or investment.
- (b) Paragraph (a) above does not apply to:
 - (i) acquisitions or investments made in the ordinary course of trade of the relevant member of the Group;
 - (ii) an acquisition or investment made by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a disposal permitted under Clause 20.6 (*Disposals*);
 - (iii) the incorporation of a company which on incorporation becomes a member of the Group or the acquisition of shares in a company which is recently incorporated and has not traded or incurred liabilities;
 - (iv) any acquisition or investment approved by the Majority Lenders;
 - (v) any acquisition to the extent financed by an equity issue or debt which is fully subordinated in respect of the right to receive payment of all fees, interest and other charges, repayments of principal and in respect of the commencement of any enforcement action, whether arising by operation of law, contract or otherwise, to the obligations of the Obligors under the Finance Documents;
 - (vi) acquisitions of or investments (by way of debt or equity) in Project Finance Companies in an aggregate amount not exceeding \$300,000,000 at any time;
 - (vii) any acquisition or investment to the extent financed by an equity issue to persons other than any member of the Group;
 - (viii) any acquisition made as a result of any Islamic Financing Transaction incurred by a member of the Group which is permitted under Clause 20.7 (*Financial Indebtedness*);
 - (ix) any acquisitions or investments made into any entities engaged in the Reem Mall Project for the purpose of that project of up to \$457,000,000 (in aggregate at any time) by way of:
 - (A) direct investment consideration, equity, quasi-equity or debt investment, credit support (including guarantees) or any other form of acquisition or investment made by the Group; and/or

- (B) credit support given by a member of the Group of outstanding debt of entities engaged in or connected with the Reem Mall Project (including a guarantee or guarantees),

provided that, where the amount related to any such acquisitions or investments made under this sub-paragraph (ix) would otherwise constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement, any such amount shall not constitute Financial Indebtedness and/or form part of Consolidated Total Borrowings for the purposes of this Agreement;

- (x) any acquisition or investment which does not require shareholder approval of the relevant member of the Group (unless approved by the Majority Lenders) and is in line with the business plan of the Group at the time of such acquisitions or investments;
- (xi) any acquisition of securities (A) of the same type as the Cash Equivalent Securities; and (B) issued by the same entity as the one who has issued the securities held in the Cash Equivalent Securities Custody Accounts, which arise pursuant to a stock or share lending or other derivative or hedging transaction related to Cash Equivalent Securities (other than transactions involving the Designated Financial Covenant Cash Equivalent Securities); or
- (xii) acquisitions or investments where the relevant consideration (when aggregated with the relevant consideration of any other acquisition or investment not allowed under the preceding subparagraphs):
 - (A) does not exceed \$250,000,000 for any single acquisition or investment (or series of related acquisitions or investments); and
 - (B) does not exceed \$500,000,000 or its equivalent in any financial year of the Company.

In subparagraph (xii) above, relevant consideration means all consideration for an acquisition or investment (including, without limitation, any deferred payments, capital commitments, non-cash consideration or assumption of liability) other than any part of such consideration that is financed by way of Project Finance Debt.

20.11 Environmental matters

- (a) Each member of the Group must ensure that it is, and has been, in compliance with all Environmental Law and Environmental Approvals applicable to it, where failure to do so has or is reasonably likely to have a Material Adverse Effect or results in any liability for a Finance Party.
- (b) Each Obligor must promptly upon becoming aware notify the Facility Agent of:

(i) any Environmental Claim current, or to its knowledge, pending or threatened; or

(ii) any circumstances reasonably likely to result in an Environmental Claim,

which has or, if substantiated, is reasonably likely to either have a Material Adverse Effect or result in any liability for a Finance Party.

20.12 Insurance

(a) Each member of the Group must insure its business and assets with insurance companies (subject to paragraph (b) below, including without limitation any Captive Insurance Company) to such an extent and against such risks as companies engaged in a similar business normally insure.

(b) Each Captive Insurance Company must reinsure all or part of the insurance risk for which it is liable to such an extent and against such risks as companies engaged in a similar business normally reinsure.

In this Clause, “**Captive Insurance Company**” means a Group company which is incorporated for the purpose of providing insurance to other members of the Group and which meets regulatory requirements applicable to insurance providers in the jurisdiction of its incorporation.

20.13 Treasury transactions

(a) In this Clause treasury transaction means any derivative transaction protecting against or benefiting from fluctuations in any rate or price.

(b) No member of the Group may enter into any treasury transaction for solely speculative purposes (unless approved by the Majority Lenders).

20.14 Guarantee

The Company shall at all times maintain a guarantee in relation to this Facility on the terms provided in Clause 16 (*Guarantee and Indemnity*).

20.15 Intellectual Property

Each member of the Group shall:

(a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of any Obligor or the Group as a whole;

(b) use reasonable endeavours to prevent any infringement in any material respect of such Intellectual Property;

(c) not use or permit such Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may

materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any member of the Group to use such property; and

- (d) not discontinue the use of such Intellectual Property.

20.16 Taxes

Each member of the Group must pay and discharge all Taxes imposed on it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (a) such payment is being contested in good faith by appropriate measures; and
- (b) adequate accounting reserves are being maintained for those Taxes and the costs required to contest them.

20.17 Sanctions

- (a) The Company will not use the proceeds of the Facility directly or (to the best of its knowledge) indirectly:

- (i) for the purpose of financing or making funds available to any person or entity which is currently listed on a Sanctions List or currently is located, organised or resident in a Sanctioned Country; or

- (ii) in any other manner,

which would, as at the date of the financing, making funds available or use in any other manner, be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions.

- (b) The Company will not prepay or repay all or any part of any Loan using funds knowingly derived directly from any transactions which would be prohibited by Sanctions.

20.18 Anti-Corruption

Each Obligor will maintain in effect policies reasonably designed to promote compliance with Anti-Corruption Laws and Sanctions laws applicable to it.

20.19 Cash Equivalent Securities Holding Company Restriction

- (a) No Cash Equivalent Securities Holding Company shall hold any material assets of the Group, other than Cash Equivalent Securities.
- (b) The Company shall ensure that the number of Cash Equivalent Securities that may be designated as Designated Financial Covenant Cash Equivalent Securities shall be no greater than the aggregate number of Cash Equivalent Securities held in the (i) Cash Equivalent Securities Custody Account 1; and (ii) subject to compliance with paragraph (d) of Clause 20.20 (*Super Restricted Cash*

Equivalent Securities), Cash Equivalent Securities Custody Account 2, as on the date of this Agreement.

- (c) The Company shall ensure that no member of the Group shall hold any other type of tradeable securities in the Cash Equivalent Securities Custody Accounts other than the Cash Equivalent Securities.

20.20 Super Restricted Cash Equivalent Securities

- (a) Subject to:
 - (i) compliance with paragraph (d) below; and
 - (ii) any disposal, sale or collateralisation of Cash Equivalent Securities in compliance with this Clause 20.20,

the Company shall ensure that the number of Cash Equivalent Securities in aggregate held in the Cash Equivalent Securities Custody Account 2 is at all times no less than the number of Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 as on the date of this Agreement (the "**Super Restricted Cash Equivalent Securities**").

- (b) To the extent that any entity whose securities constitute Cash Equivalent Securities issues any bonus securities to its existing holders of securities, then the amount of bonus securities issued to the entities holding the Super Restricted Cash Equivalent Securities (in respect of that holding of Super Restricted Cash Equivalent Securities) shall on issuance be treated as Super Restricted Cash Equivalent Securities for the purposes of this Agreement.
- (c) Notwithstanding any other provision in this Agreement, in respect of the number of Super Restricted Cash Equivalent Securities, the Company will only be permitted to dispose of any number of Super Restricted Cash Equivalent Securities as part of a share buyback program offered by any entity whose securities constitute Cash Equivalent Securities, provided that any number of Super Restricted Cash Equivalent Securities so disposed of under this subparagraph are disposed of pro rata to any other Cash Equivalent Securities disposed of at the same time by the Company or the Group under the share buyback program (and for the avoidance of doubt any such disposal proceeds will be unencumbered and not subject to the Super Restricted Securities Disposals Account mechanism provided for in paragraph (e) below).
- (d) The Company and the Finance Parties agree that:
 - (i) any Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 may only be designated as Financial Covenant Cash Equivalent Securities if a substantially similar provision allowing such designation (howsoever described) has been agreed to in relation to Mayan VIII Agreement by the requisite majority of lenders required in order to effect such an amendment in accordance with the terms of the Mayan VIII Agreement (the "**Mayan VIII Majority Lenders**");

- (ii) if the Mayan VIII Majority Lenders or any other lender or group of lenders which the Company or any other member of the Group has requested consent from to designate any Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 as Financial Covenant Cash Equivalent Securities (however so described), solely as a condition to providing such consent (and not for any other reason), require any amendments to the Mayan VIII Agreement or relevant financing agreement (or any other finance document which relates to the Mayan VIII Agreement or the relevant financing agreement) or the entry into any new finance document which relates to the Mayan VIII Agreement or the relevant financing agreement which:

- (A) have not already been made to the Finance Documents; and
- (B) provide more beneficial terms ("**Beneficial Terms**") to the relevant finance parties than the existing terms (prior to execution of any such amendments or additional documents),

then the Company shall ensure that the Finance Documents are amended to also provide the Finance Parties with such Beneficial Terms under the Finance Documents, provided that the Company shall have no obligations under this paragraph (d)(ii) if any such Beneficial Terms:

- (X) have been provided under an Islamic Financing Transaction and relate solely to the particular mechanics of that type of financing and does not provide the counterparty under such Islamic Financing Transaction with improved economic or documentary terms and conditions (other than any terms and conditions offered to ensure that the relevant Islamic Financing Transaction is compliant with Islamic law Shari'a);
 - (Y) relate to any finance party under Mayan VIII Agreement receiving an additional fee (in any form or manner whatsoever) as consideration for providing its consent to allow the designation of the Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 as Financial Covenant Cash Equivalent Securities (howsoever described); or
 - (Z) relate to any commercial terms relating to interest rate, tenor, pricing or fees (or other similar commercial terms) which are specific to the transaction contemplated under that financing agreement; and
- (iii) until the conditions mentioned in sub-paragraphs (i) and (ii) above have been complied with, the number of Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 shall not be capable of being designated as Financial Covenant Cash Equivalent Securities and consequently that number of Cash Equivalent Securities shall not be required to constitute Super Restricted Cash Equivalent Securities.

- (e) Notwithstanding any other provision in this Agreement but subject to paragraph (d) above, if on a Liquidity Date the Company is in compliance with its obligations under sub-clause (c) of Clause 19.3 (*Gearing*), then it shall be permitted to undertake a Liquidity Event provided that:
- (i) on or prior to the Liquidity Date, the Company provides a certificate to the Facility Agreement signed by a director certifying that at the proposed Liquidity Date:
- (A) no Default is continuing and no Default will occur as a result of undertaking a Liquidity Event; and
- (B) the Company is in compliance with its obligations under sub-clause (c) of Clause 19.3 (*Gearing*) provided that the financial covenant specified in sub-clause (c) of Clause 19.3 (*Gearing*) will be calculated making the adjustments specified in paragraph (i) of sub-clause (c) of Clause 19.3 (*Gearing*);
- (ii) the Liquidity Proceeds received from that Liquidity Event are immediately paid into the Super Restricted Securities Disposals Account following which the Company and the Facility Agent (acting on the instructions of the Majority Lenders) shall, for a period of 10 Business Days commencing from the Liquidity Date (the “**Consultation Period**”) enter into discussions in good faith as to how the Liquidity Proceeds should be applied. For the avoidance of doubt, the Lenders acknowledge that the Company shall be having similar discussions as to the use of the Liquidity Proceeds with:
- (A) the lenders under Mayan VIII Agreement; and
- (B) certain other debt providers under unsecured facilities made available to the Group:
- (1) where the relevant debt documents contain substantially similar provisions to the Mayan VIII Agreement (including with respect to the utilisation of Liquidity Proceeds (howsoever described));
- (2) wherein the relevant majority of lenders have agreed to allow the designation of the number of Cash Equivalent Securities held in Cash Equivalent Securities Custody Account 2 (howsoever described in the relevant facility documentation) as (x) Financial Covenant Cash Equivalent Securities (howsoever described in the relevant facility documentation); and (y) Super Restricted Cash Equivalent Securities (howsoever described in the relevant facility documentation),
- (together with the Lenders, the “**Onboarded Debt Providers**”);

- (iii) at the expiry of the Consultation Period, any of the Onboarded Debt Providers (acting through their respective facility agents) may require the Company to apply the Liquidity Proceeds standing to the credit of the Super Restricted Securities Disposals Account in prepayment of loans (and cancellation of commitments relating to such loans) or cancellation of undrawn commitments (as applicable) under their respective facilities, and the Company shall, by no later than 3 Business Days after the expiry of the Consultation Period, apply all of the Liquidity Proceeds standing to the credit of the Super Restricted Securities Disposals Account in prepayment of the loans (and cancellation of commitments to the extent loans have been so prepaid) or cancellation of undrawn commitments (as applicable) provided by such Onboarded Debt Providers, provided that to the extent any undrawn commitments under any facilities availed by the Group are cancelled pursuant to the Company complying with this sub-paragraph (iii), to that extent (being the amounts equal to the amount of undrawn commitments cancelled (such amount referred to as the **"Retained Liquidity Proceeds"**)) the Company will be entitled to withdraw from the Super Restricted Securities Disposals Account an amount equal to the Retained Liquidity Proceeds and shall be free to apply such amounts in any manner it sees fit;
- (iv) the allocation of the Liquidity Proceeds as between the Onboarded Debt Providers that request to be prepaid and/or cancelled pursuant to paragraph (iii) above shall be based on each Onboarded Debt Provider's pro rata share of commitments at the time of such prepayment under debt documents pursuant to which Financial Indebtedness has been provided to the Group and which contain this Clause 20.20(e) or a requirement for prepayment and/or cancellation similar in substance to that contained in this Clause 20.20(e) in respect of such Liquidity Proceeds and under which the right of prepayment and/or cancellation has been exercised;
- (v) within 3 Business Days of the relevant Liquidity Date, the Company shall provide the Facility Agent with a Compliance Certificate (together with calculations evidencing the same) confirming that it was in compliance with its obligations under sub-clause (c) of Clause 19.3 (*Gearing*) on that Liquidity Date; and
- (vi) for the avoidance of doubt, any amounts of interest, profit or comparable sums (**"Deposit Income"**) accruing from time to time on Liquidity Proceeds standing to the credit of the Super Restricted Securities Disposals Accounts may be retained by the Company for application at its sole discretion and such Deposit Income shall not be treated as part of the relevant Liquidity Proceeds.

20.21 Restricted Cash Equivalent Securities

- (a) Subject to any disposal, sale or collateralisation of Cash Equivalent Securities in compliance with this Clause 20.21, the Company shall ensure that the number of Cash Equivalent Securities in aggregate held in the Cash Equivalent Securities Custody Account 1, Cash Equivalent Securities Custody Account 3 and Cash

Equivalent Securities Custody Account 4 is at all times no less than the number of Cash Equivalent Securities held in those Cash Equivalent Securities Custody Accounts as on the date of this Agreement (the “**Restricted Cash Equivalent Securities**”).

- (b) To the extent that any entity whose securities constitute Cash Equivalent Securities issues any bonus securities to its existing holders of securities, then the amount of bonus securities issued to the entities holding the Restricted Cash Equivalent Securities (in respect of that holding of Restricted Cash Equivalent Securities) shall on issuance be treated as Restricted Cash Equivalent Securities for the purposes of this Agreement.
- (c) Notwithstanding any other provision in this Agreement, in respect of the number of Restricted Cash Equivalent Securities, the Company will only be permitted to:
 - (i) dispose of any number of Restricted Cash Equivalent Securities as part of a share buyback program offered by any entity whose securities constitute Cash Equivalent Securities, provided that any number of Restricted Cash Equivalent Securities so disposed of under this subparagraph (i) are disposed of pro rata to any other Cash Equivalent Securities disposed of at the same time by the Company or the Group under the share buyback program (and for the avoidance of doubt any such disposal proceeds will be unencumbered and not subject to the Restricted Securities Disposals Account mechanism provided for in subparagraph (ii) below); and
 - (ii) raise Financial Indebtedness against the Restricted Cash Equivalent Securities (including by way of a stock or share lending or other derivative or hedging transaction) or the Cash Equivalent Securities Holding Company holding such Restricted Cash Equivalent Securities as permitted under Clause 20.7(b), and dispose of Restricted Cash Equivalent Securities or the Cash Equivalent Securities Holding Company holding such Restricted Cash Equivalent Securities as permitted under Clause 20.6(b) (other than Clause 20.6(b)(xiii)) only if all the Super Restricted Cash Equivalent Securities (if any) have been disposed of or collateralised on or prior to time at which the Company proposes to (x) raise Financial Indebtedness against the Restricted Cash Equivalent Securities or the Cash Equivalent Securities Holding Company holding such Restricted Cash Equivalent Securities; or (y) dispose of such Restricted Cash Equivalent Securities or the Cash Equivalent Securities Holding Company holding such Restricted Cash Equivalent Securities, provided that in respect of any net cash proceeds of such Financial Indebtedness (“**Net Financial Indebtedness Proceeds**”) and any Net Disposal Proceeds of Restricted Cash Equivalent Securities:
 - (A) such Net Financial Indebtedness Proceeds or Net Disposal Proceeds (as the case may be) are immediately paid into a Restricted Securities Disposals Account following which the Company and the Facility Agent (acting on the instructions of the

Majority Lenders) shall enter into discussions in good faith as to how the Net Financial Indebtedness Proceeds or Net Disposal Proceeds should be applied. For the avoidance of doubt, the Lenders acknowledge that the Company shall be having similar discussions as to the use of the Net Financial Indebtedness Proceeds or Net Disposal Proceeds with certain other debt providers to the Group whose debt documents contain substantially similar provisions to this Clause 20.21(c) in respect of the Net Financial Indebtedness Proceeds and the Net Disposal Proceeds (the “**Relevant Debt Providers**”);

- (B) if the Company, the Relevant Debt Providers and the Facility Agent (acting on the instructions of the Majority Lenders) fail to reach an agreement by the date falling 60 days after the relevant disposal or incurrence of Financial Indebtedness, then the Company shall, by no later than 65 days after the date of the relevant disposal or incurrence of Financial Indebtedness, apply the Net Financial Indebtedness Proceeds or Net Disposal Proceeds standing to the credit of the Restricted Securities Disposals Account in voluntary prepayment of the Loans in accordance with Clause 8.6 (*Voluntary prepayment*) and in voluntary prepayment of the loans of any Relevant Debt Providers with whom the Company has failed to reach such agreement. The allocation of the Net Financial Indebtedness Proceeds or Net Disposal Proceeds (as the case may be) as between the Lenders and Relevant Debt Providers shall be based on each Lender or Relevant Debt Providers' pro rata share of utilisations or equivalent advances which are outstanding at the time of such prepayment under debt documents pursuant to which Financial Indebtedness has been provided to the Group and which contain this Clause 20.21(c) or a requirement for prepayment similar in substance to that contained in this Clause 20.21(c) in respect of such Net Financial Indebtedness Proceeds or Net Disposal Proceeds; and
- (C) for the avoidance of doubt, any amounts of interest, profit or comparable sums (“**Deposit Income**”) accruing from time to time on Net Financial Indebtedness Proceeds or Net Disposal Proceeds standing to the credit of the Restricted Securities Disposals Accounts may be retained by the Company for application at its sole discretion and such Deposit Income shall not be treated as part of the relevant Net Financial Indebtedness Proceeds or Net Disposal Proceeds.

20.22 The Acquisition

- (a) Compliance

The Obligors shall (and shall ensure that the Purchaser shall) comply with all laws and regulations applicable to a Scheme or Offer (as applicable) (including,

without limitation, the Takeover Code, save to the extent that the Takeover Panel has given its consent in respect of any relevant failure to comply or save as required by the Court), in each case where failure to comply would reasonably be expected to be materially prejudicial to the interests of the Finance Parties taken as a whole.

(b) Acceptance condition

In the case of an Offer, the Company shall ensure that the Purchaser shall not declare the Offer unconditional until it has received acceptances in respect of such number of shares as will result in the Purchaser owning beneficially at least the aggregate of (i) 50% of the ordinary issued share capital of the Target; and (ii) 1 issued ordinary share in the Target.

(c) The Company shall ensure that the Purchaser shall not amend or waive or treat as satisfied any material term or condition relating to the Acquisition as set out in the Scheme Press Release or the Offer Press Release (as applicable) delivered in satisfaction of Part I (*To be delivered before the Before Request*) of Schedule 2 (*Conditions Precedent Documents*) of this Agreement, in a manner which would reasonably be expected to be materially prejudicial to the interests of the Finance Parties taken as a whole, other than any amendment or waiver:

- (i) made with the prior written consent of the Majority Lenders (such consent, in each case, not to be unreasonably withheld or delayed);
- (ii) required or requested by the Takeover Panel or the Court, or reasonably determined by the Purchaser as being necessary or desirable to comply with the requirements or requests (as applicable) of the Takeover Code, the Takeover Panel or the Court or any other relevant regulatory body or applicable law or regulation;
- (iii) for changing the purchase price (or a written agreement related thereto) in connection with the Acquisition;
- (iv) for extending the period in which holders of the Target Shares may accept the terms of the Scheme or, as the case may be, the Offer (including by reason of the adjournment of any meeting or court hearing);
- (v) required to allow the Acquisition to switch from being effected by way of an Offer to a Scheme or from a Scheme to an Offer;
- (vi) for changing the acceptance condition (subject to the minimum acceptance condition set out in paragraph (b) above);
- (vii) necessary or desirable to reflect a change to or withdrawal of any recommendation of the board of directors of the Target (including where the Acquisition process turns hostile); or

- (viii) which relates to a condition which the Company reasonably considers that it would not be entitled, in accordance with Rule 13.5(a) of the Takeover Code, to invoke so as to cause the Offer not to proceed.
- (d) Save as required by the Takeover Panel, the Court or any other applicable law, regulation or regulatory body, or as reasonably determined by the Purchaser as being necessary or desirable to comply with the requirements or requests (as applicable) of the Takeover Code, the Takeover Panel or the Court or any other relevant regulatory body or applicable law or regulation, the Company shall ensure that the Purchaser shall not prior to the end of the offer period (as defined in the Takeover Code) make any press release or other public statement in respect of the Acquisition which refers to the Facility, any Finance Document or the Finance Parties or any of them (in such capacity) which would be materially prejudicial to the interests of the Lenders (taken as a whole) under the Finance Documents (other than the Scheme Press Release or Offer Press Release (as applicable), any Scheme Circular or any Offer Document), without (to the extent permitted by law or regulation) first obtaining the prior approval of the Facility Agent (acting on the instructions of the Majority Lenders), with such approval by the Facility Agent and Lenders (as appropriate) not to be unreasonably withheld or delayed. If the Purchaser does become so required, the Purchaser shall notify the Facility Agent as soon as practicable (and to the extent that it does not prejudice the Purchaser's ability to comply with such requirement), upon becoming aware of the requirement. For the avoidance of doubt, this paragraph shall not restrict the Purchaser from making any disclosure that is required, permitted or customary in relation to the Finance Documents or the identity of the Finance Parties in the Scheme Press Release or Offer Press Release (as applicable), any Scheme Circular or any Offer Document or making any disclosure or filings as required by the Takeover Code or by law or its auditors or in its audited financial statements or in accordance with or in order to satisfy or comply with the terms of the Finance Documents.
- (e) The Company shall ensure that the Purchaser shall not take any steps as a result of which any member of the Group is obliged to make a mandatory offer under Rule 9 of the Takeover Code.
- (f) The Company shall ensure that the Purchaser shall:
 - (i) if the Acquisition is being effected by way of the Scheme, use all reasonable endeavours to de-list the Target from the Official List of the UK Listing Authority and re-register the Target as a private limited company, in each case within 60 days of the Effective Date;
 - (ii) if
 - (A) the Acquisition is being effected by way of an Offer;
 - (B) the Purchaser has acquired Target Shares carrying 75% or more (but less than 90%) of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target; and

- (C) the Purchaser determines that it is commercially reasonable (in its sole opinion acting in good faith) to de-list the Target from the Official List of the UK Listing Authority and re-register the Target as a private limited company,

use all reasonable endeavours to de-list the Target from the Official List of the UK Listing Authority and re-register the Target as a private limited company, in each case, within 90 days of the date on which the Purchaser acquires Target Shares carrying 75% of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target;

- (iii) if the Acquisition is being effected by way of an Offer and the Purchaser has acquired Target Shares carrying 90% or more of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target, use all reasonable endeavours to de-list the Target from the Official List of the UK Listing Authority and re-register the Target as a private limited company, in each case within 90 days of the date on which the Purchaser acquires Target Shares carrying 90% of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target; and
- (iv) if the Acquisition is being effected by way of an Offer, and to the extent the Purchaser owns or controls not less than 90% of the voting rights of the Target Shares the subject of the Offer, use reasonable efforts to, promptly (and in any event within the maximum time period prescribed by such actions) complete a Squeeze-Out.

Notwithstanding anything contained in this sub-clause (f), the parties agree that neither the Company nor the Purchaser shall be able to use reasonable endeavours to (x) de-list the Target Preference Shares; and (y) re-register the Target as a private limited company, unless it acquires at least 75% of all Target Preference Shares, and until such time, the obligations of the Company and the Purchaser under sub-paragraphs (i), (ii) and (iii) above will be limited to the requirement to de-list the Target Shares in accordance with the relevant provisions contained in those sub-paragraphs, and the time period to do so will commence from the date on which the Company acquires the relevant percentage (as specified in the relevant sub-paragraph above) of Target Shares. It is clarified that if the Company (acting through the Purchaser or any other member of the Group) acquires 75% of all Target Preference Shares, the time period of (x) 60 days mentioned in sub-paragraph (i) above; and (y) 90 days mentioned in sub-paragraphs (ii) and (iii) above, will commence from the date on which the Company or the Purchaser (or any other member of the Group) acquires 75% of all Target Preference Shares.

- (g) Subject to any confidentiality, regulatory, legal or other restrictions relating to the supply of such information, the Company will (and will ensure that the Purchaser will) keep the Facility Agent informed as to any material developments in relation to the Acquisition which are of direct relevance to the Finance Parties, including if the Scheme or the Offer lapses or is withdrawn, and, will from time to time, if

the Facility Agent reasonably requests, give the Facility Agent reasonable details as to the current level of acceptances from any Offer.

- (h) The Company shall procure that the Purchaser shall ensure that the Offer Document and the Scheme Circular are substantially consistent in all material respects with the terms of the Scheme Press Release or Offer Press Release (as applicable) together with any amendments or other changes which would be permitted under paragraph (c) above.
- (i) Subject to paragraphs (a) to (h) above, it is clarified that the Company and the other members of the Group (including the Purchaser and the Purchaser HoldCo) are solely entitled to determine the terms and conditions of the offer for the Acquisition (whether it is undertaken in accordance with the Acquisition Documents or otherwise, and including where the Acquisition process turns hostile) and that the Finance Parties are not entitled to impose any conditions or restrictions on the manner in which the Company or any other member of the Group (including the Purchaser and/or the Purchaser HoldCo) proceeds with the Acquisition.

21. DEFAULT

21.1 Events of Default

- (a) Subject to paragraph (b) below, each of the events set out in this Clause is an Event of Default.
- (b) Without prejudice to Clause 21.15 (*Clean-Up Period*), an event which occurs or is existing in respect of a company (other than a company which is a member of the Target Group) which becomes a member of the Group after the date of this Agreement and which, but for the operation of this Clause 21.1(b) would be an Event of Default, shall not be an Event of Default unless such event is continuing upon the expiry of a 120 day cure period (except in the case of a breach by such company of either Clause 17.22 (*Sanctions*) or Clause 20.17 (*Sanctions*) where such 120 day cure period shall not apply), commencing on the date on which the relevant company became a member of the Group.

In this Clause, “**Permitted Transaction**” means:

- (i) an intra-Group re-organisation of a member of the Group which is not an Obligor on a solvent basis;
- (ii) a merger involving an Obligor provided such Obligor is the surviving entity and such merger does not adversely affect the ability of that Obligor to perform its obligations under this Agreement, the validity or enforceability of this Agreement against that Obligor or any right or remedy of any Finance Party in respect of this Agreement; or
- (iii) any other transaction agreed by the Majority Lenders.

21.2 Non-payment

An Obligor does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents, unless the non-payment:

- (a) is caused by technical or administrative error; and
- (b) is remedied within three Business Days of the due date.

21.3 Breach of other obligations

- (a) An Obligor does not comply with any term of Clause 19 (*Financial Covenants*) or Clauses 20.5 (*Negative pledge*), 20.6 (*Disposals*) or 20.8 (*Change of business*) of Clause 20 (*General Covenants*); or
- (b) an Obligor does not comply with any other term of the Finance Documents not already referred to in this Clause, unless the non-compliance:
 - (i) is capable of remedy; and
 - (ii) is remedied within 45 days of the earlier of the Facility Agent giving notice and the Obligor becoming aware of the non-compliance.

21.4 Misrepresentation

A representation made or repeated by an Obligor in any Finance Document is incorrect in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation:

- (a) are capable of remedy; and
- (b) are remedied within 30 days of the earlier of the Facility Agent giving notice and the Obligor becoming aware of the misrepresentation.

21.5 Cross-default

- (a) Except as provided below, any of the following occurs in respect of an Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group:
 - (i) any of its Financial Indebtedness is not paid when due (after the expiry of any originally applicable grace period); or
 - (ii) any of its Financial Indebtedness:
 - (A) becomes prematurely due and payable;
 - (B) is placed on demand; or

- (C) is capable of being declared by a creditor to be prematurely due and payable or being placed on demand,

in each case, as a result of an event of default (howsoever described) and only if the aggregate amount of Financial Indebtedness falling within both or either of paragraphs (i) and (ii) above is \$100,000,000 or its equivalent or less.

- (b) Paragraph (a) above does not apply to:
 - (i) Financial Indebtedness of a Project Finance Company;
 - (ii) Financial Indebtedness which is fully subordinated in respect of the right to receive payment of all fees, interest and other charges, repayments of principal and in respect of the commencement of any enforcement action, whether arising by operation of law, contract or otherwise, to the rights of the Finance Parties under the Finance Documents; or
 - (iii) Intra Group Debt.

21.6 Insolvency

Any of the following occurs in respect of an Obligor or the Purchaser or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group:

- (a) it is unable to pay its debts as they fall due;
- (b) it admits in writing its inability to pay its debts as they fall due;
- (c) it suspends making payments on any of its debts or announces an intention to do so;
- (d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor (excluding any Finance Party in its capacity as such) for the rescheduling of any of its indebtedness; or
- (e) a moratorium is declared in respect of any of its indebtedness.

21.7 Insolvency proceedings

- (a) Except as provided below, any of the following occurs in respect of an Obligor or the Purchaser or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group:
 - (i) any formal step is taken with a view to a moratorium or a composition, assignment, judicial management or similar arrangement with any of its creditors;
 - (ii) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file

documents with a court or any registrar for, its winding-up, administration, judicial management or dissolution or any such resolution is passed;

- (iii) any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration, judicial management or dissolution;
 - (iv) an order for its winding-up, administration, judicial management or dissolution is made;
 - (v) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver and/or manager, administrative receiver, administrator, preliminary administrator, judicial manager, official receiver or similar officer is appointed in respect of it or any of its assets;
 - (vi) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver and/or manager, administrative receiver, administrator, judicial manager, official receiver or similar officer; or
 - (vii) any other analogous formal step or procedure is taken in any jurisdiction.
- (b) Paragraph (a) above does not apply to:
- (i) any step or procedure which is part of a Permitted Transaction; or
 - (ii) a petition for winding-up, administration or judicial management presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within 30 days.

21.8 Creditors' process and final judgments

- (a) Any attachment, sequestration, distress, execution or analogous event affects any asset(s) of an Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group, having an aggregate value of at least \$100,000,000, and is not discharged within 14 days unless:
- (i) it is being contested in good faith with due diligence; and
 - (ii) the relevant member of the Group has sufficient funds available to meet any related liability.
- (b) Any final judgment is delivered against:
- (i) any Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group in any litigation, arbitration or administrative proceedings where the value of such judgment exceeds \$50,000,000 and is not paid in accordance with the terms of the judgment; or

- (ii) any member of the Group where such judgment has, or is reasonably likely to have, a Material Adverse Effect.

21.9 Cessation of business

An Obligor or, where the same would be reasonably likely to have a Material Adverse Effect, any other member of the Group ceases, or threatens to cease, to carry on all or a material part of its business except:

- (a) as part of a Permitted Transaction;
- (b) as part of a solvent restructuring of any member of the Group other than an Obligor; or
- (c) as a result of any disposal allowed under this Agreement.

21.10 Effectiveness of Finance Documents

- (a) It is or becomes unlawful for any Obligor to perform any of its obligations under the Finance Documents.
- (b) An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

21.11 Ownership of the Obligors

An Obligor (other than the Company) is not or ceases to be a Subsidiary of the Company except as a result of a disposal allowed under this Agreement.

21.12 Material adverse change

Any event or series of events occurs which, in the reasonable opinion of the Majority Lenders, has or is likely to have a Material Adverse Effect.

21.13 Litigation and Environmental Claims

Any:

- (a) litigation, arbitration or administrative proceeding; or
- (b) Environmental Claim,

is commenced, current or threatened against any member of the Group which:

- (i) has a Material Adverse Effect; or
- (ii) is reasonably likely to be adversely determined and, if so adversely determined, would be reasonably likely to have a Material Adverse Effect.

21.14 Acceleration

Subject to Clause 4.2 (*Utilisation during the Certain Funds Period*) and Clause 21.15 (*Clean-Up Period*), on and at any time after the occurrence of an Event of Default which is outstanding the Facility Agent may, and must if so instructed by the Majority Lenders, by notice to the Company:

- (a) cancel all or any part of the Total Commitments; and/or
- (b) declare that all or part of any amounts outstanding under the Finance Documents are:
 - (i) immediately due and payable; and/or
 - (ii) payable on demand by the Facility Agent acting on the instructions of the Majority Lenders.

Any notice given under this Clause 21.14 will take effect in accordance with its terms.

21.15 Clean-Up Period

Notwithstanding any other provision of the Finance Documents, if, during the Clean-Up Period, an event or circumstance arises (other than an Event of Default under Clauses 21.6 (*Insolvency*) to 21.8 (*Creditors' process and final judgments*)) that would otherwise constitute a Default or an Event of Default and such Default or Event of Default relates solely to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group) (a "**Clean-Up Default**"), that Clean-Up Default will not:

- (a) constitute such a Default or an Event of Default or any other actual or potential breach of this Agreement;
- (b) operate to prevent the making of any Loan; or
- (c) allow any Finance Party to declare any amount under the Finance Documents due and payable prior to its specified maturity date or to otherwise take any enforcement action under the Finance Documents,

provided that the relevant Clean-Up Default (and/or the circumstances giving rise to it):

- (i) is capable of remedy within the Clean-Up Period and reasonable steps are being taken to remedy it;
- (ii) was not procured or approved by a member of the Group (other than a member of the Target Group);
- (iii) relates to a member of the Target Group (or any obligation to procure or ensure in relation to the Target Group) (it being understood that for these purposes, any Clean-Up Default that arises under Clause 21.5 (*Cross-default*) in connection with the Financial Indebtedness of a member of the

Target Group (and not, for the avoidance of doubt, any member of the Existing Group) shall be deemed to relate to such entity); and

- (iv) is not reasonably likely to have a Material Adverse Effect.

If the relevant event or circumstance (other than an Event of Default under Clauses 21.6 (*Insolvency*) to 21.8 (*Creditors' process and final judgments*)) giving rise to the Default or Event of Default is continuing on or after the last date of the Clean-Up Period, then there shall be a Default or Event of Default (as the case may be) at that time, and nothing in this Clause 21.15 (*Clean-Up Period*) shall prevent any Finance Party from taking any of the actions or from giving any notice referred to in Clause 21.14 (*Acceleration*), or from taking any other action which it is permitted to take under the Finance Documents with respect to such Default or Event of Default.

22. EVIDENCE AND CALCULATIONS

22.1 Accounts

Accounts maintained by a Finance Party in connection with this Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

22.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under the Finance Documents will be, prima facie, conclusive evidence of the matters to which it relates.

22.3 Calculations

- (a) Any interest or fee accruing under this Agreement accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 or 365 days or otherwise, depending on what the Facility Agent determines is market practice, and 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.

23. FEES

23.1 Agency Fee

The Company must pay to the Facility Agent for its own account an agency fee in the manner agreed in the Agency Fee Letter.

23.2 Underwriting Fee

The Company must pay to the Facility Agent for the account of the Lenders an underwriting fee, in accordance with the Underwriting Fee Letter, on the First Utilisation Date.

23.3 Participation Fee

The Company must pay to the Facility Agent for the account of the Lenders a participation fee in the manner agreed in the Participation and Funding Fee Letter.

23.4 Funding Fee

The Company must pay to the Facility Agent for the account of the Lenders a participation fee in the manner agreed in the Participation and Funding Fee Letter.

23.5 Commitment Fee

- (a) The Company shall pay to the Facility Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of:
 - (i) 10 per cent. of the Margin on that Lender's undrawn Commitment under the Facility, from (and including) the date falling one month from the date of this Agreement, until (and including) the date falling two months from the date of this Agreement;
 - (ii) 20 per cent. of the Margin on that Lender's undrawn Commitment under the Facility, from (and excluding) the date falling two months from the date of this Agreement, until (and including) the date falling three months from the date of this Agreement; and
 - (iii) 30 per cent. of the Margin on that Lender's undrawn Commitment under the Facility, from (and including) the date falling three months from the date of this Agreement, until (and including) the last day of the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three months which ends during the relevant Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of a Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Facility Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.
- (d) In the event that, prior to settlement of the commitment fee due on the date falling three months from the date of this Agreement, an Existing Lender (as defined in Clause 27 (*Changes to the Parties*)) assigns or transfers (including by way of novation) any of its rights and obligations under any Finance Document in accordance with Clause 27 (*Changes to the Parties*), that Existing Lender shall procure that the relevant New Lender (as defined in Clause 27 (*Changes to the Parties*)) confirms to the Facility Agent and the Company that it acknowledges

that any reduction in the commitment fee relevant to the Existing Lender as a result of paragraph (d) above shall apply to that New Lender (calculated on a pro rata basis accounting for the proportion of that Existing Lender's Commitment assigned or transferred to that New Lender).

24. INDEMNITIES

24.1 Currency indemnity

- (a) The Company must, as an independent obligation, indemnify each Finance Party against any loss or liability which that Finance Party incurs as a consequence of:
 - (i) that Finance Party receiving an amount in respect of an Obligor's liability under the Finance Documents; or
 - (ii) that liability being converted into a claim, proof, judgment or order,in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.
- (b) Unless otherwise required by law, each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

24.2 Other indemnities

- (a) The Company must indemnify each Finance Party against any loss or liability which that Finance Party incurs as a consequence of:
 - (i) the occurrence of any Event of Default;
 - (ii) any failure by an Obligor to pay any amount due under a Finance Document on its due date, including any resulting from any distribution or redistribution of any amount among the Lenders under this Agreement;
 - (iii) (other than by reason of negligence or default by that Finance Party) a Loan not being made after a Request has been delivered for that Loan;
 - (iv) a Loan (or part of a Loan) not being prepaid in accordance with this Agreement; orThe Company's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document or any Loan.
- (b) The Company must indemnify the Facility Agent against any loss or liability incurred by the Facility Agent as a result of:
 - (i) investigating any event which the Facility Agent reasonably believes to be a Default;

- (ii) acting or relying on any notice which the Facility Agent reasonably believes to be genuine, correct and appropriately authorised; or
- (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted and to the extent so permitted under this Agreement.

24.3 Acquisition Indemnity

- (a) The Company shall (or shall procure that any member of the Group will) indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each an “**Indemnified Person**”), against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition) in each case within 10 Business Days of it being finally judicially determined that the relevant Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) has incurred such cost, loss or liability, unless such cost, loss or liability is caused by fraud, the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate) or results from such Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate) breaching a term of any Finance Documents, any confidential undertaking or any other material contractually binding obligations. Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this paragraph (a) subject to sub-clause (h) of Clause 1.2 (*Construction*).
- (b) If any event occurs in respect of which indemnification may be sought from the Company, the relevant Indemnified Person shall only be indemnified if (where legally permissible to do so and without being under any obligation if compliance would prejudice legal privilege or obligations of confidentiality applicable to the relevant Indemnified Person or to the extent that it is not lawfully permitted to do so) it notifies the Company in writing within a reasonable time after the relevant Indemnified Person becomes aware of such event, provided that, in respect of any indemnification sought by the Facility Agent on its own behalf, a failure to notify the Company shall not relieve the Company from any liability that it might have under this Clause 24.3, except to the extent that the rights or defences of a member of the Group have been prejudiced by such failure.
- (c) The Company shall be entitled to select counsel reasonably satisfactory to it in defence of the Indemnified Person at the Company’s expense and may determine the strategy of such defence so long as (i) the defence strategy does not materially interfere with the business, operations, assets, condition (financial or otherwise) or prospects of the Finance Party; and (ii) the defence strategy does not imply admission of criminal offences by any Finance Party.
- (d) If the Company does not exercise its right to appoint counsel in accordance with sub-clause (c) above, the Finance Parties shall appoint such counsel and shall determine the strategy of the defence provided that the Finance Parties shall:

- (i) consult with the Company in respect of the conduct of the relevant claim, action or proceeding;
 - (ii) conduct such claim, action or proceeding in a commercially reasonable manner; and
 - (iii) not settle such claim, action or proceeding without the Company's prior written consent (such consent not to be unreasonably withheld or delayed).
- (e) Any Indemnified Person may rely on this Clause 24.3 subject to subject to sub-clause (h) of Clause 1.2 (*Construction*) and the provisions of the Third Parties Act.
- (f) Neither (i) any Indemnified Person, nor (ii) the Company, Borrower nor any of their respective Subsidiaries and Affiliates shall be liable for any indirect, special, punitive or consequential losses or damages in connection with its activities related to the Facilities or the Finance Documents.

25. EXPENSES

25.1 Initial costs

The Company must pay to each Administrative Party the amount of all costs and expenses (including legal fees) reasonably incurred by it, up to the relevant amount agreed between the Company and each Administrative Party, in connection with the negotiation, preparation, printing, execution and syndication of the Finance Documents.

25.2 Subsequent costs

The Company must pay to the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it (provided such costs and expenses, and the extent of such costs and expenses, have been agreed with the Company prior to being incurred) in connection with:

- (a) the negotiation, preparation, printing and execution of any Finance Document (other than a Transfer Certificate) executed after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of an Obligor or specifically allowed by this Agreement.

25.3 Enforcement costs

The Company must pay to each Finance Party the amount of all costs and expenses (including legal fees) properly incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

26. AMENDMENTS AND WAIVERS

26.1 Procedure

- (a) Except as provided in this Clause, any term of the Finance Documents may be amended or waived with the agreement of the Company and the Majority Lenders.
- (b) The Facility Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause.
- (c) The Facility Agent must promptly notify the other Parties of any amendment or waiver effected by it under paragraph (a) above. Any such amendment or waiver is binding on all the Parties.
- (d) Each Obligor agrees to any amendment or waiver allowed by this Clause which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph, require the consent of each Guarantor if the guarantee under the Finance Documents is to remain in full force and effect.

26.2 Exceptions

- (a) Subject to Clause 26.2A, an amendment or waiver which relates to:
 - (i) the definition of Majority Lenders in Clause 1.1 (*Definitions*);
 - (ii) an extension of the scheduled date of payment of any amount to a Lender under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fee or other amount payable to a Lender under the Finance Documents;
 - (iv) an increase in, or an extension of, a Commitment or the Total Commitments (other than in accordance with Clause 2.3 (*Extension Option*) or Clause 2.4 (*Increase*)) or an extension of the Availability Period;
 - (v) a release of an Obligor other than in accordance with the terms of this Agreement;
 - (vi) a term of a Finance Document which expressly requires the consent of each Lender;
 - (vii) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents;
 - (viii) Clause 2.2 (*Nature of a Finance Party's Rights and Obligations*), Clause 8.2 (*Mandatory prepayment - change of control*), Clause 8.11 (*Application of prepayments*), Clause 31 (*Pro-Rata Sharing*), Clause 38 (*Governing Law*) and Clause 39 (*Enforcement*);
 - (ix) the nature or scope of the guarantee and indemnity granted under Clause 16 (*Guarantee and Indemnity*); or

(x) this Clause,

may only be made with the consent of all the Lenders.

- (b) An amendment or waiver which relates to Clause 8.3 (*Mandatory prepayment from Monetisation proceeds*), Clause 8.4 (*Mandatory prepayment from Debt Issuance proceeds*) or Clause 8.5 (*Mandatory prepayment from Other Debt proceeds*), may only be made with the written consent of the Super Majority Lenders.
- (c) An amendment or waiver which relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party.
- (d) Any Lender receiving a request from the Company (through the Facility Agent) for an amendment, waiver or consent in connection with the Finance Documents and which does not respond to such request within 10 Business Days (or within such shorter period as the Company and the Facility Agent may agree (acting reasonably)) of (i) that Lender confirming receipt of such request, or (ii) the Facility Agent receiving a read receipt via email or from DebtDomain, will be excluded from determining whether that request is granted and need not be taken into account in the determination of the consent of all the Lenders or the Majority Lenders (as the case may be).
- (e) A Fee Letter may be amended or waived with the agreement of the Administrative Party that is a party to that Fee Letter and the Company.

26.2A Changes to Reference Rates

- (a) 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 Facility Agent (acting on the instructions of the Majority Lenders) and the Obligors.

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

- (i) relates to the use of 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 Facility Agent (acting on the instructions of the Majority Lenders) and the Obligors.

- (c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or paragraph (b) above within 10 Business Days 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 26.2A:

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Replacement Reference Rate” means a reference rate which is:

- (i) formally designated, nominated or recommended as the replacement for the RFR by:

(A) 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

(B) 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 (B) above;

- (ii) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or
- (iii) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to the RFR.

26.3 Replacement of a Lender

(a) If at any time:

- (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
- (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 8.1 (*Mandatory prepayment - illegality*) or to pay additional amounts pursuant to Clause 13 (*Increased Costs*) or Clause 12.2 (*Tax gross-up*) or Clause 12.3 (*Tax indemnity*) to any Lender in excess of amounts payable to the other Lenders generally,

then the Company may, at any time within 60 days and following five Business Days' prior written notice to the Facility Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Parties*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") selected by the Company which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) in accordance with Clause 27 (*Changes to the Parties*) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Facility Agent;

- (ii) neither the Facility Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place as soon as reasonably practicable after the date the Non-Consenting Lender notifies the Company and the Facility Agent of its failure or refusal to agree to any consent, waiver or amendment to the Finance Documents requested by the Company;
 - (iv) in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Company when it is satisfied that it has complied with those checks.
- (d) In the event that:
- (i) the Company or the Facility Agent (at the request of the Company) has requested the Lenders to consent to a waiver or amendment of any provisions of the Finance Documents;
 - (ii) the waiver or amendment in question requires the consent of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate more than 70 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 70 per cent. of the Total Commitments prior to that reduction) have consented to such waiver or amendment,

then any Lender who does not and continues not to agree to such waiver or amendment shall be deemed a “**Non-Consenting Lender**”.

26.4 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:

(A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or

(B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

(b) For the purposes of this Clause 26.4 (*Disenfranchisement of Defaulting Lenders*), the Facility Agent may assume that the following Lenders are Defaulting Lenders:

(i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;

(ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "**Defaulting Lender**" has occurred,

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

26.5 Replacement of a Defaulting Lender

(a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving five Business Days' prior written notice to the Facility 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 27.2 (*Assignments and transfers by 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 27.2 (*Assignments and transfers by 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 27.2 (*Assignments and transfers by 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 Company, 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 27.2 (*Assignments and transfers by Lenders*).

- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 26.5 (*Replacement of a Defaulting Lender*) shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Facility Agent;
 - (ii) neither the Facility Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) the transfer must take place no later than 120 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.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Company when it is satisfied that it has complied with those checks.

26.6 Change of currency

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Facility Agent (acting reasonably and after consultation with the Company) determines is necessary to reflect the change.

26.7 Waivers and remedies cumulative

The rights of the Finance Parties under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

27. CHANGES TO THE PARTIES

27.1 Assignments and transfers by Obligors

No Obligor may assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of all the Lenders.

27.2 Assignments and transfers by Lenders

- (a) Subject to this Clause 27, a Lender (the **"Existing Lender"**) may at any time assign or transfer (including by way of novation) any of its rights and obligations under any Finance Document to any other 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"**) provided that the minimum amount transferred to a New Lender in relation to a Loan shall at all times be at least GBP5,000,000 or its equivalent.
- (b) The consent of the Company is required for any assignment or transfer unless:
 - (i) the New Lender is another Lender or an Affiliate of any Lender which is a bank or a financial institution;
 - (ii) until the expiry of the Certain Funds Period, a Major Default is outstanding; or
 - (iii) on and after the expiry of the Certain Funds Period, an Event of Default is outstanding.

The consent of the Company must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent 10 Business Days after the Company is given notice of the request unless it is expressly refused by the Company within that time. For the avoidance of doubt, it will be reasonable for the Company to withhold its consent to an assignment or transfer (A) which would result in an Obligor being obliged to pay an additional amount in respect of a Tax Payment or an Increased Cost, unless such assignment or transfer is made by a Lender to mitigate any circumstances giving rise to a right to be prepaid and/or cancelled by reason of illegality and (B) if it does not receive Barclays Bank PLC's consent (who is acting as financial adviser to the Company in relation to the Acquisition, and referred to as the **"Financial Adviser"**) to provide the Company's consent to such assignment or transfer provided that the reason for the Financial Adviser withholding its consent is due to its obligations under Rules 2.7(d) and 24.8 of the Takeover Code.

- (c) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and

substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and

- (ii) performance by the Facility 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.
- (d) The Facility Agent is not obliged to execute a Transfer Certificate until it has completed all know your customer requirements to its satisfaction. The Facility Agent must promptly notify the Existing Lender if there are any such requirements.
- (e) A transfer of obligations will be effective only if either:
 - (i) the obligations are novated in accordance with the following provisions of this Clause; or
 - (ii) the New Lender confirms to the Facility Agent and the Company in form and substance satisfactory to the Facility Agent that it is bound by the terms of this Agreement as a Lender. On the transfer becoming effective in this manner the Existing Lender will be released from its obligations under this Agreement to the extent that they are transferred to the New Lender.
- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility 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 remained had it remained a Lender.
- (g) Unless the Facility Agent otherwise agrees, the New Lender must pay to the Facility Agent for its own account, on or before the date any assignment or transfer occurs, a fee of GBP2,000.
- (h) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.

27.3 Procedure for transfer by way of novation

- (a) A novation is effected if:
 - (i) the Existing Lender and the New Lender deliver to the Facility Agent a duly completed Transfer Certificate; and
 - (ii) the Facility Agent executes it.

The Facility Agent must execute as soon as reasonably practicable a Transfer Certificate delivered to it and which appears on its face to be in order.

- (b) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to execute any duly completed Transfer Certificate on its behalf.
- (c) On the Transfer Date:
 - (i) the New Lender will assume the rights and obligations of the Existing Lender expressed to be the subject of the novation in the Transfer Certificate in substitution for the Existing Lender; and
 - (ii) the Existing Lender will be released from those obligations and cease to have those rights.
- (d) The Facility Agent must, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Company a copy of that Transfer Certificate.

27.4 Procedure for assignment

- (a) An assignment is effected if:
 - (i) the Existing Lender and the new Lender deliver to the Facility Agent a duly completed Assignment Agreement; and
 - (ii) the Facility Agent executes it.

The Facility Agent must execute as soon as reasonably practicable an Assignment Agreement delivered to it and which appears on its face to be in order.

- (b) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to execute any duly completed Assignment Agreement on its behalf.
- (c) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.

- (d) The Facility Agent must, as soon as reasonably practicable after it has executed an Assignment Agreement, send to the Company a copy of that Assignment Agreement.
- (e) Lenders may utilise procedures other than those set out in this Clause 27.4 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 27.3 (*Procedure for transfer by way of novation*)), 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 27.2 (*Assignments and transfers by Lenders*).

27.5 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender is not responsible to a New Lender for the legality, validity, adequacy, accuracy, completeness or performance of:
 - (i) any Finance Document or any other document; or
 - (ii) any statement or information (whether written or oral) made in or supplied in connection with any Finance 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 will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of each Obligor and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement;
 - (ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document; and
 - (iii) 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 Document or any Commitment is in force.
- (c) Nothing in any Finance Document requires 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; or
 - (ii) support any losses incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under any Finance Document or otherwise.

27.6 Additional Obligors

- (a) The Company must, by giving not less than 10 Business Days' prior notice to the Facility Agent, notify the Facility Agent (which must promptly notify the Lenders) that one of its Subsidiaries is to become an Additional Obligor.
- (b) If the accession of an Additional Obligor requires any Finance Party to carry out know your customer requirements in circumstances where the necessary information is not already available to it, the Company must promptly on request by any Finance Party supply to that Finance Party any documentation or other evidence which is reasonably requested by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.
- (c) If one of the Subsidiaries of the Company is to become an Additional Obligor, then the Company must (following consultation with the Facility Agent) deliver to the Facility Agent the relevant documents and evidence listed in Part 2 (*For An Additional Obligor*) of Schedule 2 (*Conditions Precedent Documents*).
- (d) The prior consent of all the Lenders is required if the Additional Obligor is to be an Additional Borrower. Any Additional Borrower must, unless all the Lenders otherwise agree, simultaneously accede as an Additional Guarantor. No consent is required from the Lenders for the accession of an Additional Guarantor.
- (e) The relevant Subsidiary will become an Additional Obligor when the Facility Agent notifies the other Finance Parties and the Company that it has received all of the documents and evidence referred to in paragraph (c) above in form and substance satisfactory to it. The Facility Agent must give this notification as soon as reasonably practicable.
- (f) Other than to the extent the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (e) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (g) Delivery of an Accession Agreement, executed by the relevant Subsidiary and the Company, to the Facility Agent constitutes confirmation by that Subsidiary and the Company that the Repeating Representations are then correct.

27.7 Resignation of an Obligor (other than the Company)

- (a) The Company may request that an Obligor (other than the Company) ceases to be an Obligor by giving to the Facility Agent a duly completed Resignation Request.
- (b) The Facility Agent must accept a Resignation Request and notify the Company and the Lenders of its acceptance if:

- (i) it is not aware that a Default is outstanding or would result from the acceptance of the Resignation Request; and
- (ii) no amount owed by that Obligor under this Agreement is still outstanding.
- (c) The Obligor will cease to be a Borrower and/or a Guarantor, as appropriate, when the Facility Agent gives the notification referred to in paragraph (b) above.
- (d) An Obligor (other than the Company) may also cease to be an Obligor in any other manner approved by the Majority Lenders.

27.8 Affiliates of Lenders

- (a) Each Lender may fulfil its obligations in respect of any Loan through an Affiliate if:
 - (i) the relevant Affiliate is specified in this Agreement as a Lender or becomes a Lender by means of a Transfer Certificate or an Assignment Agreement in accordance with this Agreement; and
 - (ii) the Loans in which that Affiliate will participate are specified in this Agreement or in a notice given by that Lender to the Facility Agent and the Company.

In this event, the Lender and the Affiliate will participate in Loans in the manner provided for in subparagraph (ii) above.

- (b) If paragraph (a) above applies, the Lender and its Affiliate will be treated as having a single Commitment and a single vote, but, for all other purposes, will be treated as separate Lenders.

28. ROLE OF THE FACILITY AGENT, ANY ARRANGER AND OTHERS

28.1 Appointment of the Facility Agent

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

28.2 Instructions

- (a) The Facility 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 Facility 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.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility 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 Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

28.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.

- (c) 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 Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or any Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Facility 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).

28.4 Role of the Arrangers

- (a) Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.
- (b) Notwithstanding anything contained in any other provision in any Finance Document, the Company shall have the right (at its sole discretion and without any consent from any Finance Party) to provide any new Lender (or its Affiliates) with any title in relation to the Facility that the Company deems fit. All Finance Parties shall provide all necessary and desirable cooperation to the Company at the time of exercising such right to ensure the appointment of the new Lender in such other capacity (including cooperation required to execute amendments to the Finance Documents).

28.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent or the Arrangers 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.

28.6 Business with the Group

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

28.7 Rights and discretions

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Facility 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 Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.

- (e) The Facility 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 Facility 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 Facility Agent may act in relation to the Finance Documents through its officers, employees and agents and the Facility Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,

unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Facility Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Company and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent or any 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 Facility 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.

28.8 Responsibility for documentation

None of the Facility Agent or any Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, any Arranger, an Obligor or any other

person in or in connection with any Finance Document or the Information Package 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;

- (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.

28.9 No duty to monitor

The Facility 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.

28.10 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 Facility Agent), the Facility 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; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or

- (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent, in respect of any claim it might have against the Facility 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 Facility Agent may rely on this Clause subject to Clause 1.2(e) (*Construction*) and the provisions of the Third Parties Act.
- (c) The Facility 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 Facility Agent if the Facility 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 Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or any Arranger to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Facility Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arrangers.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent's liability, any liability of the Facility Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility 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 Facility Agent at any time which increase the amount of that loss. In no event shall the Facility 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 Facility Agent has been advised of the possibility of such loss or damages.

28.11 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

28.12 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint any of its Affiliates acting through an office in a jurisdiction the identity of which has been consulted with the Borrower as successor Facility Agent by giving notice to the other Finance Parties and the Company.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the Finance Parties and the Company, in which case the Majority Lenders may (with the consent of the Company) appoint a successor Facility Agent.
- (c) If no successor Facility Agent has been appointed under paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may, after consultation with the Company, appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 28 (*Role of the Facility Agent, any Arranger and Others*) and any other term of this Agreement dealing with the rights or obligations of the Facility 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 Facility Agent's normal fee rates and those amendments will bind the Parties.

- (e) The resignation of the Facility Agent and the appointment of any successor Facility Agent will both become effective only when the successor Facility Agent notifies all the Parties that it accepts its appointment. On giving the notification, the successor Facility Agent will succeed to the position of the Facility Agent and the term Facility Agent will mean the successor Facility Agent.
- (f) The retiring Facility Agent must, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as the Facility Agent under the Finance Documents. The Company shall, within five Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (g) Upon its resignation becoming effective, this Clause will continue to benefit the retiring Facility Agent in respect of any action taken or not taken by it in connection with the Finance Documents while it was the Facility Agent, and, subject to this paragraph (g), it will have no further obligations under any Finance Document. The retiring Facility Agent shall remain entitled to the benefit of Clause 24.2(b) (*Other indemnities*) and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign under paragraph (b) above.
- (i) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility 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 Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and the Company or a Lender reasonably believes that the Facility 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 Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Company and the Lenders that the Facility 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 Company or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Facility Agent, requires it to resign.

28.13 Replacement of the Facility Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Facility Agent by appointing a successor Facility Agent.
- (b) The retiring Facility Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.
- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of this Clause 28 (*Role of the Facility Agent, any Arranger and Others*) and Clause 24.2(b) (*Other indemnities*) (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.14 Confidentiality

- (a) In acting as agent for the Finance Parties, the Facility 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 Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.

28.15 Relationship with Lenders

- (a) The Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and as acting through its Facility Office(s) until it has received not less than five Business Days' prior notice from that Lender to the contrary.
- (b) The Facility Agent may at any time, and must if requested to do so by the Majority Lenders, convene a meeting of the Lenders.

- (c) The Facility Agent must keep a register of all the Parties and supply the Company with a copy of the register on request. The register will include each Lender's Facility Office(s) and contact details for the purposes of this Agreement.
- (d) Any Lender may by notice to the Facility 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 34.1 (*In writing*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 34.2 (*Contact details*) and the Facility 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.

28.16 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 Facility Agent and the 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 the Information Package and any other information provided by the Facility 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.

28.17 Facility Agent's management time

Any amount payable to the Facility Agent shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such

reasonable daily or hourly rates as the Facility Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 23 (*Fees*).

28.18 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility 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.

28.19 Notice period

Where this Agreement specifies a minimum period of notice to be given to the Facility Agent, the Facility Agent may, at its discretion, accept a shorter notice period.

29. PAYMENT MECHANICS

29.1 Payments to the Facility 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 Facility 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 Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

29.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback and pre-funding*) be made available by the Facility 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 Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

29.3 Distributions to an Obligor

The Facility Agent may (with the consent of the Obligor or in accordance with Clause 30 (*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.

29.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility 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 Facility Agent pays an amount to another Party and it proves to be the case that the Facility 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 Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
 - (i) the Facility Agent shall notify the Company of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Facility 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 Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

29.5 Impaired Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with Clause 29.1 (*Payments to the Facility Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an acceptable bank within the meaning of paragraph (i)(A) of the definition of “**acceptable bank**” in Clause 19.1 (*Definitions*) and

contained within the definition of Consolidated Cash and Cash Equivalents and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the “**Paying Party**”) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the “**Recipient Party**” or “**Recipient Parties**”).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 29.5 (*Impaired Agent*) 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 Facility Agent in accordance with Clause 28.13 (*Replacement of the Facility 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 Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 29.2 (*Distributions by the Facility 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.

29.6 Partial payments

- (a) If the Facility Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) first, in or towards payment pro rata of any unpaid amount owing to the Facility Agent;

- (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 Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
 - (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

29.7 Set-off by Obligors

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

29.8 Business Days

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

29.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

29.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

29.11 Disruption to Payment Systems etc.

If the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) 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 Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) 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 Facility Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 26 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without

limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 29.11 (*Disruption to Payment Systems etc.*); and

- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

30. SET-OFF

A Finance Party may set off any matured obligation owed to it by an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether or not matured) owed by that Finance Party to an 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.

31. PRO-RATA SHARING

31.1 Redistribution

If any amount owing by an Obligor under this Agreement to a Lender (the “**recovering Lender**”) is discharged by payment, set-off or any other manner other than through the Facility Agent under this Agreement (a “**recovery**”), then:

- (a) the recovering Lender must, within three Business Days, supply details of the recovery to the Facility Agent;
- (b) the Facility Agent must calculate whether the recovery is in excess of the amount which the recovering Lender would have received if the recovery had been received and distributed by the Facility Agent under this Agreement; and
- (c) the recovering Lender must pay to the Facility Agent an amount equal to the excess (the “**redistribution**”).

31.2 Effect of redistribution

- (a) The Facility Agent must treat a redistribution as if it were a payment by the relevant Obligor under this Agreement and distribute it among the Lenders, other than the recovering Lender, accordingly.
- (b) When the Facility Agent makes a distribution under paragraph (a) above, the recovering Lender will be subrogated to the rights of the Finance Parties which have shared in that redistribution.
- (c) If and to the extent that the recovering Lender is not able to rely on any rights of subrogation under paragraph (b) above, the relevant Obligor will owe the recovering Lender a debt which is equal to the redistribution, immediately payable and of the type originally discharged.

- (d) If:
 - (i) a recovering Lender must subsequently return a recovery, or an amount measured by reference to a recovery, to an Obligor; and
 - (ii) the recovering Lender has paid a redistribution in relation to that recovery,
- each Finance Party must reimburse the recovering Lender all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the redistribution. In this event, the subrogation in paragraph (b) above will operate in reverse to the extent of the reimbursement.

31.3 Exceptions

Notwithstanding any other term of this Clause, a recovering Lender need not pay a redistribution to the extent that:

- (a) it would not, after the payment, have a valid claim against the relevant Obligor in the amount of the redistribution; or
- (b) it would be sharing with another Finance Party any amount which the recovering Lender has received or recovered as a result of legal or arbitration proceedings, where:
 - (i) the recovering Lender notified the Facility Agent of those proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

32. SEVERABILITY

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

33. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

34. NOTICES

34.1 In writing

- (a) Any communication in connection with a Finance Document must be in writing and, unless otherwise stated, may be given:
 - (i) in person, by an internationally recognised courier, e-mail or any other electronic communication in accordance with Clause 34.5 (*Electronic communication*); or
 - (ii) if between the Facility Agent and a Lender and the Facility Agent and the Lender agree, by e-mail or other electronic communication.
- (b) For the purpose of the Finance Documents, an electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document must be given in writing.

34.2 Contact details

- (a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Facility Agent on or before the date it becomes a Party.

- (b) The contact details of the Company for this purpose are:

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.

P.O. Box 25418

Safat 13115

Kuwait

Attention: Group Treasurer

Tel: +965 180 9222

Fax: +965 2467 3098

Email: grouptreasurer@agility.com

- (c) The contact details of the Facility Agent for this purpose are:

1 Churchill Place, London, E14 5HP

Attention: Sam Wakerly

Email: Loans.agency@barclays.com

- (d) Any Party may change its contact details by giving five Business Days' notice to the Facility Agent or (in the case of the Facility Agent) to the other Parties.

- (e) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

34.3 Effectiveness

- (a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:
 - (i) if delivered in person (including by courier), at the time of delivery; and
 - (ii) if by e-mail or any other electronic communication, in accordance with Clause 34.5 (*Electronic communication*).
- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to the Facility Agent will only be effective on actual receipt by it.

34.4 Obligors

- (a) All communications under the Finance Documents to or from an Obligor must be sent through the Facility Agent.
- (b) All communications under the Finance Documents to or from an Obligor (other than the Company) must be sent through the Company.
- (c) Each Obligor (other than the Company) irrevocably appoints the Company to act as its agent:
 - (i) to give and receive all communications under the Finance Documents;
 - (ii) to supply all information concerning itself to any Finance Party; and
 - (iii) to sign all documents under or in connection with the Finance Documents.
- (d) Any communication given to the Company in connection with a Finance Document will be deemed to have been given also to the other Obligors.
- (e) The Facility Agent may assume that any communication made by the Company is made with the consent of each other Obligor.

34.5 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or delivery as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after business hours in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 34.5.

35. CONFIDENTIAL INFORMATION

35.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (*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.

35.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates 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 Facility Agent and, in each case, to any of that person's Affiliates, 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, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under Clause 28.15(d) (*Relationship with Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) who is a Party; or
 - (viii) with the consent of the Company,

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
 - (C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

35.3 Entire agreement

This Clause 35 (*Confidential Information*) 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.

35.4 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

35.5 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35 (*Confidential Information*).

35.6 Continuing obligations

The obligations in this Clause 35 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 24 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.

36. CONFIDENTIALITY OF FUNDING RATES

36.1 Confidentiality and disclosure

- (a) The Facility 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 Facility Agent may disclose:
 - (i) any Funding Rate to the relevant Borrower pursuant to Clause 9.4 (*Notification of rates of interest*); 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 Facility Agent and the relevant Lender.
- (c) The Facility 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 Facility 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 Facility 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.

36.2 Related obligations

- (a) The Facility 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 Facility Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 36.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 36.

36.3 No Event of Default

No Event of Default will occur under Clause 21.3 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 36.

37. LANGUAGE

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:
 - (i) in English; or
 - (ii) (unless the Facility Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official 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 Arbitration

- (a) Any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or this Clause 39.1 or any non-contractual obligation arising out of or in connection with this Agreement) shall be referred to, and finally and exclusively settled by, arbitration under the Rules of Arbitration of the International Chamber of Commerce, which are deemed to be incorporated by reference into this Clause.
- (b) The Tribunal shall be composed of three arbitrators. The seat of the arbitration shall be London. The language of the arbitration shall be English. The Parties hereby expressly exclude Sections 45 and 69 of the Arbitration Act 1996.

39.2 Service of process

- (a) Each Obligor not incorporated in England and Wales irrevocably appoints Law Debenture Corporate Services Limited, 8th Floor, 100 Bishopsgate, London EC2N 4AG (fax +44 (0)20 7606 0643) as its agent for service of process in relation to any proceedings in connection with any Finance Document.
- (b) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must immediately appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

- (c) Each Obligor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
- (d) This Clause does not affect any other method of service allowed by law.

39.3 Waiver of immunity

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

40. COMPLETE AGREEMENT

The Finance Documents contain the complete agreement between the Parties on the matters to which they are related and supersede all prior commitments, agreements and understandings, whether written or oral, on those matters.

41. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

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

SCHEDULE 1
Original Parties

Name of Original Lenders	Commitment
Barclays Bank PLC	£480,000,000
Total Commitment	£480,000,000

ARRANGERS

Name of Arrangers	Title
Barclays Bank PLC	Underwriter, Mandated Lead Arranger and Bookrunner

SCHEDULE 2
Conditions Precedent Documents

PART 1
To Be Delivered Before The First Utilisation Date

Section A: Original Obligors

1. A copy of the constitutional documents of each Original Obligor.
2. If and to the extent applicable in the relevant jurisdiction of incorporation of the relevant Original Obligor, a copy of a resolution of (i) the shareholders of the Original Borrower; and (ii) the board of directors (and, if a written resolution, signed by all directors) of the Original Guarantor, approving the terms of, and the transactions contemplated by, this Agreement.
3. A specimen of the signature of each person authorised on behalf of an Original Obligor to execute or witness the execution of any Finance Document or to sign or send any document or notice in connection with any Finance Document.
4. A certificate of an authorised signatory of the Company confirming that utilising the Commitment in full would not breach any limit binding on any Original Obligor.
5. A certificate of an authorised signatory of each Original Obligor certifying that each copy document specified in Part 1 of this Schedule provided in respect of such Obligor is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
6. Evidence that the agents of the Original Obligors under the Finance Documents for service of process in England have accepted their respective appointments.

Section B: Legal opinions

1. A legal opinion of Linklaters, legal advisers to the Finance Parties.
2. A legal opinion of Bader Saud Al-Bader & Partners, legal advisers in Kuwait to the Finance Parties.
3. A legal opinion of Elham Ali Hassan & Associates, legal advisers in Bahrain to the Finance Parties.
4. If an Obligor is incorporated in a jurisdiction other than England, a legal opinion from legal advisers in that jurisdiction to the Finance Parties.

Section C: The Acquisition

1. The Scheme Press Release or the Offer Press Release (as applicable).
2. A certificate of an authorised signatory of the Company certifying that either:

- (A) (if the Acquisition proceeds by way of Scheme) the Scheme has been approved by a court of competent jurisdiction and has become effective (attaching the relevant court documentation approving the Scheme and identifying the Effective Date); or
- (B) (if the Acquisition proceeds by way of Offer) the Offer has become unconditional (specifying the date on which this occurred).

Section D: Finance Documents

A copy of the counterparts of each of the following documents duly executed by the Obligors (in each case to the extent they are a party to such document):

- (a) this Agreement; and
- (b) the Fee Letters.

Section E: Other documents and evidence

1. Evidence that all fees and expenses then due and payable from the Company under this Agreement have been or will be paid by the First Utilisation Date.
2. A certificate of an authorised signatory of the Borrower or the Purchaser confirming that the Purchaser will have funds available to it (including the proceeds of the Loans) that are in aggregate sufficient to pay the consideration for the Acquisition and any Acquisition Costs which will fall due and payable on or before completion of the Acquisition or will become due and payable as a result of the Acquisition.
3. A certified copy of the Original Financial Statements.
4. Evidence reflecting the tradeable securities held in each Cash Equivalent Securities Custody Account as of not earlier than one Business Day prior to the date of this Agreement, along with a certificate from an authorised signatory of the Company confirming that no Cash Equivalent Securities will be transferred out of any Cash Equivalent Securities Custody Account during the period commencing from the date of such certificate and ending on the date of this Agreement.
5. A summary of the organisation chart of key entities in the Group in the form provided to the Facility Agent prior to the Signing Date.
6. A copy of the final draft of the Scheme Press Release or the Offer Press Release (as applicable), for information purposes only and not required to be in form and substance satisfactory to the Facility Agent or any Finance Party (other than the language in the Scheme Press Release or Offer Press Release relating to the financing of the Acquisition which must be in substance satisfactory to the Facility Agent).

PART 2
For An Additional Obligor

Additional Obligors

1. An Accession Agreement, duly executed by the Company and the Additional Obligor.
2. A copy of the constitutional documents of the Additional Obligor.
3. If and to the extent applicable in the relevant jurisdiction of incorporation of the relevant Original Obligor, a copy of a resolution of the board of directors (and, if a written resolution, signed by all directors) of the Additional Obligor approving the terms of, and the transactions contemplated by, the Accession Agreement.
4. A specimen of the signature of each person authorised on behalf of the Additional Obligor to execute or witness the execution of any Finance Document or to sign or send any document or notice in connection with any Finance Document.
5. A copy of a resolution, signed by all (or any lower percentage agreed by the Facility Agent) of the holders of its issued or allotted shares, approving the terms of, and the transactions contemplated by, the Accession Agreement.
6. If applicable, a copy of a resolution of the board of directors (and, if a written resolution, signed by all directors) of each corporate shareholder in the Additional Guarantor approving the resolution referred to in paragraph 5 above.
7. A certificate of an authorised signatory of the Additional Obligor:
 - (A) confirming that utilising the Commitment in full would not breach any limit binding on it; and
 - (B) certifying that each copy document specified in Part 2 of this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Agreement.
8. If available, a copy of the latest audited accounts of the Additional Obligor.
9. Evidence that the agent of the Additional Obligor under the Finance Documents for service of process in England have accepted their respective appointments.

Legal opinions

10. A legal opinion of Linklaters, legal advisers to the Finance Parties.
11. If the Additional Obligor is incorporated in a jurisdiction other than England, a legal opinion from legal advisers in that jurisdiction, addressed to the Finance Parties.

Other documents and evidence

1. Evidence that all expenses due and payable from the Company under this Agreement in respect of the Accession Agreement have been paid.

SCHEDULE 3
Forms of Request

PART 1
Form of Request For Drawdown

To: [●] as “**Facility Agent**”

From: [Borrower]

Date: [●]

[Borrower] – £[●] Facility Agreement dated [●] (the “Agreement”)

1. We refer to the Agreement. This is a Request.
2. We wish that [name of Borrower] borrow a Loan on the following terms:
 - (A) Utilisation Date: [●]
 - (B) Amount/currency: [●]
 - (C) Term: [●].
3. [The account to be credited is the account mentioned below:]¹

Currency	GBP
Beneficiary / Account name	[●]
Beneficiary Account number	[●]
Beneficiary IBAN	[●]
Beneficiary Bank	[●]
Beneficiary Bank SWIFT	[●]
Beneficiary Bank Account number	[●]
Correspondent Bank	[●]
Correspondent Bank ABA	[●]

¹ To be retained if the Loan is proposed to be utilised for the purpose set out in Clause 3.1(a)(A). This will be the receiving agent's bank account.

Correspondent Bank SWIFT	[•]
--------------------------	-----

OR

3. [Our account to be credited is set out in Schedule 13 (*Standard Settlement Instructions of The Borrower*) of the Agreement.]²
4. The borrowing of a Loan pursuant to this Request (taken together with all other Loans borrowed or proposed to be borrowed for the end use mentioned in Clause 3.1(a)) will provide sufficient funding for the Group to meet the requirements of sub-clause (b) (*Acceptance condition*) of Clause 20.22 (*The Acquisition*) of the Agreement.
5. The purpose of the Loan is [•].
6. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this Request is so satisfied.
7. This Request is irrevocable.

By: [Borrower]

² To be retained if the Loan is proposed to be utilised for any purpose other than the purpose set out in Clause 3.1(a)(A).

PART 2
Form of Extension Request Notice

[To: [•] as “**Facility Agent**”

From: [Borrower] and [Borrower]

Date: [•]

[Borrower] – £[•] Facility Agreement dated [•] (the “Agreement”)

1. We refer to the Agreement. This is a Facility Extension Request Notice. Terms defined in the Agreement have the same meaning in this Extension Request Notice unless given a different meaning in this Extension Request Notice.
2. The Borrower irrevocably and unconditionally requests an extension of the Maturity Date pursuant to Clause 2.3 (*Extension Option*) of the Agreement to the Extended Maturity Date.
3. This Extension Request is irrevocable.
4. This Extension Request Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

EXECUTED

By: [Borrower]

Authorised Signatory

By: [Borrower]

Authorised Signatory]

PART 3
Form of Selection Notice

[To: [•] as “**Facility Agent**”

From: [Borrower] and [Borrower]

Date: [•]

[Borrower] – £[•] Facility Agreement dated [•] (the “Agreement”)

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Loan[s] in [*insert currency*] with the Term ending on [•]³.
3. [We request that the above Loan[s] be divided into [•] Loans with the following Base Currency Amounts and Terms:]⁴

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

EXECUTED

By: [Borrower]

Authorised Signatory

By: [Borrower]

Authorised Signatory

³ Insert details of all Loans which have a Term ending on the same date.

⁴ Use this option if division of Loans is requested.

⁵ Use this option if sub-division is not required.

SCHEDULE 4
Existing Security And Financial Indebtedness Permitted Under The Finance Documents

PART 1
Permanent Financial Indebtedness And Security

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Jurisdiction	Member of Group incurring financial indebtedness / granting security	Lender / Creditor	Type of Facility	Maximum principle amount of Facility (USD)	Maturity Date	Security / secured assets	Drawn amount as at 31-December-2021 (USD)
Kuwait - Others	NAS	Gulf Bank	Overdraft	2,500,000	Annual Rolling		0
Kuwait - Others	NAS	SCB	Overdraft	1,000,000	Annual Rolling	Assets	0
Kuwait - Others	MRC	ABK	Overdraft	1,900,000	Annual Rolling		569,099
Kuwait - Others	MRC	ABK	Term Loan	5,406,799	31-Oct-24		5,345,902
Kuwait - Others	MRC	IBK	Overdraft	2,487,562	Annual Rolling		2,166,667
Spain	Icontainers Solutions, S.L.	Centro de Desarrollo Tecnológico Industrial (CDTI)	Term Loan	297,788	31-Dec-26		173,274
Spain	Icontainers Solutions, S.L.	Acción Estratégica de Economía y Sociedad Digital (AAESD)	Term Loan	228,503	31-Dec-22		218,895
UAE	GCC	HSBC	Overdraft	6,000,000	Annual Rolling	Letter of Comforts and Omnibus Counter Indemnity Form	0
				19,820,652			8,473,837

PART 2
Other Existing Security

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Jurisdiction	Member of Group incurring financial indebtedness / granting security	Lender / Creditor	Type of Facility	Maximum principal amount of Facility (US\$)	Maturity Date	Security / secured assets
Kuwait-Others	Global Clearing House Systems	KFH	Guarantee Facility	120,000	Annual rolling	Cash Collateral
Kuwait-Others	Global Clearing House Systems	GB	Guarantee Facility	2,500,000	Annual rolling	Cash Collateral
Kuwait-Others	MRC	ABK	Guarantee Facility	1,002,985	Annual rolling	Cash Collateral
Kuwait-Others	MRC	KFH	Guarantee Facility	100,000	Annual rolling	Cash Collateral
Kuwait-Others	MRC	FAB	Guarantee Facility	1,005,556	Annual rolling	Cash Collateral
Kuwait-Others	MRC (UES)	QNB	Guarantee Facility	400,000	Annual rolling	Cash Collateral
Kuwait-Others	MRC (UES)	KIB	Guarantee Facility	615,000	Annual rolling	Cash Collateral
Kuwait-Others	NAS - UGANDA	SCB	Guarantee Facility	700,000	Annual rolling	Cash Collateral
			TOTAL	6,443,541		

SCHEDULE 5
Form of Compliance Certificate

To: **[•]** as “**Facility Agent**”

From: **AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.**

Date: **[•]**

**AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P. - £[•] Facility Agreement dated [•]
(the “Agreement”)**

1. We refer to the Agreement. This is a Compliance Certificate.
2. We confirm that as at [relevant testing date]:
 - (A) Consolidated EBITDA was [•]; and Consolidated Total Net Borrowings are [•]; therefore, Consolidated Total Net Borrowings are [•] x Consolidated EBITDA; and
 - (B) Given paragraph (A) above, the Margin for the next Term shall be [•] per cent. per annum.
3. We set out below calculations establishing the figures in paragraph 2 above:

[•].
4. In further establishment of the figures in paragraph 2 above, we set out below a reconciliation of the (i) daily closing share price in the relevant currency (other than USD) of the entity or entities whose shares constitute Cash Equivalent Securities; and (ii) the daily exchange rate for converting the relevant currency to USD, taking the daily closing share price in the relevant currency of the entity or entities whose shares constitute Cash Equivalent Securities for each day on which trading has occurred during the last three months of the relevant Measurement Period and converting each such daily:

[•].
5. We set out below the following in respect of the Designated Financial Covenant Cash Equivalent Securities at [relevant testing date/ Liquidity Date]:

Cash Equivalent Securities Holding Company name	Number of Financial Covenant Cash Equivalent Securities to be treated as Designated Financial Covenant Cash Equivalent Securities held by the relevant company
[•]	[•]
[•]	[•]

Cash Equivalent Securities Holding Company name	Number of Financial Covenant Cash Equivalent Securities to be treated as Designated Financial Covenant Cash Equivalent Securities held by the relevant company
[●]	[●]

6. We confirm that the total Designated Financial Covenant CES Amount, as of [the relevant testing date] is:

[●].

7. We confirm that the following companies were Project Finance Companies at [relevant testing date]:

[●].

8. We confirm that the following companies have each become an ALP Entity since the date of the previous Compliance Certificate:

[●].

9. The details of all Project Finance Debt outstanding as at [relevant testing date] were as follows:

[●].

10. [We confirm that no Default is outstanding as at [relevant testing date]].⁶

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.

By:

⁶ If this statement cannot be made, the certificate should identify any Default that is outstanding and the steps, if any, being taken to remedy it.

SCHEDULE 6
Form of Accession Agreement

To: [●] as “**Facility Agent**”

From: **AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.** and [*Proposed Borrower/Proposed Guarantor*]⁷

Date: [●]

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P. – £[●] Facility Agreement dated [●] (the “Agreement”)

We refer to the Agreement. This is an Accession Agreement.

[*Name of company*] of [*address/registered office*] agrees to become an Additional Borrower/Guarantor and to be bound by the terms of the Agreement as an Additional Borrower/Guarantor.

This Accession Agreement is governed by English law.

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.

By:

[*PROPOSED BORROWER/GUARANTOR*]

By:

⁷ Delete as applicable.

SCHEDULE 7
Form of Transfer Certificate

To: [●] as Facility Agent

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

Dated: [●]

[Company] – [●] Facility Agreement dated [●] (the “Agreement”)

1. We refer to the Agreement. This is a Facility 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 27.3 (*Procedure for transfer by way of novation*) of the Agreement:
 - (A) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 27.3 (*Procedure for transfer by way of novation*) of the Agreement.
 - (B) The proposed Transfer Date is [●].
 - (C) The Facility Office and address, e-mail address and attention details for notices of the New Lender for the purposes of Clause 34.2 (*Contact details*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 27.5 (*Limitation of responsibility of Existing Lender*) of the Agreement.
4. 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.
5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

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

[Facility Agent]

By:

SCHEDULE 8
Form of Resignation Request

To: [•] as Facility Agent

From: **AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.** and [*relevant Obligor*]

Date: [•]

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P. – £[•],000,000 Facility Agreement dated [•] (the “Agreement”)

We refer to the Agreement. This is a Resignation Request.

Pursuant to Clause 27.7 (*Resignation of an Obligor (other than the Company)*) of the Agreement, we request that [resigning Obligor] be released from its obligations as [a/an]⁸ [*Obligor/Borrower/Guarantor*] under the Agreement.

We confirm that no Default is outstanding or would result from the acceptance of this Resignation Request.

We confirm that as at the date of this Resignation Request no amount owed by [resigning Obligor] under the Agreement is outstanding.

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

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P. [Relevant Obligor]

By:

By:

The Facility Agent confirms that this resignation takes effect on [•].

[Name of Facility Agent]

By:

⁸ Delete as applicable.

SCHEDULE 9
Form of Confidentiality Undertaking

[Letterhead of Seller]

To: [potential purchaser]

From: [potential seller]

Re: **£[•],000,000 Facility Agreement dated [•] (the “Agreement”)**

Agility Public Warehousing Company K.S.C.P. (the “**Company**”)

Date: [•]

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation 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 or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the “**Acquisition**”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. CONFIDENTIALITY UNDERTAKING

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information; and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2. PERMITTED DISCLOSURE

We agree that you may disclose:

- 2.1 to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall reasonably consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2.1 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;

2.2 to any person:

- (A) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement, such Confidential Information as you shall reasonably consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (A) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
- (B) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor, such Confidential Information as you shall reasonably consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (B) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter; and
- (C) to whom and to the extent that information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation, such Confidential Information as you shall reasonably consider appropriate if [to the extent practicable], the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of it may be price sensitive; and

2.3 Confidential Information to such persons other than those listed in paragraphs 2.1 and 2.2 above to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3. **NOTIFICATION OF DISCLOSURE**

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 in advance of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (C) of paragraph 2.2 above 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
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **RETURN OF COPIES**

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent

technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (C) of paragraph 2.2 above.

5. **CONTINUING OBLIGATIONS**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling 24 months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling 24 months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. **NO REPRESENTATION, CONSEQUENCES OF BREACH, ETC**

You acknowledge and agree that:

- 6.1 neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based; or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **ENTIRE AGREEMENT: NO WAIVER, AMENDMENTS, ETC**

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **INSIDE INFORMATION**

You acknowledge 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 you undertake not to use any Confidential Information for any unlawful purpose.

9. **NATURE OF UNDERTAKING**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

10. **THIRD PARTY RIGHTS**

10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this letter.

10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.

10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person other than the Company to rescind or vary this letter at any time.

11. **GOVERNING LAW AND JURISDICTION**

11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the “**Letter**”) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

11.2 The parties to this Letter and each Relevant Person agree that any dispute arising out of or in connection with this Letter (including a dispute regarding the existence, validity or termination of this Letter or this paragraph 11.1 or any non-contractual obligation arising out of or in connection with this Letter) shall be referred to, and finally and exclusively settled by, arbitration under the Rules of Arbitration of the International Chamber of Commerce, which are deemed to be incorporated by reference into this paragraph 11.1. The Tribunal shall be composed of three arbitrators. The seat of the arbitration shall be London. The language of the arbitration shall be English. The parties hereby expressly exclude Sections 45 and 69 of the Arbitration Act 1996.

12. **DEFINITIONS**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Target Group, the shareholders of the Target, the Acquisition, the Finance

Documents, the Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or the Facility from us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (A) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (B) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (C) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“Group” means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

“Permitted Purpose” means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of
[Seller]

To: **[Seller]**

The Company and each other member of the Group

We acknowledge and agree to the above:

.....

For and on behalf of
[Potential Purchaser]

SCHEDULE 10
Form of Increase Confirmation

To: [●] as Facility Agent and Agility Public Warehousing Company K.S.C.P. as Company

From: [*the Increase Lender*] (the “**Increase Lender**”)

Dated:

Agility Public Warehousing Company K.S.C.P. – £[●] Term Credit Facility Agreement dated [●] (the “Agreement”)

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.4 (*Increase*) of the Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the “**Relevant Commitment**”) as if it was an Original Lender under the 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 Finance Documents as a Lender.
6. The Facility Office and address, electronic mail address and attention details for notices to the Increase Lender for the purposes of Clause 34.2 (*Contact details*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (g) of Clause 2.4 (*Increase*).
8. The Increase Lender confirms that it is not a Defaulting Lender.
9. This Increase Confirmation may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Increase Confirmation.
10. This Increase Confirmation and any non contractual obligations arising out of or in connection with it are governed by English law.
11. This Agreement has been entered into on the date stated at the beginning of this Agreement.

THE SCHEDULE

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

[insert relevant details]

*[Facility office address, electronic mail 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 Agreement by the Facility Agent and the Increase Date is confirmed as [●].

Facility Agent

By:

SCHEDULE 11
Form of Assignment Agreement

To: [●] as Facility Agent and [●] as Company, for and on behalf of each Obligor

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

Dated: [●]

[Company] – [●] Facility Agreement dated [●] (the “Agreement”)

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 27.4 (*Procedure for assignment*) of the Agreement:
 - (A) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Agreement as specified in the Schedule.
 - (B) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Agreement specified in the Schedule.
 - (C) The New Lender becomes a Party as a Lender and is bound by the obligations equivalent to those from which the Existing Lender is released under paragraph (B) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date, the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of Clause 34.2 (*Contact details*) of the Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 27.5 (*Limitation of responsibility of Existing Lender*) of the Agreement.
7. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 27.4(d) (*Procedure for assignment*) of the Agreement, to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.

8. 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.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. 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, electronic mail address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

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

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

[Facility Agent]

By:

SCHEDULE 12

Timetables

Delivery of a duly completed Selection Notice (Clause 10.1 (<i>Selection</i>))	U 1 11.00 a.m.
Facility Agent notifies the Lenders of the Loan in accordance with Clause 5.3 (<i>Advance of Loan</i>)	U-1 Noon
Currency to be available and convertible into the Base Currency (Clause 6.2 (<i>Conditions relating to Optional Currencies</i>))	On the day which is two Business Days before the first day of the Term for the relevant Loan.
Facility Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 6.2 (<i>Conditions relating to Optional Currencies</i>)	U-4
Facility Agent receives a notification from a Lender under Clause 6.3 (<i>Revocation of currency</i>)	9.30 a.m. on the day which is two Business Days before the first day of the Term for the relevant Loan.
Lender gives notice in accordance with Clause 6.3(a) (<i>Revocation of currency</i>)	5.30 p.m. on the day which is two Business Days before the first day of the Term for the relevant Loan.

“U” = date of utilisation or, if applicable in the case of a Loan that has already been borrowed, the first day of the relevant Term for that Loan.

“U-X” = Business Days prior to date of utilisation.

SCHEDULE 13
Standard Settlement Instructions of The Borrower

1. Standard Settlement Instructions

- (A) Any amounts to be credited to the Borrower by the Facility Agent (including, without limitation, any Utilisation) shall be credited only to the account of the Borrower as set out in paragraph 2 of this Schedule 13 (the **"Borrower's Account"**).
- (B) Notwithstanding clause 26 of this Agreement, the details of the Borrower's Account as set out in paragraph 2 of this Schedule 13 may be amended by the Borrower without the consent of the Facility Agent and/or any Lender(s), provided that:
- (i) the Facility Agent shall only accept a request to amend the details of the Borrower's Account where notification of such amendment is provided by the Borrower to the Facility Agent:
- (A) in writing;
- (B) in original form (hard copy); and
- (C) signed by two directors of the Borrower,
- (the **"Notice of Amendment to Borrower's Account"**);
- (ii) the Facility Agent shall confirm promptly in writing to the Borrower receipt of the Notice of Amendment to Borrower's Account (the **"Facility Agent's Acknowledgement"**); and
- (iii) the amendment to paragraph 2 of this Schedule 13 in accordance with the Notice of Amendment to Borrower's Account shall become effective 10 Business Days following the date of the Facility Agent's Acknowledgement (or such shorter period as may be agreed between the Company and the Facility Agent from time to time).

2. Account Details

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SCHEDULE 14
Reference Rate Terms

CURRENCY: Sterling.

Cost of funds will not apply as a fallback.

Definitions

Additional Business Days: An RFR Banking Day.

Business Day Conventions (definition of “Month” and Clause 10.3 (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 a Term begins on the last Business Day of a calendar month, that Term shall end on the last Business Day in the calendar month in which that Term is to end.

(b) If a Term would otherwise end on a day which is not a Business Day, that Term 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 Facility Agent or by any other Finance Party which agrees to do so in place of the Facility Agent) of the Central Bank Rate Spread 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 rate per annum) calculated by the Facility Agent (or by any other Finance Party

which agrees to do so in place of the Facility Agent) between:

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

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

Lookback Period:

Five RFR Banking Days.

Market Disruption Rate:

None specified.

Relevant Market:

The sterling wholesale market.

Reporting Day:

The day which is the Lookback Period prior to the last day of the Term 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.
Length of Term in absence of selection (paragraph (c) of Clause 10.1 (<i>Selection</i>))	three months
<i>Reporting Times</i>	
Deadline for Lenders to report market disruption in accordance with Clause 11.2 (<i>Market disruption</i>)	Close of business in London on the Reporting Day for the relevant Loan.
Deadline for Lenders to report their cost of funds in accordance with Clause 11.3 (<i>Cost of funds</i>)	Close of business on the date falling two Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling two Business Days before the date on which interest is due to be paid in respect of the Term for that Loan).

SCHEDULE 15

Daily Non-Cumulative Compounded RFR Rate

The “**Daily Non-Cumulative Compounded RFR Rate**” for any RFR Banking Day “i” during an Term 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 Term;

“**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 Term 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 Term 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 4 decimal places) calculated as set out below:

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

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

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

“**i**” means a series of whole numbers from one to d₀, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

“**DailyRate_{i-LP}**” means, for any RFR Banking Day “i” in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “i”;

“**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.

SCHEDULE 16

Cumulative Compounded RFR Rate

The “**Cumulative Compounded RFR Rate**” for any Term for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of “**Annualised Cumulative Compounded Daily Rate**” in Schedule 15 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d}$$

where:

“**d₀**” means the number of RFR Banking Days during the Term;

“**i**” means a series of whole numbers from one to d₀, each representing the relevant RFR Banking Day in chronological order during the Term;

“**DailyRate_{i-LP}**” means for any RFR Banking Day “i” during the Term, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “i”;

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

“**dcc**” means 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;

“**d**” means the number of calendar days during that Term.

SIGNATURE PAGES FOR AGILITY ACQUISITION TERM LOAN FACILITY

Company

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.

By:

REDACTED

Original Borrower

AGILITY MAYAN HOLDING W.L.L.

By:

REDACTED

Original Guarantor

AGILITY PUBLIC WAREHOUSING COMPANY K.S.C.P.

By:

REDACTED

SIGNATURE PAGES FOR AGILITY ACQUISITION TERM LOAN FACILITY (CONTINUED)

Facility Agent

REDACTED

BARCLAYS BANK PLC

By:

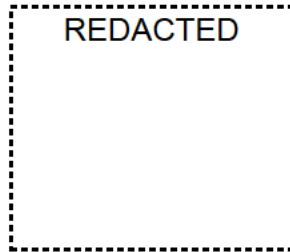
REDACTED

SIGNATURE PAGES FOR AGILITY ACQUISITION TERM LOAN FACILITY (CONTINUED)

Mandated Lead Arranger and Bookrunner

BARCLAYS BANK PLC

By:



SIGNATURE PAGES FOR AGILITY ACQUISITION TERM LOAN FACILITY (CONTINUED)

Original Lender

BARCLAYS BANK PLC

By:

REDACTED

REDACTED