

£400,000,000  
Facility Agreement

Dated 5 September 2022

for

VISTRY GROUP PLC

arranged by

HSBC BANK PLC

as Mandated Lead Arranger

with

HSBC BANK PLC

acting as Agent

Ref: L-318861

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THIS AGREEMENT is dated 5 September 2022 and made between:

- (1) VISTRY GROUP PLC, a company incorporated in England with registered number 00306718, as the company (the "**Company**");
- (2) VISTRY GROUP PLC, a company incorporated in England with registered number 00306718, as the original borrower (the "**Original Borrower**");
- (3) EACH COMPANY listed in Part I of Schedule 1 (*The Original Parties*) as an original guarantor (the "**Original Guarantors**");
- (4) HSBC BANK PLC as mandated lead arranger (the "**Mandated Lead Arranger**");
- (5) THE FINANCIAL INSTITUTIONS listed in Part II of Schedule 1 (*The Original Parties*) as original lenders (the "**Original Lenders**"); and
- (6) HSBC BANK PLC as agent of the other Finance Parties (the "**Agent**").

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**2019 Facility Agreement**" means the £600,000,000 term and revolving credit facility agreement originally dated 7 November 2019, as amended and/or restated from time to time, between, among others, the Company as original borrower and Barclays Bank PLC as agent.

"**2021 Facility Agreement**" means the £500,000,000 revolving credit facility agreement originally dated 16 December 2021, as amended and/or restated from time to time, between, among others, the Company as original borrower and Barclays Bank PLC as agent.

"**Acceptable Bank**" means an Original Lender, an Affiliate of an Original Lender, or a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or has been approved by the Majority Lenders.

"**Accession Letter**" means a document substantially in the form set out in Schedule 5 (*Form of Accession Letter*), with such amendments as the Agent and the Company may agree.

"**Acquisition**" means the acquisition by the Offeror of the Target pursuant to the Offer or the Scheme and including, in the case of an Offer, the acquisition of Target Shares through the compulsory acquisition procedures in sections 979 to 982 of the Companies Act 2006.

"**Acquisition Closing Date**" means the Unconditional Date or the Scheme Effective Date, as the case may be.

"**Acquisition Costs**" means the Offer Costs or the Scheme Costs, as the case may be.

"**Acquisition Documents**" means the Offer Documentation or the Scheme Documentation, as the case may be.

**"Acquisition Purpose"** means any of the purposes set out in paragraphs (a) to (c) of Clause 3.1 (*Purpose*).

**"Additional Borrower"** means a company which becomes an Additional Borrower in accordance with Clause 24 (*Changes to the Obligors*).

**"Additional Guarantor"** means a company which becomes an Additional Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

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

**"Affected Lender"** has the meaning given to it in Clause 7.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*).

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

**"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.

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

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

**"Available Commitment"** means a Lender's Commitment under the Facility minus:

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

**"Available Facility"** means the aggregate for the time being of each Lender's Available Commitment in respect of the Facility.

**"Backstop RCF Agreement"** means the £500,000,000 revolving credit facility agreement dated on or about the date of this Agreement, as amended and/or restated from time to time, between, among others, the Company as original borrower and HSBC Bank plc as agent.

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

**"Bail-In Legislation"** means:

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

**"Borrower"** means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 24 (*Changes to the Obligors*).

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

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

**"Calculation Period"** has the meaning given to it in Clause 20.1 (*Financial definitions*).

**"Cash and Cash Equivalent Investment"** 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 and issued by an Acceptable Bank;
- (c) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the UK or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (d) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the UK, or any Participating Member State;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (f) any investment in money market funds which:
  - (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited;
  - (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above; and
  - (iii) can be turned into cash on not more than 30 days' notice; or
- (g) any other debt security approved by the Majority Lenders,

in each case, denominated in sterling and to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security other than any Security listed under paragraph (b), (c) or (i) of the definition of "Permitted Security Interest".

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

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

**"Certain Funds Period"** means:

- (a) in the case of a Scheme, the period from and including the date of this Agreement to and including the date which is the earlier of:
  - (i) the date on which the Scheme lapses or is withdrawn in writing, in each case, in accordance with the terms of the Takeover Code and, if required, with the consent of the Takeover Panel, or is rejected by the Court (subject to exhausting any rights of appeal) (other than (A) where such lapse or withdrawal is as a result of the exercise of the Offeror's right to effect a switch from a Scheme to an Offer or (B) it is otherwise to be followed within 7 Business Days by an announcement made by the Offeror to implement the Acquisition by a new, revised or replacement Offer or Scheme, as the case may be);
  - (ii) the date on which the Target becomes a direct or indirect wholly-owned Subsidiary of the Company and the Offeror has paid all sums due in connection with the Acquisition; and
  - (iii) the Longstop Date, if by that date the Scheme Effective Date has not occurred;
- (b) in the case of an Offer, the period from and including the date of this Agreement to and including the date which is the earliest of:
  - (i) the date on which the Offer lapses or is withdrawn in writing, in each case, in accordance with the terms of the Takeover Code and, if required, with the consent of the Takeover Panel (other than (A) where such lapse or withdrawal is as a result of the exercise of the Offeror's right to effect a switch from an Offer to a Scheme or (B) it is otherwise to be followed within 7 Business Days by an announcement made by the Offeror to implement the Acquisition by a new, revised or replacement Offer or Scheme, as the case may be);
  - (ii) the date on which the Target becomes a direct or indirect wholly-owned Subsidiary of the Company and the Offeror has paid all sums due in connection with the Acquisition; and
  - (iii) the Longstop Date, if by that date the Unconditional Date has not occurred;

in each case, provided that the Longstop Date will, upon the Company's request, be extended if necessary or desirable in order to comply with the requirements of the Takeover Panel:

- (A) if the Acquisition is intended to be completed pursuant to a Scheme, to a date falling a maximum of six weeks after the Longstop Date; or

(B) if the Acquisition is intended to be completed pursuant to an Offer, to a date falling a maximum of eight weeks after the Longstop Date,

or, in each case, such later date as is agreed from time to time by the Company and the Agent (acting on the instructions of the Majority Lenders, acting reasonably).

**"Certain Funds Utilisation"** means any Loan made or to be made during the Certain Funds Period for an Acquisition Purpose.

**"Certain Funds Period White List"** means the list of entities agreed in writing on or before the date of this Agreement by the Company and the Mandated Lead Arranger (being the entities to which an assignment or transfer is permitted prior to the expiry of the Certain Funds Period in accordance with paragraph (a)(i) of Clause 23.2 (*Conditions of assignment or transfer*)).

**"Clean-up Date"** means the date falling 120 days from and including the Acquisition Closing Date.

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

**"Commitment"** means

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

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

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

**"Compounded Reference Rate"** means, in relation to any Business Day during an Interest Period of a Loan, the Daily Non-Cumulative Compounded RFR Rate for that Business Day.

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

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

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

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



- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or the Target Group or any of its advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:
- (i) information that:
- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 35 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with 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 Funding Rate.

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

**"Consolidated Tangible Net Worth"** has the meaning given to it in Clause 20.1 (*Financial definitions*).

**"Court Order"** means an order of the High Court of Justice of England and Wales sanctioning the Scheme under section 899 of the Companies Act 2006.

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

**"Daily Non-Cumulative Compounded RFR Rate"** means, in relation to any Business Day during an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 10 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

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

**"Default"** means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

- (a) which has failed to make its participation in a Loan available (or has notified the Agent or the Company (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*);
  - (b) which has otherwise rescinded or repudiated a Finance Document; or
  - (c) with respect to which an Insolvency Event has occurred and is continuing,
- unless, in the case of paragraph (a) above:
- (i) its failure to pay is caused by:
    - (A) administrative or technical error and payment is made within five Business Days of its due date; or
    - (B) a Disruption Event and payment is made within five Business Days of its due date; or
  - (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

**"Disapplied Period"** has the meaning given to it in paragraph (b) of Clause 20.3 (*Financial covenants*).

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

**"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.

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

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

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

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

- (a) the pollution or protection of the environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the environment.

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

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

**"Event of Default"** means any event or circumstance specified as such in Clause 22 (*Events of Default*).

**"Facility"** means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

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

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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 any letter or letters dated on or about the date of this Agreement between the Original Lenders and the Company (or the Agent and the Company) setting out any of the fees referred to in Clause 11 (*Fees*).

**"Finance Document"** means this Agreement, any Fee Letter, any Accession Letter, any Resignation Letter, any Reference Rate Supplement, any Compounding Methodology Supplement and any other document designated as such by the Agent and the Company.

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

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) receivables sold or discounted (other than any receivables to the extent they are sold on a non recourse basis);
- (e) any amount raised under any other transaction (including any forward sale or purchase agreement) required by GAAP to be shown as a borrowing in the audited consolidated balance sheet of the Group;
- (f) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (g) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (but for the avoidance of doubt, excluding any counter indemnity by a member of the Group in respect of any Trade Instrument); and
- (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above,

provided that in no event shall any indebtedness for or in respect of any Lease Liability constitute Financial Indebtedness.

**"Financial Model"** means the financial model prepared by the Company in connection with the Acquisition titled "Project Coach – Financial Model – 3 September 2022".

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.3 (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in England and Wales (including IFRS).

**"Gearing Ratio"** has the meaning given to it in Clause 20.1 (*Financial definitions*).

**"Government Body"** means the government of the UK, any local or political subdivision of the government of the UK, any entity exercising executive, legislative, regulatory or administrative functions of or pertaining to the government of the UK or any other entity or person that may be appointed by or on behalf of the government of the UK as its agent, sub-contractor or representative in respect of any Government Programme.

**"Government Programme"** means any initiative that is announced by a Government Body to support the housebuilding or residential property sector (including, without limitation, the HCA Kickstart Programme).

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

**"Guarantor"** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

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

**"IFRS"** means International Accounting Standards, International Financial Reporting Standards and related Interpretations, together with any future standards and related interpretations issued or adopted by the International Accounting Standards Board, in each case as amended and to the extent applicable to the relevant financial statements.

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

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

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

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

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 8 (*Form of Increase Confirmation*).

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

**"Information Package"** means, together:

- (a) the Financial Model;
- (b) the Lender Presentation; and
- (c) the KPMG Report.

**"Insolvency Event"** means, in relation to a Finance Party or an Acceptable Bank:

- (a) any receiver, administrative receiver, administrator, liquidator, compulsory manager or other similar officer is appointed in respect of that Finance Party or that Acceptable Bank all or substantially all of its assets;
- (b) that Finance Party or that Acceptable Bank has passed a resolution for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (c) that Finance Party or that Acceptable Bank has had another secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of 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;
- (d) that Finance Party or that Acceptable Bank is subject to any event which has an analogous effect to any of the events specified in paragraphs (a) to (c) above under the applicable laws of any jurisdiction; or
- (e) that Finance Party or that Acceptable Bank suspends making payments on all or substantially all of its debts or publicly announces an intention to do so.

**"Interest Cover Ratio"** has the meaning given to it in Clause 20.1 (*Financial definitions*).

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

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

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

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

**"KPMG Report"** means the report titled "Project Coach Financial initial findings report" dated 2 September 2022.

**"Land Creditor"** means a trade payable in respect of deferred consideration for real estate.

**"Lease Liability"** means any liability arising in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability.

**"Lender"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.2 (*Increase*), or Clause 23 (*Changes to the Lenders*),

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

**"Lender Presentation"** means the document in the form approved by the Company concerning the Group which, at the Company's request and on its behalf, was prepared in relation to this transaction and distributed by the Mandated Lead Arranger to selected financial institutions before the date of this Agreement.

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

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

**"Longstop Date"** means the date falling 14 days after 6 September 2023.

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

**"Major Default"** means any circumstances with respect to the Borrower, Vistry Homes Limited or Vistry Partnerships Limited (and not for the avoidance of doubt, relating to or with respect to (i) any procurement obligations of any member of the Group or (ii) the Target or any of its Subsidiaries) constituting an Event of Default arising under any of:

- (a) Clause 22.1 (*Non payment*) to the extent such event or circumstance relates to non-payment of principal amounts, interest or fees to any Finance Party under the Finance Documents and excluding any agency fees;
- (b) Clause 22.3 (*Other obligations*) insofar as it relates to:
  - (i) Clause 21.3 (*Negative pledge*);
  - (i) Clause 21.4 (*Acquisitions*);
  - (ii) Clause 21.5 (*Disposals*);
  - (iii) Clause 21.6 (*Loans and guarantees*);
  - (iv) Clause 21.7 (*Financial Indebtedness*);
  - (v) Clause 21.8 (*Merger*) other than by way of any amalgamation, demerger, merger or corporate reconstruction which is implemented by the shareholders of the Borrower without the consent of the Borrower; and
  - (vi) Clause 21.17 (*The Acquisition*) other than sub-paragraphs (e) and (f) of Clause 21.17 (*The Acquisition*);

- (c) Clause 22.4 (*Misrepresentation*) insofar as it relates to any Major Representation being incorrect in any material respect (unless that Major Representation is already qualified by materiality, in which case such Major Representation must be correct in all respects);
- (d) paragraphs (a) and (c) of Clause 22.6 (*Insolvency*), provided that, in relation to paragraph (a) of Clause 22.6 (*Insolvency*), the suspension of making payments on any of its debts shall be due to financial difficulties and reference to "one or more of its creditors (excluding any Finance Party in its capacity as such)" shall be deemed to be replaced with reference to "its creditors generally";
- (e) Clause 22.7 (*Insolvency proceedings*) other than paragraphs (a)(v) of Clause 22.7 (*Insolvency proceedings*), provided that:
  - (i) in relation to paragraph (a)(ii) of Clause 22.7 (*Insolvency proceedings*), reference to "any creditor of any Obligor or Material Subsidiary" shall be deemed to be replaced with reference to "a creditor with respect to the Borrower, Vistry Homes Limited or Vistry Partnerships Limited provided the aggregate amounts owed by the Borrower, Vistry Homes Limited or Vistry Partnerships Limited to such creditor exceeds £10,000,000 (or its equivalent in other currency or currencies)";
  - (ii) paragraph (a)(iv) of Clause 22.7 (*Insolvency proceedings*) shall only apply in respect of any action, legal proceeding or other procedure or step where the aggregate value of the events or claims which are the subject of such actions, proceedings or other procedures or steps is more than £10,000,000 (or its equivalent in other currency or currencies);
  - (iii) paragraphs (a)(i) to (iv) of Clause 22.7 (*Insolvency proceedings*) shall only apply in respect of any action, legal proceeding or other procedure or step which is not frivolous or vexatious;
- (f) Clause 22.9 (*Ownership of the Obligors*);
- (g) Clause 22.11 (*Unlawfulness*), provided that it shall only apply if such Event of Default materially and adversely affects the interests of the Lenders (taken as a whole) under the Finance Documents; or
- (h) Clause 22.12 (*Repudiation*).

**"Major Representation"** means a representation or warranty under any of:

- (a) Clause 18.1 (*Status*);
- (b) Clause 18.2 (*Binding obligations*);
- (c) Clause 18.3 (*Non conflict with other obligations*), provided that in relation to paragraphs (b) and (c) of Clause 18.3 (*Non conflict with other obligations*), references to "or any of its Material Subsidiaries" shall not apply for the purpose of this definition;
- (d) Clause 18.4 (*Power and authority*); and



- (e) Clause 18.5 (*Validity and admissibility in evidence*), in each case subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*),

in each case, with respect to the Borrower, Vistry Homes Limited or Vistry Partnerships Limited.

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate 66⅔ per cent. or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66⅔ per cent. or more of the Total Commitments immediately prior to the reduction).

**"Margin"** means the rate per annum calculated in accordance with Clause 8.3 (*Margin adjustments financial covenants*).

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

**"Material Adverse Effect"** means a material adverse effect on the business, assets or financial condition of the Group taken as a whole or on the ability of any Obligor to comply with its payment obligations under the Finance Documents or the ability of the Company to comply with its obligations under Clause 20.3 (*Financial covenants*).

**"Material Subsidiary"** means, at any time, a Subsidiary of the Company if (a) the gross assets of that Subsidiary are 10 per cent. or more of the consolidated gross assets of the Group or (b) the turnover of that Subsidiary (excluding VAT and/or sales tax) is 10 per cent. or more of the aggregate turnover of the Group.

For this purpose:

- (a) subject to paragraph (b) below:
- (i) the contribution of a Subsidiary of the Company will be determined from its financial statements which were consolidated into the latest audited consolidated financial statements of the Company; and
  - (ii) the financial condition of the Group will be determined from the latest audited consolidated financial statements of the Company;
- (b) if a Subsidiary of the Company becomes a member of the Group after the date on which the latest audited consolidated financial statements of the Company were prepared:
- (i) the contribution of the Subsidiary will be determined from its latest financial statements; and
  - (ii) the financial condition of the Group will be determined from the latest audited consolidated financial statements of the Company but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that Subsidiary);
- (c) the contribution of a Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
- (d) if a Material Subsidiary disposes of all or substantially all of its assets to another member of the Group, it will immediately cease to be a Material Subsidiary and the other member

of the Group (if it is not an Obligor or already a Material Subsidiary) will immediately become a Material Subsidiary;

- (e) a Subsidiary of the Company (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-Group transfer or reorganisation occurred on the date of the latest audited consolidated financial statements of the Company; and
- (f) except as specifically mentioned in paragraph (d) above, a member of the Group will remain a Material Subsidiary until the next audited consolidated financial statements of the Company show otherwise under paragraph (a) above.

If there is a dispute as to whether or not a member of the Group is a Material Subsidiary, a certificate of the auditors of the Company will be, in the absence of manifest error, conclusive.

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

**"New Lender"** has the meaning given to that term in Clause 23 (*Changes to the Lenders*).

**"NHBC"** means the National House-Building Council.

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

**"OFAC"** means the Office of Foreign Assets Control of the US Department of the Treasury.

**"Offer"** means, following an election in accordance with Clause 21.17 (*The Acquisition*), the offer made or proposed to be made by the Offeror for the Target Shares not already owned by the Offeror substantially on the terms and conditions set out in the Offer Document, as that offer may from time to time be amended, extended, revised or waived in accordance with this Agreement.

**"Offer Costs"** means all fees, costs and expenses and stamp, registration and other Taxes incurred by or on behalf of or the Offeror in connection with the Offer or the Offer Documents.

**"Offer Document"** means the offer document posted or to be posted by the Offeror to holders of Target Shares containing the full terms and conditions of the Offer.

**"Offer Documentation"** means:

- (a) the Offer Document; and
- (b) any other document issued by or on behalf of the Offeror to holders of Target Shares in relation to the Offer.

**"Offer Press Release"** means a press announcement released by or on behalf of the Offeror to announce the terms and conditions of the Offer.

**"Offeror"** means the Company or any other entity designated as such by the Company and the Agent.

**"Original Financial Statements"** means the audited consolidated financial statements of the Company for the financial year ended 31 December 2021.

**"Original Obligor"** means the Original Borrower or the Original Guarantors.

**"Participating Member State"** means any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

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

**"Permitted Acquisition"** means:

- (a) the Acquisition;
- (b) acquisitions of, or investments in, assets made in the ordinary course of business (excluding purchases of third party businesses except as detailed below);
- (c) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
- (d) an acquisition of securities which are Cash and Cash Equivalent Investments;
- (e) the incorporation of a company or the establishment of a partnership which on incorporation or establishment becomes a member of the Group, but only if that company is incorporated in the UK with limited liability;
- (f) acquisitions of, or investments made, in connection with a Permitted Joint Venture;
- (g) acquisitions of, or investments in, shares or cells in HBF Insurance PCC Limited (or any replacement entity) in connection with the NewBuy Scheme;
- (h) acquisitions or investments made with the prior written consent of the Majority Lenders; or
- (i) an acquisition for cash consideration of (A) part or all of the issued share capital of a limited liability company, or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) part or all of a business or undertaking carried on as a going concern or (C) of all the members' interests in a limited liability partnership, but only if:
  - (i) no Default is continuing on the closing date for the acquisition or would occur as a result of the relevant acquisition;
  - (ii) the acquired company, business or undertaking is incorporated or established in, and carries on its principal business in, the UK and is engaged in a business substantially the same as that carried on by the Group; and
  - (iii) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of the acquisition (when aggregated with the consideration (including associated costs and expenses) for any other Permitted Acquisition made under this

paragraph (i) and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") does not in any financial year of the Company exceed in aggregate 15 per cent. of Consolidated Tangible Net Worth or its equivalent (as set out in the Compliance Certificate then most recently delivered to the Agent in relation to the audited consolidated financial statements of the Company in accordance with Clause 19.2 (*Compliance Certificate*)).

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

Such certificate must contain calculations showing in reasonable detail that the Company would have remained in compliance with its obligations under Clause 20 (*Financial Covenants*) if the financial covenant tests detailed in Clause 20.3 (*Financial covenants*) were recalculated for the most recent Calculation Period consolidating the financial statements of the target company (consolidated if the target company has subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that Calculation Period.

**"Permitted Disposal"** means Disposals:

- (a) made in the ordinary course of business of the disposing entity;
- (b) of assets in exchange for or to be replaced by other assets comparable or superior as to type, value and quality;
- (c) of obsolete assets;
- (d) by any member of the Group to another member of the Group, provided that no breach of paragraph (a)(i) of Clause 21.16 (*Guarantor coverage*) would result from such disposal;
- (e) of Shared Equity Assets;
- (f) of any interest in any joint venture entered into by any member of the Group;
- (g) to a Joint Venture, to the extent permitted by Clause 21.15 (*Joint Ventures*);
- (h) where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other disposal not permitted under the preceding paragraphs) does not exceed 10 per cent. of the consolidated net assets of the Group (as set out in the financial statements of the Company most recently delivered to the Agent in accordance with Clause 19.1 (*Financial statements*)) in any financial year of the Company; or
- (i) made with the prior written consent of the Majority Lenders.

**"Permitted Guarantee"** means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;

- (b) any performance or similar bond or guarantee guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee of a Joint Venture to the extent permitted by Clause 21.15 (*Joint Ventures*);
- (d) any guarantee given in respect of any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including an Ancillary Facility, as defined and under the 2021 Facility Agreement or the Backstop RCF Agreement, which is an overdraft comprising more than one account);
- (e) guarantees granted in respect of the obligations of any Obligor;
- (f) guarantees granted by members of the Group which are not Obligors;
- (g) guarantees granted by the Obligors in respect of obligations of any member of the Group, provided that the amount guaranteed under guarantees entered into after the date of this Agreement in respect of the obligations of members of the Group which are not Obligors shall not exceed in aggregate £20,000,000 (or its equivalent in other currencies) at any time;
- (h) guarantees granted by any Obligors prior to the date of the 2019 Facility Agreement provided that the amount guaranteed is not increased, amended or extended after the date of the 2019 Facility Agreement (other than by reason of the fluctuation of the guaranteed obligations in accordance with its terms as of the date of this Agreement);
- (i) any guarantee which constitutes Permitted Indebtedness;
- (j) guarantees granted by any member of the Group on a joint and several basis with consortium parties in respect of planning and building issues related to any sites which such member of the Group shares with such consortium parties, provided that such guarantees do not support any Financial Indebtedness;
- (k) guarantees granted by any member of the Group in respect of any Facility under and as defined in the 2021 Facility Agreement or the Backstop RCF Agreement;
- (l) guarantees granted by the Guarantors in respect of the Financial Indebtedness set out in paragraph (d) and (e) of the definition of "Permitted Indebtedness"; ;
- (m) guarantees granted by any member of the Group with the prior written consent of the Majority Lenders; or
- (n) guarantees to the extent not otherwise permitted provided that the aggregate amount guaranteed under such guarantees (when aggregated with any amount outstanding under loans permitted pursuant to paragraph (d) of the definition of "Permitted Intra-Group Loan" but without double counting) does not exceed £250,000,000 (or its equivalent in other currencies) at any time.

**"Permitted Indebtedness"** means:

- (a) Financial Indebtedness pursuant to this Agreement;

- (b) Financial Indebtedness arising in respect of each Facility (including any Ancillary Facilities), in each case, under and as defined in the 2021 Facility Agreement or the Backstop RCF Agreement;
- (c) any derivative transaction (or foreign exchange transaction) protecting against or benefiting from fluctuations in any rate or price entered into in the ordinary course of business;
- (d) Financial Indebtedness arising in respect of the Pricoa Bond (as the same may be amended, supplemented, modified, extended, replaced or refinanced from time to time) provided that the aggregate outstanding principal amount of such Financial Indebtedness does not exceed £100,000,000 (or its equivalent in other currencies) at any time;
- (e) any other Financial Indebtedness not permitted by paragraph (d) above arising under either the Pricoa Bond (as the same may be amended, supplemented, modified, extended, replaced or refinanced from time to time) or a note or other similar debt instrument sold to certain investors advised by Pricoa Capital Group or any of its Affiliates, the proceeds of which are applied in accordance with Clause 7.3 (*Mandatory prepayment*);
- (f) any Financial Indebtedness arising under a Permitted Intra-Group Loan or a Permitted Guarantee or as otherwise permitted under Clause 21.6 (*Loans and guarantees*);
- (g) any Financial Indebtedness arising under the Barclays Bank PLC overdraft facility in a principal amount not exceeding £5,000,000;
- (h) any Financial Indebtedness of the Group arising under the development funding agreement relating to Sherford New Community dated 12 November 2013 between The Homes and Communities Agency and the Original Development Partners named therein;
- (i) any Financial Indebtedness arising under the £50,000,000 bilateral facility agreement between Vistry Group plc and HSBC UK Bank plc originally dated 17 March 2020 as amended and restated from time to time including pursuant to an amendment and restatement agreement dated 23 February 2021, as the same may be extended or refinanced for the same or a lower amount;
- (j) any deferred purchase consideration payable in connection with the acquisition of land or any Financial Indebtedness arising under a guarantee by (or counter indemnity obligation to) a bank or financial institution of such deferred purchase consideration;
- (k) any Subordinated Debt;
- (l) Financial Indebtedness owed by one member of the Group to another member of the Group;
- (m) any Financial Indebtedness incurred by way of a Government Programme, in an amount not exceeding £100,000,000 in aggregate plus any amount permitted under paragraph (p) below that has not otherwise been utilised;
- (n) 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 outstanding only for a period of three months following the date of acquisition;

- (o) any Financial Indebtedness incurred with the prior written consent of the Majority Lenders; or
- (p) any other Financial Indebtedness not permitted by the preceding paragraphs and the outstanding amount of which does not exceed £250,000,000 in aggregate for the Group at any time.

**"Permitted Intra-Group Loan"** means a loan:

- (a) by a member of the Group to an Obligor;
- (b) by a non-Obligor to another member of the Group;
- (c) made with the prior written consent of the Majority Lenders; or
- (d) to the extent not otherwise permitted, provided that the aggregate amount outstanding under all such loans (when aggregated with the aggregate of amounts guaranteed under guarantees permitted pursuant to paragraph (n) of the definition of "Permitted Guarantee") does not exceed £250,000,000 (or its equivalent in other currencies) at any time.

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

- (a) the Joint Venture is incorporated or established in the UK;
- (b) the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and
- (c) in any financial year of the Company, the aggregate of:
  - (i) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;
  - (ii) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and
  - (iii) the market value of any assets transferred by any member of the Group to any such Joint Venture,

after deducting the aggregate value of:

- (A) all amounts distributed from all such Joint Ventures to any member of the Group by way of dividend or otherwise;
- (B) the amount of any loan repayments made by all such Joint Ventures to any member of the Group; and
- (C) the market value of any assets transferred by all such Joint Ventures to any member of the Group,

during that financial year, does not exceed £250,000,000 (or its equivalent in other currencies),

or otherwise where the Majority Lenders have granted their prior written consent to any such investment in any Joint Venture.

**"Permitted Security Interest"** means any of the following:

- (a) any Security or Quasi-Security in existence at the date of the 2019 Facility Agreement and notified to the Agent in the certificate delivered pursuant to paragraph 4(c) of Part I to Schedule 2 (*Conditions Precedent*), except to the extent that the principal amount secured by that Security or Quasi-Security exceeds the amount notified to the Agent;
- (b) any cash management, netting or set off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any lien or right of set-off arising by operation of law or in the ordinary course of business;
- (d) any conditional sale or title retention arising under or pursuant to any contract for the purchase of goods in the normal 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;
- (e) any agreement entered into by a member of the Group in the ordinary course of trading under which it is to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired by a member of the Group;
- (f) any Security or Quasi-Security securing the obligations of a member of the Group to satisfy Land Creditors or other deferred purchase consideration for real property acquired in the ordinary course of business, provided the Security relates only to the property acquired;
- (g) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement to the extent that:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (h) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, to the extent that:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company by a member of the Group;



- (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company by a member of the Group; and
  - (iii) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (i) any Security or Quasi-Security entered into pursuant to any Finance Document;
  - (j) any Security or Quasi-Security granted over a member of the Group's interest in a Permitted Joint Venture in favour of banks or financial institutions which have provided or shall provide finance to such Joint Venture;
  - (k) any Security or Quasi-Security with the prior written consent of the Majority Lenders;
  - (l) any Quasi-Security arising as a result of a Permitted Disposal;
  - (m) any netting or set-off agreement entered into under a derivative transaction where the obligations of the parties are calculated by reference to the net exposure under that derivative transaction;
  - (n) any Security granted in connection with a member of the Group's obligations under section 106 Town and Country Planning Act 1990 (as amended) provided that the outstanding principal amount of which does not exceed £15,000,000 (or its equivalent) in aggregate at any time;
  - (o) any Security granted in favour of a Government Programme, provided that the outstanding principal amount of which does not exceed the aggregate amount of Financial Indebtedness permitted to be incurred under paragraph (m) of the definition of "Permitted Indebtedness", at any time; or
  - (p) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (o) above) does not exceed five per cent. of Consolidated Tangible Net Worth (as defined in Clause 20.1 (*Financial definitions*)) and as shown in the most recent Compliance Certificate delivered to the Agent) at any time.

**"Pricoa Bond"** means the £100,000,000 ten year 4.03% unsecured notes due February 2027 originally issued by Galliford Try PLC and originally sold to certain investors advised by Pricoa Capital Group, as amended and restated pursuant to an amendment and restatement deed dated on or about 3 January 2020 under which the notes were novated to the Company.

**"Qualifying Lender"** has the meaning given to it in Clause 12 (*Tax Gross-Up and Indemnities*).

**"Quasi-Security"** has the meaning given to it in paragraph (b) of Clause 21.3 (*Negative pledge*).

**"Reference Rate Supplement"** means a document which:

- (a) is agreed in writing by the Company, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders or, in the case of any Reference Rate Supplement which has the effect of a reduction in the Margin, all the Lenders);

- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Company and each Finance Party.

**"Reference Rate Terms"** means the terms set out in Schedule 9 (*Reference Rate Terms*) or in any relevant Reference Rate Supplement.

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

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

**"Repeating Representations"** means each of the representations set out in Clauses 18.1 (*Status*) to 18.6 (*Governing law and enforcement*) (inclusive) and Clause 18.11 (*Sanctions*).

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

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

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

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

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

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

**"Sanctioned Person"** means any person or vessel:

- (a) designated on any Sanctions List;
- (b) that is, or is part of, a government (including any governmental agency, governmental authority or governmental body), or a state-owned enterprise of a Sanctioned Territory;
- (c) directly or indirectly owned or controlled by, or acting on behalf of, any of the foregoing paragraphs (a) and (b);
- (d) located, organised or resident within or operating from a Sanctioned Territory; or
- (e) otherwise the target or subject of any Sanctions.

**"Sanctioned Territory"** means any country or other territory subject to a general export, import, financial or investment embargo under Sanctions.

**"Sanctions"** means any economic, trade or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by Her Majesty's Treasury, OFAC, the US State Department, any other agency of the US government, the United Nations, the United Kingdom, the European Union, or any member state thereof, or any other national economic, trade or financial sanctions authority.

**"Sanctions List"** means:

- (a) the list of Specially Designated Nationals and Blocked Persons, the Foreign Sanctions Evaders (FSE) List and the Sectoral Sanctions Identifications List, in each case, maintained by OFAC;
- (b) the European Union's Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions;
- (c) the Consolidated List of Financial Sanctions Targets issued by Her Majesty's Treasury of the United Kingdom; and
- (d) any other list of designated or targeted persons issued or maintained in connection with any Sanctions.

**"Scheme"** means a scheme of arrangement under Part 26 of the Companies Act 2006 which is or may be proposed by the Target to its shareholders, pursuant to which the Target Shares not already owned by the Offeror shall be transferred to the Offeror, substantially on the terms set out in the Scheme Documentation.

**"Scheme Costs"** means all fees, costs and expenses and stamp, registration and other Taxes incurred by or on behalf of the Company or the Offeror in connection with the Scheme or the Scheme Documents.

**"Scheme Document"** means the document dispatched or to be dispatched by the Target to its shareholders setting out the proposals and the full terms and conditions for the Scheme (including any supplement or amendment thereto).

**"Scheme Documentation"** means:

- (a) the Scheme Document; and
- (b) any other document issued by or on behalf of the Company, the Offeror or the Target to holders of Target Shares in relation to the Scheme.

**"Scheme Effective Date"** means the date on which an office copy of the Court Order is delivered to the Registrar of Companies in England and Wales.

**"Scheme Press Release"** means a press announcement released by or on behalf of the Offeror to announce the terms and conditions of a Scheme.

**"Securitisation"** means any transaction in which a Lender may:

- (a) sell all or any portion of its interest in, or issue one or more participations in, any Loan or any part of it; or
- (b) consummate one or more private or public securitisations of rated single or multi class securities backed by or evidencing ownership interests in:
  - (i) all or any portion of its interest in any Loan or any part of it; or
  - (ii) a pool of assets that includes its interest in any Loan or any part of it.

**"Security"** means any mortgage, charge, pledge, lien, assignment by way of security, retention of title or other security interest securing any obligation of any person.

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

**"Shared Equity Asset"** means an interest in a property retained by a member of the Group under an advance or deferred purchase agreement and supported by Security in favour of a member of the Group.

**"Subordinated Debt"** means Financial Indebtedness of an Obligor subordinated under an intercreditor agreement in favour of the Lenders, the terms of which have been approved in writing by the Lenders.

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

**"Takeover Code"** means the City Code on Takeovers and Mergers.

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

**"Target"** means Countryside Partnerships PLC, a company incorporated under the laws of England and Wales with registered number 09878920.

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

**"Target Shares"** means the issued ordinary shares in the capital of the Target (including any issued pursuant to the exercise of any options or awards or other instruments convertible into or exchangeable for shares of the Target).

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

**"Termination Date"** means 31 March 2025.

**"Total Commitments"** means the aggregate of the Commitments, being £400,000,000 as at the date of this Agreement.

**"Trade Instruments"** means any surety bond, performance bond, performance guarantee, insurance product, letter of credit, guarantee, indemnity or other similar instrument entered into in the ordinary course of trading by a member of the Group (or by a bank, an insurance company, the NHBC (or a similar provider of bonds or such other instruments) or a financial institution with a counter-indemnity from a member of the Group) in relation to the obligations of any member of the Group, unless and until such time as any counter-indemnity provided by a member of the Group under such instrument is called or otherwise exercised.

**"Transaction Documents"** means each Finance Document and each Acquisition Document.

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

**"Transfer Date"** means, in relation to a transfer, the later of:

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

**"UK"** and **"United Kingdom"** means the United Kingdom of Great Britain and Northern Ireland.

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

**"Unconditional Date"** means the date on which the Offer is declared or becomes unconditional in all respects.

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

**"US"** and **"United States"** means the United States of America.

**"Utilisation"** means a utilisation of the Facility.

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

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

**"VAT"** means:

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

**"White List"** means the list of entities agreed in writing on or before the date of this Agreement by the Company and the Mandated Lead Arranger.

**"Write-down and Conversion Powers"** means:

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

of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

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

## 1.2 Construction

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

- (i) the "**Agent**", any "**Finance Party**", any "**Lender**", any "**Mandated Lead Arranger**", any "**Obligor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) "**assets**" includes present and future properties, revenues and rights of every description;
- (iii) a "**Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or Transaction Document or other agreement or instrument;
- (iv) a Lender's "**cost of funds**" in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;
- (v) the Agent's "**cost of funds**" is a reference to the average cost (determined either on an actual or a notional basis) which the Agent would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount referred to in paragraph (b) of Clause 28.4 (*Clawback and pre-funding*);
- (vi) a "**group of Lenders**" includes all the Lenders;
- (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law (but, if not having the force of law, compliance with which is

- customary)) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (x) a provision of law is a reference to that provision as amended or re-enacted from time to time;
  - (xi) a time of day is a reference to London time; and
  - (xii) the terms "**includes**" and "**including**" (or equivalent) shall not be construed in a manner which is exhaustive of the matters to which such terms relate;
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) A Default and an Event of Default is "**continuing**" if it has not been remedied or waived.
  - (e) A "**guarantee**" means (other than in Clause 17 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness.
  - (f) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
    - (i) any replacement page of that information service which displays that rate; and
    - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,

and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Company.
  - (g) A reference in this Agreement to a Central Bank Rate (as specified in Schedule 9 (*Reference Rate Terms*) or in any Reference Rate Supplement) shall include any successor rate to, or replacement rate for, that rate.
  - (h) Any Reference Rate Supplement overrides anything in:
    - (i) Schedule 9 (*Reference Rate Terms*); or
    - (ii) any earlier Reference Rate Supplement.
  - (i) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate overrides anything relating to that rate in:
    - (i) Schedule 10 (*Daily Non-Cumulative Compounded RFR Rate*); or
    - (ii) any earlier Compounding Methodology Supplement.

- (j) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

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

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

### 1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 34.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.



## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1 The 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 Increase

(a) The Company may by giving prior notice to the Agent by no later than the date falling 10 Business Days after the effective date of a cancellation of:

- (i) the Available Commitments of a Defaulting Lender in accordance with paragraph (d) of Clause 7.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*); or
- (ii) the Commitments of a Lender in accordance with:
  - (A) Clause 7.1 (*Illegality*); or
  - (B) paragraph (a) of Clause 7.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

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

- (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
- (iv) each of the Obligor and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligor and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
- (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
- (vii) any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.

- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied that it has complied with, in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Company and the Increase Lender.
- (d) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (e) Unless the Agent agrees otherwise, the Company shall, on the date upon which the Increase takes effect, pay to the Agent (for its own account) a fee of £2,500 and the Company shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.
- (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 letter between the Company and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (f).
- (g) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (h) Clause 23.4 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an "Existing Lender" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "New Lender" were references to that "Increase Lender"; and
  - (iii) a "re-transfer" and "re-assignment" were references to respectively a "transfer" and "assignment".

### **2.3 Finance Parties' rights and obligations**

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

- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

## 2.4 **Obligors' Agent**

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

- (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,

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

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

## 3. **PURPOSE**

### 3.1 **Purpose**

Each Borrower shall apply all amounts borrowed by it under the Facility towards financing or refinancing:

- (a) in the case of a Scheme, the cash consideration payable by the Offeror in respect of the transfer of Target Shares not already owned by the Offeror pursuant to the Scheme;

- (b) in the case of an Offer:
  - (i) the cash consideration payable by the Offeror in respect of the Target Shares to which the Offer relates;
  - (ii) the cash consideration payable by the Offeror in respect of the Target Shares acquired by it as a result of its implementing the statutory compulsory acquisition procedures set out in sections 979 to 982 of the Companies Act 2006;
- (c) Acquisition Costs; or
- (d) working capital of the Group (including, without limitation, the refinancing of existing Financial Indebtedness of the Target Group on and from the Acquisition Closing Date).

### 3.2 **Monitoring**

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

## 4. **CONDITIONS OF UTILISATION**

### 4.1 **Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if, on or before the Utilisation Date for that Utilisation, the Agent has received (or the Majority Lenders have waived the requirement to receive) all of the documents and other evidence listed in Part I and Part II of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 4.2 **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation (other than a Utilisation to which Clause 4.4 (*Utilisations during the Certain Funds Period*) applies) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by each Obligor are true in all material respects.

### 4.3 **Maximum number of Loans**

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

- (a) if the Acquisition proceeds by way of a Scheme, more than three Loans would be outstanding; or
- (b) if the Acquisition proceeds by way of an Offer, more than 10 Loans would be outstanding.

#### 4.4 Utilisations during the Certain Funds Period

- (a) Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
- (i) no Major Default is continuing or would result from the proposed Certain Funds Utilisation; and
  - (ii) all the Major Representations are true in all material respects (unless a Major Representation is qualified by materiality, in which case it must be true in all respects).
- (b) During the Certain Funds Period and notwithstanding any other Clause in this Agreement (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*) or where a Lender has notified the Agent of an illegality event pursuant to Clause 7.1 (*Illegality*) (provided that, in relation to Clause 7.1 (*Illegality*), (A) reference to "(or it becomes unlawful for any Affiliate of a Lender for that Lender to do so)" shall not apply for the purpose of this Clause 4.4, and (B) occurrence of such event in respect of any Lender will not release any other Lender from its obligations under this Clause 4.4), none of the Finance Parties shall be entitled to:
- (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (ii) rescind, terminate or cancel this Agreement or 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 Utilisation;
  - (iii) refuse to participate in the making of a Certain Funds Utilisation;
  - (iv) exercise any right of set-off or counterclaim in respect of a Certain Funds Utilisation;
  - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation or would require the repayment or prepayment of a Certain Funds Utilisation; or
  - (vi) take any action or make or enforce any claim to the extent such action or claim or enforcement would directly or indirectly prevent or limit the making of a Certain Funds Utilisation,
- provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or made available for use during the Certain Funds Period.
- (c) In the event of any conflict or inconsistency between this Clause 4.4 and any of the other term of the Finance Documents, this Clause 4.4 shall prevail.

## **SECTION 3**

### **UTILISATION**

#### **5. UTILISATION**

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

A Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 11.00 a.m. one Business Day prior to the proposed Utilisation Date.

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

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

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

- (a) The currency specified in a Utilisation Request must be sterling.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of £1,000,000 and an integral multiple of £1,000,000 or, if less, the Available Facility.

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

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 28.1 (*Payments to the Agent*), in each case promptly one Business Day prior to the proposed Utilisation Date.

##### **5.5 Cancellation of Commitment**

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

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

**6. REPAYMENT**

**6.1 Repayment of Loans**

- (a) Each Borrower which has drawn a Loan shall repay that Loan on the Termination Date.
- (b) No Borrower may reborrow any part of the Facility which is repaid.

**7. PREPAYMENT AND CANCELLATION**

**7.1 Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, the Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that such Lender's participation has not been transferred pursuant to Clause 34.5 (*Affected Lenders*), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

**7.2 Change of control**

- (a) If any person or group of persons acting in concert gains control of the Company (a "**change of control**"):
  - (i) the Company shall promptly notify the Agent upon becoming aware of that event;
  - (ii) a Lender shall not be obliged to fund a Utilisation;
  - (iii) the Lenders and the Company will consult in good faith for a period of 15 days following the change of control with a view to agreeing alternative terms for continuing the Facility; and
  - (iv) if at the end of the period in paragraph (iii) above no alternative basis has been agreed by all the Lenders, and if a Lender so requires and notifies the Agent within 15 days of the end of period set out in paragraph (iii) above, the Agent shall, by not less than 15 days' notice to the Company, cancel the Commitment(s) of that Lender and declare the participation of that Lender in all outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment(s) of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

- (b) For the purpose of paragraph (a) above "**control**" means the power to direct the management and policies of an entity or the ownership of more than 50 per cent. of the voting capital of that entity.
- (c) For the purpose of paragraph (a) above "**acting in concert**" has the meaning given in the Takeover Code.

### 7.3 **Mandatory prepayment**

- (a) For the purposes of this Clause 7.3:

**"Applicable Debt Proceeds"** means the cash proceeds of any Financial Indebtedness received by any member of the Group and incurred pursuant to paragraph (e) of the definition of "Permitted Indebtedness" after deducting:

- (i) any reasonable expenses which are incurred by any member of the Group with respect to incurring such Financial Indebtedness to persons who are not members of the Group; and
- (ii) any Tax incurred and required to be paid by any member of the Group in connection with incurring such Financial Indebtedness (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Applicable Disposal Proceeds"** means the consideration receivable by any member of the Group for any Disposal of any interest in any land made by any member of the Group which:

- (i) is not made in the ordinary course of business;
- (ii) is made as part of a publicly announced land sale programme; and
- (iii) the consideration for which (when aggregated with any other Disposals forming part of that publicly announced sales programme and made in the same financial year of the Company as that Disposal) exceeds £60,000,000,

after deducting:

- (A) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
  - (B) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).
- (b) The Company shall ensure that the Borrowers prepay Utilisations, and cancel Available Commitments, in amounts equal to the amount of the Applicable Disposal Proceeds and the Applicable Debt Proceeds. Any such prepayment or cancellation shall (unless the Company makes an election under paragraph (c) below) be applied promptly upon receipt:
    - (i) first, in prepayment of all outstanding Loans pro rata; and
    - (ii) second, in cancellation of any Available Commitments.
  - (c) Subject to paragraph (d) below, the Company may elect that any prepayment under this Clause 7.3 be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Company makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.



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

#### 7.4 **Voluntary cancellation**

The Company may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £1,000,000) of the Available Facility. Any cancellation under this Clause 7.4 shall reduce the Commitments of the Lenders rateably under the Facility.

#### 7.5 **Voluntary prepayment of Loans**

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

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

- (a) If:
- (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross up*); or
  - (ii) any Lender claims indemnification from the Company under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased Costs*),  
  
(an "**Affected Lender**"), the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice:
    - (A) of cancellation of the Commitment(s) of that Affected Lender and its intention to procure the repayment of that Affected Lender's participation in the Utilisations; or
    - (B) that it requires that Affected Lender to transfer its Commitment(s) and its participations in the Utilisations to another person in accordance with the provisions of Clause 34.5 (*Affected Lenders*).
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (d) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent ten Business Days' notice of cancellation of each Available Commitment of that Lender.
- (e) On the notice referred to in paragraph (d) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.

- (f) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (d) above, notify all the Lenders.

#### **7.7 Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) The Borrowers shall not repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Utilisation under the Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

#### **7.8 Application of prepayments**

Any prepayment of a Utilisation pursuant to Clause 7.5 (*Voluntary prepayment of Loans*) shall be applied pro rata to each Lender's participation in that Utilisation.

## SECTION 5

### COSTS OF UTILISATION

#### 8. INTEREST

##### 8.1 Calculation of interest

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

##### 8.2 Payment of interest

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

##### 8.3 Margin adjustments financial covenants

- (a) Until and including the date of the first Compliance Certificate delivered pursuant to Clause 19.2 (*Compliance Certificate*), the Margin shall be 2.20 per cent. per annum.
- (b) Subject to the other provisions of this Clause 8.3, thereafter the Margin for each Loan shall be calculated by reference to the table below, and the information set out in the relevant Compliance Certificate in respect of the most recently ended Calculation Period:

<b>Gearing Ratio</b> (determined in accordance with Clause 20.3 ( <i>Financial covenants</i> ))	<b>Margin (per cent. per annum)</b>
Equal to or greater than 60 per cent.	3.10
Equal to or greater than 45 per cent., but less than 60 per cent.	2.60
Equal to or greater than 35 per cent., but less than 45 per cent.	2.40
Equal to or greater than 25 per cent., but less than 35 per cent.	2.20
Less than 25 per cent.	1.90

- (c) Any increase or decrease in the Margin (except in accordance with paragraph (e) below) shall take effect on the date which is five Business Days after receipt by the Agent of the Compliance Certificate for the relevant Calculation Period pursuant to Clause 19.2 (*Compliance Certificate*).
- (d) If any financial statements of the Group or Compliance Certificate are required to be republished or corrected and, as a result, a higher Margin should have applied during a certain period, then the Company shall (or ensure that the relevant Borrower shall) pay to the Agent any amounts

necessary to put the Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.

- (e) Notwithstanding paragraph (b) above, for any period during which an Event of Default is continuing or the Company is in default of its obligation under this Agreement to deliver a Compliance Certificate, the Margin shall be the highest percentage per annum set out in the table in paragraph (b) above.

#### 8.4 **Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is 1.00 per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.4 shall be immediately payable by the Obligor on demand by the Agent.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.5 **Notifications**

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

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.3 (*Cost of funds*).

- (b) The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.
- (c) The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest relating to a Loan to which Clause 10.3 (*Cost of funds*) applies.
- (d) This Clause 8.5 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

## 9. INTEREST PERIODS

### 9.1 Selection of Interest Periods

- (a) A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Agent by the Borrower (or the Company on behalf of a Borrower) to which that Loan was made not later than 11.00 a.m. one Business Day prior to the proposed Utilisation Date.
- (c) If a Borrower (or the Company) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be the period specified in the applicable Reference Rate Terms.
- (d) Subject to this Clause 9, a Borrower (or the Company) may select an Interest Period of any period specified in the Reference Rate Terms or any other period agreed between that Borrower (or the Company) and the Agent (acting on the instructions of all the Lenders in relation to the relevant Loan).
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) No Interest Period shall be longer than six Months.

### 9.2 Non Business Days

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

### 9.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:

- (i) relate to Loans made to the same Borrower; and
- (ii) end on the same date,

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

- (b) Subject to Clause 4.3 (*Maximum number of Loans*), and Clause 5.3 (*Currency and amount*) if a Borrower (or the Company on its behalf) requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the Loan immediately before its division.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1 Interest calculation if no RFR or Central Bank Rate

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for a Business Day during an Interest Period for a Loan; and
  - (b) "**Cost of funds will apply as a fallback**" is specified in the Reference Rate Terms,
- Clause 10.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

#### 10.2 **Market disruption**

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (b) before the Reporting Time the Agent receives notification from a Lender or Lenders (whose participations in a Loan exceed 35 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 10.3 (*Cost of funds*) shall apply to that Loan.

#### 10.3 **Cost of funds**

- (a) If this Clause 10.3 applies to a Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the applicable Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this Clause 10.3 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 10.3 applies pursuant to Clause 10.2 (*Market disruption*) and:
  - (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
  - (ii) a Lender does not notify a rate to the Agent by the Reporting Time,

that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate.
- (e) If this Clause 10.3 applies the Agent shall, as soon as is practicable, notify the Company.

#### 10.4 **Break Costs**

- (a) If an amount is specified as Break Costs in the Reference Rate Terms, each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of that Loan or Unpaid Sum being paid by that Borrower on a day prior to the last day of an Interest Period for that Loan or Unpaid Sum.

- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become, payable.

## **11. FEES**

### **11.1 Ticking fee**

- (a) The Company shall pay to the Agent (for the account of each Lender) a fee computed at a rate of:
- (i) zero per cent. per annum of the applicable Margin on that Lender's Available Commitment for the period from, and including, the date of this Agreement (the "**Signing Date**") to, but excluding, the date falling one Month after the Signing Date;
  - (ii) 10 per cent. per annum of the applicable Margin on that Lender's Available Commitment for the period from, and including, the date falling one Month after the Signing Date to, but excluding, the date falling two Months after the Signing Date;
  - (iii) 20 per cent. per annum of the applicable Margin on that Lender's Available Commitment for the period from, and including, the date falling two Months after the Signing Date to, but excluding, the date falling three Months after the Signing Date;
  - (iv) 30 per cent. per annum of the applicable Margin on that Lender's Available Commitment for the period from, and including, the date falling three Months after the Signing Date to, but excluding, the date falling four Months after the Signing Date; and
  - (v) 35 per cent. per annum of the applicable Margin on that Lender's Available Commitment for the period from, and including, the date falling four Months after the Signing Date to, and including, the last day of the Availability Period.
- (b) The accrued ticking fee is payable in arrears on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No ticking fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

### **11.2 Upfront fee**

The Company shall pay to the Mandated Lead Arranger an upfront fee in the amount and at the times agreed in a Fee Letter.

### **11.3 Agency fee**

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

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

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

**12.1 Definitions**

(a) In this Agreement:

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

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (*The Original Parties*), and
  - (A) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 working days of the date of this Agreement; or
  - (B) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 working days of the date on which that Borrower becomes an Additional Borrower; or
- (ii) where it relates to a Treaty Lender that is a New Lender, an Increase Lender or an Acceding Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Increase Confirmation, and
  - (A) where the Borrower is a Borrower as at the relevant Transfer Date, is filed with HM Revenue & Customs within 30 working days of that Transfer Date; or
  - (B) where the Borrower is not a Borrower as at the relevant Transfer Date, is filed with HM Revenue & Customs within 30 working days of the date on which that Borrower becomes an Additional Borrower.

**"Guarantor DTTP Filing"** means, where a Guarantor is liable to make payments of interest to a Treaty Lender pursuant to Clause 17.1 (*Guarantee and indemnity*), an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Guarantor, which:

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Treaty Lender's name in Part II of Schedule 1 (*The Original Parties*); and
- (ii) where it relates to a Treaty Lender that is a New Lender, an Increase Lender or an Acceding Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Treaty Lender in the relevant Transfer Certificate or Increase Confirmation.

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



**"Qualifying Lender"** means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

- (i) a Lender:
  - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to UK corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
  - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and is within the charge to UK corporation tax as respects any payments of interest made in respect of that advance; or
- (ii) a Lender which is:
  - (A) a company resident in the UK for UK tax purposes;
  - (B) a partnership each member of which is:
    - (I) a company so resident in the UK; or
    - (II) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 18 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
  - (C) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 18 of the CTA) of that company; or
- (iii) a Treaty Lender.

**"Tax Confirmation"** means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (i) a company resident in the UK for UK tax purposes;
- (ii) a partnership each member of which is:
  - (A) a company so resident in the UK; or
  - (B) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 18 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (iii) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of that

advance in computing the chargeable profits (within the meaning of section 18 of the CTA) of that company.

**"Tax Credit"** means a credit against, relief or remission for, or repayment of any Tax.

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross up*) or a payment under Clause 12.3 (*Tax indemnity*).

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

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the UK through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (iii) meets all other conditions in the relevant Treaty for full exemption from Tax imposed by the jurisdiction of residence of the relevant Borrower on interest, except that for this purpose it shall be assumed that the following are satisfied:
  - (A) any condition which relates (expressly or by implication) to there not being a special relationship between the Borrower and a Lender or between both of them and another person, or to the amounts or terms of any Loan or the Finance Documents or to any other matter that is outside the exclusive control of that Lender; and
  - (B) any necessary procedural formalities.

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

**"UK Non-Bank Lender"** means:

- (i) an Original Lender that is listed as being a "UK-Non-Bank Lender" in Part II of Schedule 1 (*The Original Parties*); and
  - (ii) a Lender which is not an Original Lender and which gives a Tax Confirmation to the Company including in any applicable Transfer Certificate or Increase Confirmation which it executes on becoming a Party.
- (b) Unless a contrary indication appears, in this Clause 12 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

## 12.2 Tax gross up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable

to that Lender. If the Agent receives such notification from a Lender it shall notify the Company and that Obligor.

- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the UK, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Qualifying Lender solely under paragraph (ii) of the definition of "Qualifying Lender"; and
    - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA (as that provision has effect on the date on which the relevant Lender became a Party) which relates to the payment and that Lender has received from that Obligor or the Company a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction in the absence of that Direction; or
  - (iii) the relevant Lender is a Qualifying Lender solely under paragraph (ii) of the definition of "Qualifying Lender" and:
    - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
  - (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had the Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (e) If an Obligor (or the Agent) is required to make a Tax Deduction, that Obligor (or the Agent, as the case may be) shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

- (f) Within 30 days of making either a Tax Deduction or any payment required in connection with a Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g)
- (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction, including, to the extent reasonably practicable, making and filing an appropriate application for relief under such Treaty.
- (ii)
- (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and
- (B) a New Lender, an Increase Lender or an Acceding Lender, that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Increase Confirmation which it executes,
- and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.
- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
- (i) an Obligor making a payment to that Lender has made neither a Borrower DTTP Filing nor a Guarantor DTTP Filing (as the case may be) in respect of that Lender; or
- (ii) an Obligor making a payment to that Lender has made a Borrower DTTP Filing or a Guarantor DTTP Filing (as the case may be) in respect of that Lender but:
- (A) that Borrower DTTP Filing or Guarantor DTTP Filing (as the case may be) has been rejected by HM Revenue & Customs;
- (B) HM Revenue & Customs has not given the Obligor authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing or Guarantor DTTP Filing (as the case may be); or
- (C) HM Revenue & Customs has given the Obligor authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

and in each case, the Obligor has notified that Lender in writing, that Lender and the Obligor shall co-operate in completing any additional procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

- (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing, Guarantor DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
- (j) An Obligor shall, promptly on making a Borrower DTTP Filing or Guarantor DTTP Filing, deliver a copy of that Borrower DTTP Filing or Guarantor DTTP Filing to the Agent for delivery to the relevant Lender.
- (k) A Lender which becomes a Party on the day on which this Agreement is entered into and indicates in Part II of Schedule 1 (*The Original Parties*) that it is a UK Non-Bank Lender gives a Tax Confirmation to the Company by entering into this Agreement.
- (l) A UK Non-Bank Lender shall notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation promptly upon becoming aware of such change.

### 12.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross up*);
    - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross up*) applied; or
    - (C) relates to a FATCA Deduction required to be made by a Party.

- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Agent.

#### 12.4 **Tax Credit**

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

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

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

#### 12.5 **Lender status confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Increase Confirmation which it executes on becoming a Party, and for the benefit of the Agent and without any liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender, an Increase Lender or an Acceding Lender fails to indicate its status in accordance with this Clause 12.5 then such Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

#### 12.6 **Stamp taxes**

The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 12.7 **Value added tax**

- (a) All amounts set out, or expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is or becomes chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and that Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to that Finance

Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of the VAT (and that Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall also at the same time reimburse or indemnify (as the case may be) such Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that such Finance Party reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the VAT.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in the Value Added Tax Act 1994, Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction other than the United Kingdom or a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).
- (e) If VAT is chargeable on any supply made by a Finance Party to any Party under a Finance Document and if reasonably requested by the Finance Party, that Party must promptly give that Finance Party details of its VAT registration number and any other information as is reasonably requested in connection with that Finance Party's reporting requirements for the supply.

## 12.8 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to 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.

## 12.9 **FATCA Deduction**

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



### 13. INCREASED COSTS

#### 13.1 Increased Costs

(a) Subject to Clause 13.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation, (ii) compliance with any law or regulation made after the date of this Agreement, or (iii) the implementation or application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

(b) In this Agreement:

**"Basel III"** means:

- (i) 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 in December 2010, each as amended, supplemented or restated;
- (ii) 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
- (iii) any further guidance or standards published by the Basel Committee relating to "Basel III".

**"Basel Committee"** means the Basel Committee on Banking Supervision.

**"CRD IV"** means EU CRD IV and UK CRD IV.

**"EU CRD IV"** means:

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

**"Increased Costs"** means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

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

"**UK CRD IV**" means:

- (i) CRR as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "**Withdrawal Act**");
- (ii) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020 ("**WAA**")) implemented CRD and its implementing measures; and
- (iii) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the WAA) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act.

### 13.2 **Increased Cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) which relates to Increased Costs in respect of Basel III and/or CRD IV shall only be entitled to make such claim to the extent that:
  - (i) those Increased Costs were incurred in the six month period prior to the date on which the Finance Party makes a claim in accordance with Clause 13.1 (*Increased Costs*), unless a determination of the amount incurred could only reasonably be made at a later date (in which case the six month period shall instead run from the date upon which the Finance Party could reasonably determine the amount incurred); and
  - (ii) it is that Finance Party's policy or practice to make similar claims in relation to such Increased Costs from other similar borrowers, where the facilities extended to such other borrowers include a right of the Finance Party to make such a claim.
- (c) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs, provided that a Finance Party shall not be obliged to disclose any confidential or sensitive information.

### 13.3 **Exceptions**

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by or on behalf of an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);

- (iv) save as provided for in paragraph (b)(i) of Clause 13.2 (*Increased Cost claims*), notified to the Company by a Finance Party at any time after the date falling six months from the date on which that Finance Party becomes aware that it has incurred such Increased Cost;
  - (v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
  - (vi) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 13.3, a reference to a Tax Deduction has the same meaning given to the term in Clause 12.1 (*Definitions*).

#### 14. **OTHER INDEMNITIES**

##### 14.1 **Currency indemnity**

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

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

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

##### 14.2 **Other indemnities**

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

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or

more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

#### 14.3 Indemnity to the Agent

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

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

#### 14.4 Transaction indemnity

- (a) The Company shall (or shall procure that any member of the Group will) within 10 Business Days of demand 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 but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by 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 Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (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 as soon as reasonably practicable after the relevant Indemnified Person becomes aware of such event, provided that a failure to notify the Company shall not relieve the Company from any liability that it might have under this Clause 14.4, except to the extent that the rights or defences of a member of the Group have been prejudiced by such failure.
- (c) Any Indemnified Person may rely on this Clause 14.4 subject to subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

- (d) 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 Facility or the Finance Documents.

#### **14.5 Survival of indemnities**

Each indemnity given by a Party under or in connection with a Finance Document is a continuing obligation, independent of the Party's other obligations under or in connection with that or any other Finance Document and survives after that Finance Document is terminated. It is not necessary for a person to pay any amount or incur any expense before enforcing an indemnity under or in connection with a Finance Document.

### **15. MITIGATION BY THE LENDERS**

#### **15.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross-Up and Indemnities*), or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

#### **15.2 Limitation of liability**

- (a) The Company shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

### **16. COSTS AND EXPENSES**

#### **16.1 Transaction expenses**

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

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

#### **16.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*), the Company shall, within three Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 16.3 **Enforcement costs**

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

## **SECTION 7**

### **GUARANTEE**

#### **17. GUARANTEE AND INDEMNITY**

##### **17.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

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

##### **17.2 Continuing guarantee**

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

##### **17.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

##### **17.4 Waiver of defences**

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

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor

or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **17.5 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **17.6 Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys (bearing interest at market rates) received from any Guarantor or on account of any Guarantor's liability under this Clause 17.

#### **17.7 Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;



- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 27 (*Sharing among the Finance Parties*).

#### 17.8 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

#### 17.9 **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.

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

**18. REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement and, in the case of Clause 18.10 (*No misleading information*), on the dates specified therein.

**18.1 Status**

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

**18.2 Binding obligations**

The obligations expressed to be assumed by it in each Transaction Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 24 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

**18.3 Non conflict with other obligations**

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

- (a) (in the case of the entry into and performance by it of the Finance Documents) any law or regulation applicable to it and (in the case of the entry into and performance by it of the transactions contemplated by the Finance Documents) any law or regulation applicable to it in any material respect;
- (b) its or any of its Material Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Material Subsidiaries or any of its or any of its Material Subsidiaries' assets, breach of which has or would reasonably be expected to have a Material Adverse Effect.

**18.4 Power and authority**

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

**18.5 Validity and admissibility in evidence**

All Authorisations required:

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

have been obtained or effected and are in full force and effect.

#### **18.6 Governing law and enforcement**

- (a) The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- (b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

#### **18.7 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is:

- (a) a Qualifying Lender:
  - (i) falling within paragraph (i) of the definition of "Qualifying Lender"; or
  - (ii) except where a direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (ii) of the definition of "Qualifying Lender"; or
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue and Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488) that has not expired or otherwise become ineffective.

#### **18.8 No filing or stamp taxes**

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

#### **18.9 No default**

- (a) No Event of Default is continuing or could reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or could reasonably be expected to have a Material Adverse Effect.

#### **18.10 No misleading information**

- (a) Any written factual information contained in the Information Package relating to any member of the Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it was stated.
- (b) Nothing has occurred or been omitted from the Information Package and no information has been given or withheld that results in the information contained in the Information Package, so far as it is aware, being untrue or misleading in any material respect.
- (c) The Company has provided each Original Lender with substantially the same material written information (save for any written information provided to an individual Original Lender in response to specific questions raised by such Lender).

- (d) Any written factual information contained in each business plan to be provided by the Company pursuant to Clause 19.4 (*Plan*) is true and accurate in all material respects as at the date it is provided or as at the date (if any) at which it is stated, and any financial projections contained therein are prepared on the basis of recent historical information and on the basis of reasonable assumptions.

#### 18.11 Sanctions

No member of the Group, nor any director or officer of any member of the Group or (to the knowledge of any Obligor) no employee, agent or representative of any member of the Group:

- (a) is a Sanctioned Person;
- (b) has been engaged (directly or indirectly):
  - (i) in any transaction, activity or conduct which:
    - (A) has the purpose of evading or avoiding any Sanctions; or
    - (B) could reasonably be expected to breach any Sanctions; or
  - (ii) in any trade, business or other activities with, on behalf of or for the benefit of any Sanctioned Person; or
- (c) has received notice of, or is otherwise aware of, any claim, action, suit, proceeding or investigation involving it with respect to any Sanctions.

#### 18.12 Anti-bribery and Corruption

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws in all material respects, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### 18.13 The Acquisition Documents

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

#### 18.14 Environmental laws

- (a) Each member of the Group is in compliance with Clause 21.10 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened in writing against any member of the Group where that claim has or is reasonably likely to have a Material Adverse Effect.

#### 18.15 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly present its financial condition and operations (consolidated in the case of the Company) during the relevant financial year.

- (c) There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group, in the case of the Company) since 31 December 2021.

#### 18.16 **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.

#### 18.17 **No proceedings pending or threatened**

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

#### 18.18 **Repetition**

- (a) The Repeating Representations are deemed to be made by each Obligor:
  - (i) on the date of each Utilisation Request and the first day of each Interest Period; and
  - (ii) in the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor,except where the contrary is specified in the relevant clause, by reference to the facts and circumstances existing on such date.
- (b) The representations in Clause 18.10 (*No misleading information*) (other than paragraph (d) of such Clause) are deemed to be made by each Obligor on the date of this Agreement.
- (c) The representation in paragraph (d) of Clause 18.10 (*No misleading information*) is deemed to be made by the Company on each date a business plan is delivered to the Agent pursuant to Clause 19.4 (*Plan*).

### 19. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### 19.1 **Financial statements**

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

- (a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years, the audited consolidated financial statements of the Company for that financial year;
- (b) (with respect to each Obligor other than the Company) as soon as the same become available, but in any event within 270 days after the end of each of its financial years, the financial statements of each such Obligor (audited where available) for that financial year;

- (c) as soon as the same become available, but in any event within 90 days after the end of the first half of each of its financial years, the unaudited consolidated financial statements of the Company for that financial half year; and
- (d) within 45 days of the last day of each financial quarter, a management information pack for the Group (on a consolidated basis) relating to the immediately preceding financial quarter (including a balance sheet, profit and loss statement, cash flow statement, sales analysis, land and work in progress position and management commentary).

## 19.2 Compliance Certificate

- (a) The Company shall supply to the Agent, with each set of financial statements delivered pursuant to:
  - (i) paragraph (a) or (c) of Clause 19.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with:
    - (A) Clause 20.3 (*Financial covenants*) as at the date as at which those financial statements were drawn up; and
    - (B) demonstrating which of its Subsidiaries are Material Subsidiaries; and
  - (ii) paragraph (a) of Clause 19.1 (*Financial statements*), a Compliance Certificate which also confirms the Guarantor Coverage Threshold in accordance with Clause 21.16 (*Guarantor Coverage Threshold*).
- (b) Each Compliance Certificate shall be signed by two directors of the Company.

## 19.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Company pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly presenting its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Company shall procure that each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors deliver to the Agent:
  - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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

- (c) At the Company's request, the Company and the Agent shall negotiate in good faith with a view to agreeing such amendments to the financial covenants as may be necessary to Clause 20 (*Financial Covenants*) in order to avoid the Company having to provide reconciliations pursuant to paragraph (b) of Clause 19.2 (*Compliance Certificate*).

#### 19.4 **Plan**

- (a) The Company shall supply to the Agent (in sufficient copies for all the Lenders) within 45 days of the start of each financial year, a business plan relating to the Group for that financial year (the "**Plan**"). The Plan will contain full profit and loss, cashflow and balance sheet projections by month together with sales analysis, land and work-in-progress estimates, covenant projections and a management commentary.
- (b) In relation to the Plan to be provided within 45 days of the start of the first financial year falling after the date of this Agreement (the "**First Plan**"), the Company shall also provide to the Agent (with copies for all of the Lenders) sufficient information to enable the Lenders to make an accurate comparison between the financial position indicated in the Information Package to that indicated in the First Plan.

#### 19.5 **Information: miscellaneous**

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

- (a) all documents dispatched by the Company to its shareholders (or any class of them) or by the Company to its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceeding or claim which are current, threatened or pending and in which there is a reasonable possibility of an adverse decision which could by itself or together with any other such proceedings or claims reasonably be expected to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group, and which could reasonably be expected to have a Material Adverse Effect; and
- (d) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request, except to the extent that disclosure of information would breach any law, regulation, stock exchange requirement or duty of confidentiality.

#### 19.6 **Notification of default**

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

#### 19.7 **Direct electronic delivery by Company**

The Company may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly in accordance with Clause 30.6 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

#### 19.8 **Know your customer checks**

(a) If:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in the status (including ownership) of an Obligor after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under any Finance Document to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with know your customer or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than ten Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of the Subsidiaries becomes an Additional Obligor pursuant to Clause 24 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with know your customer or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.



## 20. FINANCIAL COVENANTS

### 20.1 Financial definitions

In this Agreement, unless the context requires otherwise, the following expressions have the following meanings and refer to the position of the Group on a consolidated basis:

**"Borrowings"** means and includes as at any date (without double counting):

- (a) all indebtedness outstanding under the Finance Documents;
- (b) all moneys borrowed by any member of the Group;
- (c) receivables sold, assigned or discounted (except on a non-recourse basis);
- (d) the acquisition cost of any asset to the extent payable before or after the time of acquisition and possession by the party liable therefor where the advance or deferred payment is arranged primarily as a method of raising finance;
- (e) the principal amount raised by any member of the Group by acceptances (not being acceptances in relation to the purchase of goods or services in the ordinary course of trading which have been outstanding for 180 days or less) or under any acceptance credit opened on its behalf by a bank or accepting house;
- (f) any other amount required under GAAP to be accounted for as borrowings;
- (g) any counter indemnity obligation in respect of a guarantee, indemnity or similar assurance provided by a bank or financial institution (but, for the avoidance of doubt, excluding any counter indemnity by a member of the Group in respect of Trade Instruments); and
- (h) Net Land Creditors or guarantees or similar assurances in respect thereof,

but shall not include:

- (i) any Subordinated Debt;
- (ii) any amount in respect of any Lease Liability; or
- (iii) any amounts which would otherwise be taken into account which are for the time being owing by any member of the Group to any other member of the Group.

**"Calculation Period"** means each period of 12 months ending on the last day of:

- (a) each financial year of the Company; and
- (b) the first half of each financial year of the Company.

**"Consolidated Tangible Net Worth"** means:

- (a) the amount of the share capital of the Company for the time being issued and paid up or credited as paid up; and
- (b) the amounts standing to the credit of all capital and revenue reserve accounts of the Company (including any share premium account, paid in surplus, capital redemption reserve and credit balance on profit and loss account and any amount transferred to reserves upon a revaluation of any asset of the Company or other member of the Group whenever made),

but adjusted:

- (c) to the extent that the following items have not already been added, deducted or excluded in arriving at the amounts referred to in paragraph (a) or (b) above:
  - (i) by taking into account net cash subscription moneys in respect of any share capital proposed to be issued by the Company for cash to the extent to which the subscription thereof has been unconditionally underwritten by a bank or other financial institution (provided such net cash subscription moneys are payable not later than three months after the end of the most recent Calculation Period) with effect from the date on which such issue was so underwritten;
  - (ii) by deducting therefrom any distribution declared, recommended or made by the Company out of profits included within reserves as at the date of the most recently delivered financial statements and not provided for therein;
  - (iii) by deducting therefrom the amount by which the share capital of the Company is to be reduced or redeemed or purchased, which reduction, redemption or purchase has been declared, proposed or recommended, and which was not provided for in the most recently delivered financial statements;
  - (iv) by deducting therefrom any amounts attributable to goodwill or any other intangible assets;
  - (v) by excluding therefrom any sums attributable to minority interests;
  - (vi) by deducting therefrom the amount of any debit balance on profit and loss account;

but so that no amount shall be added, deducted or excluded as a result of any of the foregoing more than once in the same calculation.

**"EBITDA"** means, for a relevant period, the consolidated profits on ordinary activities of the Group as stated in the financial statements for that period before Interest Charges, Tax, dividends, depreciation and amortisation and any exceptional and/or non-recurring items as per IFRS (and, for the avoidance of doubt, adjusted to the extent necessary (as determined by the auditors of the Group) to eliminate the impact of any profit or loss arising on a sale or termination of an operation, a fundamental re-organisation, an exceptional land write-down, a restructuring or a disposal of fixed assets where such impact would otherwise distort the profits on the ordinary activities of the Group).

**"Gearing Ratio"** means the ratio of Net Borrowings to Consolidated Tangible Net Worth (expressed as a percentage).

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

- (a) the aggregate interest and finance charges in the nature of interest paid or payable by the Group on Borrowings; less
- (b) interest received or receivable during such period,

(excluding in either case amounts paid or received intra Group and taking account of receipts and payments under interest rate derivative contracts and excluding the amounts as calculated for interest under IFRS on Land Creditors).

**"Interest Cover Ratio"** means, in respect of any Calculation Period, the ratio of EBITDA to Interest Charges for that Calculation Period.

**"Net Borrowings"** means at any date the aggregate amount of Borrowings of the Group (on a consolidated basis) at that date but deducting the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Group at that date, and so that no amount shall be included or excluded more than once.

**"Net Land Creditor"** means Land Creditors less associated trade receivables in respect of deferred consideration for real estate.

**"Testing Date"** means the last day of a Calculation Period.

## 20.2 Financial calculations

- (a) The covenants contained in Clause 20.3 (*Financial covenants*) will be tested by reference to the latest consolidated financial statements and accounts for the Group delivered to the Agent under paragraph (a) or (c) of Clause 19.1 (*Financial statements*).
- (b) The components of each definition used in Clause 20.3 (*Financial covenants*) will be calculated:
  - (i) in accordance with the principles applied in the Original Financial Statements; and
  - (ii) without deducting or crediting any item more than once in any calculation.
- (c) The:
  - (i) Gearing Ratio and calculation of Consolidated Tangible Net Worth will each be calculated as at the relevant Testing Date; and
  - (ii) Interest Cover Ratio will be tested on a rolling aggregate basis for the relevant Calculation Period.

## 20.3 Financial covenants

- (a) The Company shall procure that:
  - (i) *Gearing Ratio*: as at each Testing Date, the Gearing Ratio shall equal or be less than 75 per cent.;
  - (ii) *Consolidated Tangible Net Worth*:
    - (A) as at each Testing Date which falls prior to the Acquisition Closing Date, the Consolidated Tangible Net Worth shall equal or exceed £750,000,000;
    - (B) as at each Testing Date which falls on and after the Acquisition Closing Date, the Consolidated Tangible Net Worth shall equal or exceed £1,200,000,000; and
  - (iii) *Interest Cover Ratio*: subject to paragraph (b) below, for each Calculation Period, the Interest Cover Ratio shall equal or exceed 3:1.

- (b) If the Company at its option so elects, the Interest Cover Ratio shall not apply during any Calculation Period (a "**Disapplied Period**") in respect of which:
- (i) a Compliance Certificate delivered in accordance with Clause 19.2 (*Compliance Certificate*) shows that Net Borrowings is in a cash positive position as at the last day of that Calculation Period; and
  - (ii) the Agent confirms that, as at the date of delivery of such Compliance Certificate, no Loans are outstanding,

provided that there must not be more than two Disapplied Periods in total and that the Calculation Period immediately preceding a Disapplied Period was not a Disapplied Period.

## 21. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 21.1 **Authorisations**

Each Obligor shall promptly:

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

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

### 21.2 **Compliance with laws**

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

### 21.3 **Negative pledge**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Company shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset (a "**Quasi-Security**").
- (c) Paragraphs (a) and (b) above do not apply to any Security (or as the case may be) Quasi-Security which is a Permitted Security Interest.

#### 21.4 **Acquisitions**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will), acquire any asset or make any investment.
- (b) Paragraph (a) above does not apply to any acquisition, subscription or investment which is a Permitted Acquisition.

#### 21.5 **Disposals**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) sell, lease, transfer or otherwise dispose of any asset, whether in a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary).
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

#### 21.6 **Loans and guarantees**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) be the creditor in respect of any Financial Indebtedness or grant or permit to subsist any guarantee.
- (b) Paragraph (a) above does not apply to:
  - (i) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
  - (ii) any loans or guarantees in respect of the Group's employee car ownership scheme;
  - (iii) any loan or guarantees to directors and/or employees to the extent not covered by paragraph (ii) above in an aggregate amount not exceeding £500,000 at any time;
  - (iv) Permitted Intra-Group Loans;
  - (v) Permitted Guarantees;
  - (vi) any loans made to a Joint Venture to the extent permitted under Clause 21.15 (*Joint Ventures*);
  - (vii) any loans in relation to the NewBuy Scheme; or
  - (viii) any other loan so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £5,000,000 (or its equivalent) at any time.

#### 21.7 **Financial Indebtedness**

No Obligor shall (and the Company shall ensure that no other member of the Group will) incur or permit to subsist any Financial Indebtedness, other than Permitted Indebtedness.

#### 21.8 **Merger**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, corporate reconstruction or solvent reorganisation except with one or more members of the Group and if with an Obligor, provided that the surviving entity assumes all the rights and obligations of the relevant Obligor (including, without limitation, the

obligations of the Obligor under the Finance Documents) or with the consent of the Majority Lenders.

- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

#### **21.9 Change of business**

The Company shall procure that no material change is made to the general nature or scope of the business of the Group as a whole from that carried on at the date of this Agreement (being that of housebuilding, property development and ancillary activities both in the UK and overseas).

#### **21.10 Environmental compliance**

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

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### **21.11 Insurance**

The Company must ensure that insurance cover is maintained over the assets and undertaking of the Group of a type and in an amount which a prudent company in the same business would effect with reputable insurers.

#### **21.12 Sanctions**

- (a) No member of the Group shall:
  - (i) request any Utilisation, or use the proceeds of any Utilisation directly or indirectly, or lend, contribute or otherwise make available such proceeds, for the purpose of financing the business or other activities of transactions with or investments in, any Sanctioned Person;
  - (ii) otherwise engage in any activity, transaction or conduct that:
    - (A) could reasonably be expected to cause any person to be in breach of any Sanctions (including any person participating in a Utilisation, whether as mandated lead arranger, lender, bookrunner or otherwise); or
    - (B) has the purpose of evading or avoiding, or breaches or attempts to breach, in whole or in part, any Sanctions;

- (iii) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Sanctioned Person, or from any action which is in breach of any Sanctions; or
  - (iv) engage, directly or indirectly, in any trade, business or other activities with, on behalf of or for the benefit of any Sanctioned Person.
- (b) Any provision of this Clause 21.12 or Clause 18.11 (*Sanctions*) shall not apply to or in favour of any person if and to the extent that it would result in a breach, by or in respect of that person, of any applicable Blocking Law.
- (c) For the purposes of this Clause 21.12, "**Blocking Law**" means:
  - (i) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the European Union);
  - (ii) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996, as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018; or
  - (iii) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*).

#### 21.13 **Anti-bribery and corruption**

- (a) No Obligor shall (and shall procure that no member of the Group will) directly or indirectly use the proceeds of any Utilisation for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and shall procure that each member of the Group will):
  - (i) conduct business in compliance with applicable anti-bribery and anti-corruption laws in all material respects; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.
- (c) Each Obligor undertakes that it shall not repay the proceeds of any Utilisation using funds derived directly or indirectly from any action that would breach applicable anti-bribery laws or anti-corruption laws.

#### 21.14 **Pari passu ranking**

Each Obligor will procure that its unsecured obligations under this Agreement do and will rank at least *pari passu* with all its other present and future unsecured obligations other than obligations in respect of national, provincial and local taxes and employees' remuneration and taxes and for other statutory exceptions.

#### 21.15 **Joint Ventures**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will):
  - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

- (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to any acquisition or (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Security Interest, a Permitted Joint Venture or as otherwise permitted under Clause 21.6 (*Loans and guarantees*).

#### 21.16 **Guarantor coverage**

- (a) Subject to paragraph (b) below, the Company shall procure that:
  - (i) the gross assets and turnover of the Obligors at any time shall account for not less than 80 per cent. of the gross assets and turnover of the Group at that time (the "**Guarantor Coverage Threshold**"); and
  - (ii) each Material Subsidiary which is not a Guarantor becomes (unless prohibited by law provided that the Company uses its reasonable endeavours and takes all reasonable steps to try and overcome such prohibition) a Guarantor in accordance with paragraph (c) of Clause 24.4 (*Additional Guarantors*) within 21 days of becoming a Material Subsidiary.
- (b) Following the Acquisition:
  - (i) the Company shall only be obliged to comply with paragraph (a)(i) above; and
  - (ii) the Company shall only be obliged to comply with paragraph (a)(ii) above in respect of a Material Subsidiary which is a member of the Target Group,

on and from the date falling 45 days of the date when the Target is re-registered as a private company.
- (c) For the purpose of paragraph (a)(i) above:
  - (i) subject to paragraph (ii) below:
    - (A) the contribution of each Guarantor will be determined from its financial statements which were consolidated into the latest audited consolidated financial statements of the Company; and
    - (B) the financial condition of the Group will be determined from the latest audited consolidated financial statements of the Company;
  - (ii) if a company becomes a member of the Group after the date on which the latest audited consolidated financial statements of the Company were prepared:
    - (A) the contribution of that company will be determined from its latest financial statements; and
    - (B) the financial condition of the Group will be determined from the latest audited consolidated financial statements of the Company, but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that company);



- (iii) the contribution of a Guarantor will:
  - (A) if it has Subsidiaries, be determined from its unconsolidated financial statements; and
  - (B) exclude intra-group items which would be eliminated in the consolidated financial statements of the Company.
- (d) The Company shall have the ability to cure a breach of paragraph (a)(i) above by procuring that, as soon as reasonably practicable and in any event within 21 days of the earlier of:
  - (i) the delivery of the Compliance Certificate evidencing that breach; and
  - (ii) any Obligor becoming aware of the non-compliance,
 (the "**Cure Period**"), members of the Group become Additional Guarantors to the extent required to cure the relevant breach.
- (e) A breach of paragraph (a)(i) above will be deemed not to be a breach (and accordingly will not constitute a Default) for the duration of the Cure Period providing that all reasonable steps are being taken to remedy such breach. This paragraph (e) is without prejudice to the rights and remedies of the Finance Parties on expiry of the Cure Period, if the remedy of such breach has not been effected. If the breach is not remedied by the end of the Cure Period, there will be an immediate Event of Default.

#### 21.17 The Acquisition

- (a) The Company shall ensure that:
  - (i) in the case of a Scheme, the Scheme Document contains all the terms and conditions of the Scheme as at the date on which they were published; and
  - (ii) in the case of an Offer, the Offer Document contains all the terms and conditions of the Offer as at the date on which they were published.
- (b) The Company shall ensure the Offeror will not amend, vary or treat as satisfied in whole or in part, any term or condition relating to the Acquisition as set out in the Scheme Document or the Offer Document (as applicable) 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 Agent (acting on the instructions of the Majority Lenders, such consent, in each case, not to be unreasonably withheld or delayed); or
  - (ii) required or requested by the Takeover Panel or the Court Order, or reasonably determined by the Offeror as being necessary or desirable to comply with the requirements or requests (as applicable) of the Takeover Code, the Takeover Panel or the Court Order or any other relevant regulatory body or applicable law or regulation;
  - (iii) for increase, decrease or any other adjustment to or change in the purchase price (or other consideration), or in the nature or manner in which any purchase consideration (or other consideration) is paid or to be paid, in each case in connection with the Acquisition,

provided that in the case of any increase in the purchase price (or other consideration), the amount of such increase must be funded entirely by equity;

- (iv) to change the timing of the Acquisition, including by way of any reduction or extension to the actual or anticipated Scheme Effective Date, Unconditional Date, Offer Period, closing date or completion date (howsoever described) of the Acquisition (including by reason of the adjournment of any meeting or court hearing), provided that, for the avoidance of doubt, any extension of the periods described in the definition of "Certain Funds Period" in Clause 1.1 (*Definitions*) shall be made in accordance with Clause 34 (*Amendments and Waivers*);
- (v) which constitutes a switch or other change in relation to the Acquisition from being effected by way of an Offer to a Scheme or from a Scheme to an Offer;
- (vi) in the case of an Offer, for changing the acceptance condition (subject to paragraph (g) below);
- (vii) which relates to a condition which the Offeror 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, to lapse or to be withdrawn; or
- (viii) contemplated by or otherwise permitted under the terms of this Agreement or any other Finance Documents,

provided that it is acknowledged and agreed that paragraphs (i) to (viii) above shall not, in any such case, be regarded as being an amendment or waiver which would reasonably be expected to be materially prejudicial to the interests of the Finance Parties taken as a whole.

- (c) The Company shall ensure no action is taken which would require it to make a mandatory offer under Rule 9 of the Takeover Code.
- (d) The Company shall ensure the Offeror will 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 Order), 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.
- (e) Save as required by the Takeover Panel, the Court Order or any other applicable law, regulation or regulatory body, or as reasonably determined by the Company as being necessary or desirable to comply with the requirements or requests (as applicable) of the Takeover Code, Takeover Panel or the Court Order or any other relevant regulatory body or applicable law or regulation, the Company shall ensure the Offeror 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, the Offer Press Release, any Scheme Document or any Offer Document), without (to the extent permitted by law or regulation) first obtaining the prior approval of the Agent (acting on the instructions of the Majority Lenders), with such approval by the Agent and Lenders (as appropriate) not to be unreasonably

withheld or delayed. If the Offeror does become so required, the Company shall notify the Agent as soon as practicable (and to the extent that it does not prejudice any Borrower's ability to comply with such requirement), upon becoming aware of the requirement.

- (f) Subject to any confidentiality, regulatory, legal or other restrictions relating to the supply of such information, the Company shall keep the Agent informed as to any material developments in relation to the Acquisition, including if the Scheme or the Offer lapses or is withdrawn, and, in the case of an Offer only, shall from time to time, if the Agent reasonably requests, give the Agent reasonable details as to the current level of acceptances from the Offer.
- (g) In the case of an Offer, the Company shall ensure the Offeror will not declare the Offer unconditional as to acceptances until it has received acceptances in respect of such number of Target Shares as will result in the Offeror owning beneficially at least 75 per cent. of the issued ordinary share capital of the Target, unless required to do so in accordance with applicable law or regulation or the Takeover Code or by the Court Order or the Takeover Panel or any other applicable regulatory body or as approved by the Mandated Lead Arranger, the Agent or Majority Lenders (acting reasonably and in good faith).
- (h) The Company shall (to the extent it is legally able to do so in accordance with applicable law and regulation, including having regard to the Takeover Code and to compliance with any court order or guidance or rulings of the Takeover Panel):
  - (i) procure that the Target is re-registered as a private company as soon as practicable after receipt of acceptances in respect of 75 per cent. or more in nominal value of the Target Shares to which the Offer relates;
  - (ii) procure that the Target Shares are de-listed from the Main Market of the London Stock Exchange and the Official List of the Financial Conduct Authority:
    - (A) if the Acquisition is to be effected by way of a Scheme, as soon as reasonably practicable after the Scheme Effective Date; or
    - (B) if the Acquisition is to be effected by way of an Offer, as soon as reasonably practicable after the later of:
      - (1) the Unconditional Date; and
      - (2) the date on which the Company first becomes the beneficial owner of more than 75 per cent. of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target, provided that such beneficial ownership of such shares is, at that time, sufficient to procure such de-listing; and
  - (iii) to commence any squeeze out procedure as soon as reasonably practicable upon it becoming entitled to do so pursuant to the procedures contained in sections 979 to 982 of the Companies Act 2006.

## 22. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 22 is an Event of Default (save for Clause 22.14 (*Acceleration*)).

### 22.1 **Non payment**

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

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

### 22.2 **Financial covenants**

Any requirement of Clause 20 (*Financial Covenants*) is not satisfied.

### 22.3 **Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non payment*) and Clause 22.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 21 days of the earlier of (i) the Agent giving notice to the Company and (ii) the Company becoming aware of the failure to comply.

### 22.4 **Misrepresentation**

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents to which it is a party or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the misrepresentation or misstatement, or the circumstances giving rise to it, is/are capable of remedy and is/are remedied within 21 days of the earlier of (A) the Agent giving notice to the Company and (B) the Company becoming aware of the misrepresentation or misstatement.

### 22.5 **Cross default**

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

- (e) No Event of Default will occur under this Clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £15,000,000 (or its equivalent in any other currency or currencies).

#### **22.6 Insolvency**

- (a) An Obligor or Material Subsidiary is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor or Material Subsidiary is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of all or any material part of the indebtedness of any Obligor or Material Subsidiary.

#### **22.7 Insolvency proceedings**

- (a) Except as provided in paragraph (b) below, any corporate action, legal proceedings or other formal procedure or step is taken with a view to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or Material Subsidiary;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor or Material Subsidiary;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or Material Subsidiary or any material part of its assets;
  - (iv) the enforcement of any Security over any assets of an Obligor or Material Subsidiary; or
  - (v) any other analogous step or procedure is taken in any jurisdiction.
- (b) Paragraph (a) above does not apply to:
  - (i) a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and which is discharged or struck out within 21 days;
  - (ii) a solvent liquidation or reorganisation of any member of the Group which is not an Obligor or a Material Subsidiary; or
  - (iii) a transaction agreed to by the Majority Lenders.

#### **22.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of an Obligor or Material Subsidiary having an aggregate value of £5,000,000 and is not discharged within 20 Business Days.

#### **22.9 Ownership of the Obligors**

An Obligor (other than the Company) is not or ceases to be a wholly-owned Subsidiary of the Company (unless such Obligor is disposed of as permitted under the terms of this Agreement).

#### **22.10 Cessation of business**

An Obligor or Material Subsidiary ceases to carry on all or substantially all of its business except as a result of any disposal or solvent intra-Group reorganisation permitted under this Agreement.

#### **22.11 Unlawfulness**

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

#### **22.12 Repudiation**

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

#### **22.13 Material adverse change**

Any event or series of events whether related or not occurs which has, or could reasonably be expected to have, a Material Adverse Effect.

#### **22.14 Acceleration**

Subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

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

#### **22.15 Clean-up Period**

- (a) Notwithstanding any other provision of any Finance Document, but subject to paragraph (b) below, and until the Clean-up Date, any matter or circumstance that exists in respect of the Group which would constitute a Default or an Event of Default (other than as a result of misrepresentation under Clause 18.11 (*Sanctions*) or breach of Clause 21.12 (*Sanctions*)) will be deemed not to be a Default or an Event of Default (as the case may be) if:
  - (i) it would have been (if it were not for this provision) a Default or an Event of Default only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);
  - (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
  - (iii) the circumstances giving rise to it have not been procured or approved by the Company or the Offeror; and
  - (iv) it is not reasonably likely to have a Material Adverse Effect.

- (b) If the relevant matter or circumstance giving rise to the Default or Event of Default is continuing on or after the Clean-up Date, there shall be a Default or Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

**SECTION 9**  
**CHANGES TO PARTIES**

**23. CHANGES TO THE LENDERS**

**23.1 Assignments and transfers by the Lenders**

Subject to Clause 23.2 (*Conditions of assignment or transfer*), a Lender (the "**Existing Lender**") may:

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

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

**23.2 Conditions of assignment or transfer**

- (a) The consent of the Company is required for an assignment or transfer by an Existing Lender unless:
  - (i) prior to the expiry of the Certain Funds Period, the assignment or transfer is to another Lender or an Affiliate of a Lender (provided that, in the case of a transfer to an Affiliate of a Lender, the Lender of which it is an Affiliate remains liable for the obligations under this Agreement of that Affiliate, if that Affiliate fails to perform those obligations) or to any entity identified in the Certain Funds Period White List; or
  - (ii) after the expiry of the Certain Funds Period, an Event of Default has occurred and is continuing or the assignment or transfer is to another Lender or an Affiliate of a Lender or to any entity identified in the White List.
- (b) Following the end of the Certain Funds Period, the consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. Following the end of the Certain Funds Period, the Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) An assignment will only be effective on:
  - (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
  - (ii) performance by the Agent of all necessary know your customer or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with.



- (e) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in relation to Clause 12.2 (*Tax gross up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 12.2 (*Tax gross up*) if the Obligor making the payment:
- (iii) has not made a Borrower DTTP Filing or a Guarantor DTTP Filing (as the case may be) in respect of that Treaty Lender; or
  - (iv) has made a Guarantor DTTP Filing in respect of that Treaty Lender and such Guarantor DTTP Filing has been rejected by HM Revenue & Customs.
- (f) Each New Lender, by executing the relevant Transfer Certificate confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have had it remained a Lender.

### 23.3 **Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £2,500.

### 23.4 **Limitation of responsibility of Existing Lenders**

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

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

### 23.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 23.8 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Agent, the Mandated Lead Arrangers, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that

extent the Agent, the Mandated Lead Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Lender shall become a Party as a Lender.

#### 23.6 **Copy of Transfer Certificate or Increase Confirmation to Company**

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

#### 23.7 **Security over Lender's rights**

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve, central bank or any governmental authorities, agencies or departments (including HM Treasury) and the utilisation of Loans for any type of Securitisation or collateralisation; and
- (b) any charge, security assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

#### 23.8 **Pro rata interest settlement**

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 23.5 (*Procedure for transfer*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period; and
- (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
  - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

- (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.8, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 23.8 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 23.8 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.
- (d) Any assignment or transfer by an Existing Lender to a New Lender shall only be effective if it transfers or assigns the Existing Lender's share of the Facility pro rata against the Existing Lender's Available Commitment in respect of the Facility and its participations in Utilisations under the Facility.

## **24. CHANGES TO THE OBLIGORS**

### **24.1 Assignments and transfer by Obligors**

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

### **24.2 Additional Borrowers**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.8 (*Know your customer checks*), the Company may request that any of its wholly-owned Subsidiaries becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:
  - (i) the Lenders approve the addition of that Subsidiary and provided that if any Finance Party determines that that Subsidiary is a 'relevant financial institution' for the purposes of article 2 of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014, that Finance Party also approves the addition of that Subsidiary;
  - (ii) the Company delivers to the Agent a duly completed and executed Accession Letter;
  - (iii) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
  - (iv) the Agent has received all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

#### 24.3 **Resignation of a Borrower**

- (a) The Company may request that a Borrower (other than the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
  - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case); and
  - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents,

whereupon that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents.

#### 24.4 **Additional Guarantors**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.8 (*Know your customer checks*), the Company may request that any of its Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
  - (i) the Company delivers to the Agent a duly completed and executed Accession Letter; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance reasonably satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance reasonably satisfactory to it) all the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (d) In the case of an Additional Guarantor that is not incorporated in England and Wales, the Agent (on behalf of the Finance Parties) and the Company (on behalf of the Obligors) will agree such amendments to Clause 17 (*Guarantee and Indemnity*) as local counsel to the Obligors shall have advised are, in the applicable circumstances, necessary or customary in the relevant jurisdiction by way of guarantor limitation language.

#### 24.5 **Repetition of representations**

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

#### 24.6 **Resignation of a Guarantor**

- (a) Subject to paragraph (c) below, the Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter.

- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
- (i) all of the shares in the relevant Guarantor are being disposed of to a person which is not a member of the Group and that disposal is permitted under Clause 21.5 (*Disposals*) or made with the approval of the Majority Lenders (and the Company has confirmed this is the case);
  - (ii) the relevant Guarantor is to be wound-up or otherwise liquidated and, following the acceptance of the Resignation Letter, the Guarantor Coverage Threshold in paragraph (a)(i) of Clause 21.16 (*Guarantor coverage*) would be met; or
  - (iii) all the Lenders have consented to the Company's request,
- and, in each case, no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case).
- (c) A Resignation Letter may not be given in respect of the Company or (other than in the circumstances set out in paragraph (b)(i) above) a Guarantor which is a Material Subsidiary.

**SECTION 10**  
**THE FINANCE PARTIES**

**25. ROLE OF THE AGENT AND THE MANDATED LEAD ARRANGERS**

**25.1 Appointment of the Agent**

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

**25.2 Instructions**

- (a) The Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; or
    - (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 Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

### **25.3 Duties of the Agent**

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 23.6 (*Copy of Transfer Certificate or Increase Confirmation to Company*), paragraph (b) above shall not apply to any Transfer Certificate or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Mandated Lead Arrangers) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall provide to the Company within ten Business Days of a request by the Company (but no more frequently than once per calendar month) or as soon as is reasonably practicable upon the Agent becoming an Impaired Agent, a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means.
- (h) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **25.4 Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, the Mandated Lead Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

### **25.5 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Agent or any Mandated Lead Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.



## 25.6 **Business with the Group**

The Agent and the Mandated Lead 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.

## 25.7 **Rights and discretions of the Agent**

(a) The Agent may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised; and

(ii) assume that:

(A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non payment*));

(ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and

(iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.

(e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Company and shall, as soon as reasonably practical, disclose the same upon the written request of the Company or the Majority Lenders.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any Mandated Lead Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **25.8 Responsibility for documentation**

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

- (a) the adequacy, accuracy and/or completeness of the Information Package or any information (whether oral or written) supplied by the Agent, a Mandated Lead Arranger, an Obligor or any other person given in 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.

#### **25.9 No duty to monitor**

The Agent shall not be bound to enquire:

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

#### **25.10 Exclusion of liability**

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

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; 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 (but not including any claim based on the fraud of the Agent) arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,
 including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent in respect of its own officer, employee or agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause 25.10 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Mandated Lead Arrangers to carry out:
  - (i) any know your customer or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender (or for any Affiliate of any Lender),
 on behalf of any Lender and each Lender confirms to the Agent and the Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Mandated Lead Arrangers.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

#### **25.11 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within five Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 28.11 (*Disruption to payment systems etc*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

#### **25.12 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the UK as successor by giving notice to the other Finance Parties and the Company.
- (b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the UK).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent and the Company (each of which must act reasonably) amendments to this Clause 25 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of this Clause 25 and Clause 14.3 (*Indemnity to the Agent*) (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (i) The Agent shall resign in accordance with paragraph (b) above if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
  - (i) the Agent fails to respond to a request under Clause 12.8 (*FATCA Information*) and the Company or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent pursuant to Clause 12.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,
 and (in each case) 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 Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Agent, requires it to resign.

#### 25.13 Impaired Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the UK).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of this Clause 25 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### **25.14 Replacement of the Agent**

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the UK).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 25 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### **25.15 Confidentiality**

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

#### **25.16 Relationship with the Lenders**

- (a) Subject to Clause 23.8 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 30.6 (*Electronic communication*)) electronic mail address and/or any other information required to

enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 30 (*Notices*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

#### **25.17 Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent, the Mandated Lead Arrangers 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 and/or completeness of the Information Package or any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### **25.18 Agent's management time**

- (a) If an Event of Default has occurred and is continuing, any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and Clause 25.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).
- (b) For the avoidance of doubt, the Agent shall only be entitled to recover the cost of its management or other resources under paragraph (a) above if an Event of Default has occurred and is continuing.

#### **25.19 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and

apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

#### **25.20 Prudent Regulation Authority**

The Agent is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Nothing in this Agreement shall require the Agent to carry on an activity of the kind specified by any provision of Part II (other than article 5 (accepting deposits)) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or to lend money to any Borrower in its capacity as Agent.

#### **25.21 Money held as banker**

The Agent shall be entitled to deal with money paid to it by any person for the purposes of this Agreement in the same manner as other money paid to a banker by its customers except that it shall not be liable to account to any person for any interest or other amounts in respect of the money.

#### **25.22 Abatement of fees**

The fees, commissions and expenses payable to the Agent for services rendered and the performance of its obligations under this Agreement shall not be abated by any remuneration or other amounts or profits receivable by the Agent (or by any of its associates) in connection with any transaction which effected by the Agent with or for the Lenders or the Company and which is not effected in connection with, or in relation to, this Agreement or other Finance Documents.

#### **25.23 Amounts paid in error**

- (a) If the Agent pays an amount to another Finance Party and the Agent notifies that Finance Party that such payment was an Erroneous Payment then the Finance Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent.
- (b) Neither:
  - (i) the obligations of any Finance Party to the Agent; nor
  - (ii) the remedies of the Agent,(whether arising under this Clause 25.23 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Finance Party).
- (c) All payments to be made by a Finance Party to the Agent (whether made pursuant to this Clause 25.23 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Finance Party which the Agent determines (in its sole discretion) was made in error.

#### **26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;



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

## 27. SHARING AMONG THE FINANCE PARTIES

### 27.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 28 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*).

### 27.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 28.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 27.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 27.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

### 27.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

**27.5 Exceptions**

- (a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 27.5, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**SECTION 11**  
**ADMINISTRATION**

**28. PAYMENT MECHANICS**

**28.1 Payments to the Agent**

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

**28.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to an Obligor*) and Clause 28.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency.

**28.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 29 (*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.

**28.4 Clawback and pre-funding**

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

Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

#### **28.5 Impaired Agent**

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 28.1 (*Payments to the Agent*) may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. 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 beneficiaries of that trust account pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 28.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 25.13 (*Impaired Agent*), each Party which has made a payment to a trust account in accordance with this Clause 28.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 28.2 (*Distributions by the Agent*).

#### **28.6 Partial payments**

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) first, in or towards payment pro rata of any unpaid amount owing to the Agent or the Mandated Lead Arrangers under the Finance Documents;
  - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary 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.

#### **28.7 No set off by Obligors**

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

#### **28.8 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.

#### **28.9 Currency of account**

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

#### **28.10 Change of currency**

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

#### **28.11 Disruption to payment systems etc**

If either the Agent determines (acting reasonably) that a Disruption Event has occurred or the Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its reasonable opinion, it is not practicable to do

so in the circumstances and, in any event, shall have no obligation to agree to such changes;

- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 34 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 28.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

## 29. SET OFF

Following the occurrence of an Event of Default which is continuing, a Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. That Finance Party shall promptly notify that Obligor of any such set-off or conversion.

## 30. NOTICES

### 30.1 Communications in writing

- (a) Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, e-mail or letter.
- (b) For the purpose of the Finance Documents, an electronic communication will be treated as being in writing.

### 30.2 Addresses

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

- (a) in the case of the Company:  

Address: 11 Tower View  
Kings Hill  
West Malling

Kent  
ME19 4UY

E-mail: [REDACTED]

Attention: [REDACTED]

- (b) in the case of each Lender or any other Original Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent:

Address: HSBC Bank plc  
Issuer Services  
8 Canada Square  
London E14 5HQ

Email: Borrower operational requests only: [REDACTED]  
All other queries: [REDACTED]

Fax: [REDACTED]

Attention: Agent – Issuer Services

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

### 30.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if delivered in person, upon delivery;
  - (ii) if by way of fax, when received in legible form; or
  - (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified in paragraph (c) of Clause 30.2 (*Addresses*) (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 30.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document made or delivered to an Obligor (other than the Company) shall be copied to the Company at the same time and by the same method.

- (f) Any communication or document which becomes effective, in accordance with paragraphs (a) to (e) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **30.4 Notification of address and fax number**

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

#### **30.5 Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

#### **30.6 Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 30.6.

#### **30.7 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.



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

### **31. CALCULATIONS AND CERTIFICATES**

#### **31.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

#### **31.2 Certificates and determinations**

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

#### **31.3 Day count convention**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 365 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

### **32. PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **33. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law. The rights of each Finance Party under the Finance Documents may be exercised as often as necessary and may only be waived in writing and specifically.

## 34. AMENDMENTS AND WAIVERS

### 34.1 Required consents

- (a) Subject to Clause 34.2 (*Exceptions*) and Clause 34.3 (*Other Exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 34.
- (c) Paragraph (c) of Clause 23.8 (*Pro rata interest settlement*) shall apply to this Clause 34.

### 34.2 Exceptions

- (a) Subject to Clause 34.4 (*Changes to reference rates*), an amendment or waiver that has the effect of changing or which relates to:
  - (i) the definitions of "Majority Lenders", "Sanctioned Person", "Sanctioned Territory", "Sanctions" or "Sanctions List" in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
  - (v) a change to the Borrowers or Guarantors other than in accordance with Clause 24 (*Changes to the Obligors*);
  - (vi) any provision which expressly requires the consent of all the Lenders; or
  - (vii) Clauses 2.3 (*Finance Parties' rights and obligations*), Clause 18.11 (*Sanctions*), Clause 21.12 (*Sanctions*), Clause 23 (*Changes to the Lenders*) or this Clause 34,shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver which relates to Clause 17 (*Guarantee and Indemnity*) may be made in accordance with paragraph (d) of Clause 24.4 (*Additional Guarantors*).

### 34.3 Other exceptions

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

### 34.4 Changes to reference rates

- (a) Subject to Clause 34.3 (*Other exceptions*), if an RFR Replacement Event has occurred, any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;

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

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

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

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

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

- (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 (or such longer time period in relation to any request which the Company and the Agent may agree) of that request being made:

- (i) its Commitment(s) 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 34.4:

**"RFR Replacement Event"** means:

- (a) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders and the Company, materially changed;
- (b)
  - (i)

- (A) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
- (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent,

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

- (ii) the administrator of the RFR publicly announces that it has ceased or will cease to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
  - (iii) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
- (c) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Company) temporary; or
  - (ii) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the "RFR Contingency Period" in the Reference Rate Terms; or
- (d) in the opinion of the Majority Lenders and the Company, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

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

**"Replacement Reference Rate"** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for the RFR by:
  - (i) the administrator of the RFR (**provided that** the market or the economic reality that such reference rate measures is the same as that measured by the RFR); or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under paragraph (ii) above;

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

#### 34.5 **Affected Lenders**

- (a) In the event that a Lender is an Affected Lender, or an Obligor becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender, any such Lender will, at the request of the Company by at least ten Business Days' notice to the Agent (which the Agent shall give to such Lender), to the extent permitted by law, transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of such transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.8 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (b) The replacement of a Lender pursuant to this Clause 34.5 shall be subject to the following conditions:
  - (i) the Company shall have no right to seek replacement of the Agent;
  - (ii) no Finance Party shall have any obligation to be or find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (a) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (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)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### 34.6 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
  - (i) the Majority Lenders; or
  - (ii) whether:
    - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
    - (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote 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 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 34.6, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of "Defaulting Lender" has occurred and in the case of the events and circumstances referred to in paragraph (a), none of the exceptions to that paragraph apply,

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

#### **34.7 Excluded Commitments**

If any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within ten Business Days (unless the Company and the Agent agree to a longer time period in relation to any request) of that request being made:

- (a) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) 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.

#### **34.8 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 20 Business Days' prior written notice to the Agent and such Lender:

- (i) replace such Lender by requiring such Lender to (and to the extent permitted by law such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
- (ii) require such Lender to (and to the extent permitted by law such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitments of the Lender; or
- (iii) require such Lender to (and to the extent permitted by law such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Facility,

to an Eligible Institution (a "**Replacement Lender**"), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest, (to the extent that the Agent has not given a notification under Clause 23.8 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company and which does not exceed the amount described in paragraph (A) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) the Company shall have no right to replace the Agent;
  - (ii) neither the 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 20 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 Agent and the Company when it is satisfied that it has complied with those checks.

## 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 Clause 35.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 35.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 25.16 (*Relationship with the Lenders*));
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (i) or (ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
  - (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.7 (*Security over Lender's rights*);
  - (vii) 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;



- (viii) who is a Party; or
- (ix) with the consent of the Company;

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

- (A) in relation to paragraphs (i), (ii) and (iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to paragraph (iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (v), (vi) and (vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (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;
  - (d) to any monoline insurer or its Affiliates (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such monoline insurer to carry out its normal insurance activities in relation to the Finance Documents and/or the Obligors if the monoline insurer 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;
  - (e) 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; or

- (f) the size and term of the Facility and the name of each of the Obligors to any investor or potential investor in a Securitisation (or similar transaction of broadly equivalent economic effect) of that Lender's rights or obligations under the Finance Documents.

### 35.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
  - (i) names of Obligors;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) date of this Agreement;
  - (v) Clause 39 (*Governing Law*);
  - (vi) the names of the Agent and the Mandated Lead Arrangers;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of Total Commitments;
  - (ix) currency of the Facility;
  - (x) type of Facility;
  - (xi) ranking of Facility;
  - (xii) the Termination Date;
  - (xiii) changes to any of the information previously supplied pursuant to paragraphs (a)(i) to (xii) above; and
  - (xiv) such other information agreed between such Finance Party and the Company,to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in paragraphs (a)(i) to (xiv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and

- (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligor by such numbering service provider.

#### **35.4 Entire agreement**

This Clause 35 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.

#### **35.5 Inside information**

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

#### **35.6 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.

#### **35.7 Continuing obligations**

The obligations in this Clause 35 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

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

### **36. CONFIDENTIALITY OF FUNDING RATES**

#### **36.1 Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate to the Company pursuant to Clause 8.5 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the

LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.

- (c) The Agent and each Obligor may disclose any Funding Rate to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender.

#### 36.2 **Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
- (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 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 22.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 36.

**37. COUNTERPARTS**

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

**38. 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.

## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### 39. **GOVERNING LAW**

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

#### 40. **ENFORCEMENT**

##### 40.1 **Jurisdiction**

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

##### 40.2 **Service of process**

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

- (a) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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

**SCHEDULE 1**  
**THE ORIGINAL PARTIES**  
**PART I**  
**THE ORIGINAL GUARANTORS**

<b>Name of Original Guarantors</b>	<b>Registration number (or equivalent, if any)</b>
Vistry Group PLC	00306718 (England)
Vistry Homes Limited	00397634 (England)
Linden Limited	01108676 (England)
Vistry Partnerships Limited	00800384 (England)
Drew Smith Limited	02433962 (England)
Vistry Linden Limited	03158857 (England)

## PART II

### THE ORIGINAL LENDERS

Name of Original Lender	Commitment (£)	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)	UK Non-Bank Lender? (Y/N)
HSBC Bank plc	400,000,000	N/A	N
<b>Total</b>	<b>400,000,000</b>		



**SCHEDULE 2**  
**CONDITIONS PRECEDENT**  
**PART I**  
**CONDITIONS PRECEDENT TO SIGNING**

**1. Original Obligors**

- (a) A copy of the constitutional documents of each Original Obligor.
- (b) A copy of (or an extract of) a resolution of the board (or of a committee) of directors of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, in the case of an Original Borrower, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A copy of a resolution signed by all of the holders of the issued shares in each Original Guarantor (other than the Company) approving the terms of, and the transactions contemplated, by the Finance Documents to which the Original Guarantor is a party.
- (e) A certificate of the Company (signed by a director) confirming that:
  - (i) borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded; and
  - (ii) that each copy document relating to it and any other Original Obligor, specified in this Part I of Schedule 2, is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. Legal Opinions**

A legal opinion of Ashurst LLP, legal advisers to the Mandated Lead Arrangers and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

**3. Other Documents and Evidence**

- (a) An original of each Fee Letter duly executed and delivered by the Company.

- (b) The Original Financial Statements.
- (c) A certificate of an authorised signatory of the Company referring to paragraph (a) of the definition of "Permitted Security Interest", identifying any Security or Quasi-Security in existence at the date of the 2019 Facility Agreement and certifying the principal amount secured by such Security or Quasi Security as at the date of the 2019 Facility Agreement.
- (d) Confirmation from the Agent and each Original Lender that it has complied with all applicable money laundering regulations and completed all necessary "know your customer" requirements.
- (e) A list of Material Subsidiaries as at the audited consolidated financial statements of the Company for the financial year ended 31 December 2021.
- (f) A copy of the Financial Model.
- (g) A copy of the KPMG Report (on a non-reliance basis).

4. **Offer/Scheme information**

A copy of the final draft of the Scheme Press Release or Offer Press Release.

**PART II**  
**CONDITIONS PRECEDENT TO INITIAL UTILISATION**

**1. Announcement**

- (a) The initial Scheme Press Release or Offer Press Release issued in connection with the Acquisition, provided that such document will be deemed to be in form and substance satisfactory to the Agent if it is the version of such document delivered prior to the date of this Agreement or, in respect of any subsequent version of the Scheme Press Release or Offer Press Release, in the form of the previous Scheme Press Release or Offer Press Release (as applicable), with any changes which (i) are not materially prejudicial to the interests of the Original Lenders taken as a whole under the Finance Documents or (ii) are approved by the Majority Lenders (such approval not to be unreasonably withheld or delayed).
- (b) A copy of the Scheme Document or Offer Document (as applicable), for information purposes only and not required to be in form and substance satisfactory to the Agent or any Finance Party.

**2. Acquisition**

- (a) A certificate from the Company (signed by an authorised signatory) confirming that in the case of a Scheme, the Scheme Effective Date has occurred or, in the case of an Offer, the Unconditional Date has occurred.
- (b) A funds flow statement detailing the movement of funds in relation to the Acquisition (for information purposes only and not required to be in form and substance satisfactory to the Agent or any Finance Party).

**3. Other documentation and evidence**

Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid on or by the date on which they fall due.

**PART III**  
**CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN**  
**ADDITIONAL OBLIGOR**

1. An Accession Letter, duly executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board of directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
  - (b) authorising a specified person or persons to execute the Accession Letter on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
9. If available, the latest audited financial statements of the Additional Obligor.
10. A legal opinion of the legal advisers to the Mandated Lead Arrangers and the Agent in England.
11. If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Mandated Lead Arrangers and the Agent in the jurisdiction in which the Additional Obligor is incorporated.

If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 40.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

**SCHEDULE 3**  
**REQUESTS**  
**PART I**  
**UTILISATION REQUEST**

From: [*Borrower*]

To: [ ] as Agent

Dated:

Dear Sirs

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:  
  
Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
  
Currency of Loan: Sterling  
  
Amount: [ ] or, if less, the Available Facility  
  
Interest Period: [ ]
3. [We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.]\*\*/[We confirm that no Major Default is continuing or would result from the proposed Utilisation and all the Major Representations are true.]\*\*\*
4. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify maturing Loan*]]/[The proceeds of this Loan should be credited to [*account*]].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[*name of relevant Borrower*]

\*\*Include for a Utilisation which is not a Certain Funds Utilisation.

\*\*\*Include for a Utilisation which is a Certain Funds Utilisation.

**PART II**  
**SELECTION NOTICE**

From: [Borrower]

To: [Agent]

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (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] with an Interest Period ending on [ ].\*  
[ ]
3. [We request that the above Loan[s] be divided into [ ] Loans with the following amounts and Interest Periods:]\*\*  
  
or  
  
[We request that the next Interest Period for the above Loan[s] is [ ]].\*\*\*
4. This Selection Notice is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[the Company on behalf of]  
[name of relevant Borrower]

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

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

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

**SCHEDULE 4**  
**FORM OF TRANSFER CERTIFICATE**

To: [ ] as Agent

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

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.5 (*Procedure for transfer*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 23.5 (*Procedure for transfer*), of the Agreement all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>1</sup>
5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
  - (a) a company resident in the UK for UK tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the UK; or
    - (ii) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 18 of the CTA) the whole of any

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<sup>1</sup> Delete as applicable – each New Lender is required to confirm which of these categories it falls within.

share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- (c) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 18 of the CTA) of that company.]<sup>2</sup>
6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [\_\_\_\_]) and is tax resident in [\_\_\_\_]<sup>3</sup>, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify:
- (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date, that it wishes that scheme to apply to the Agreement.]<sup>4</sup>
- [6/7]. 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.
- [7/8]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

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<sup>2</sup> Include if New Lender comes within paragraph (i)(B) of the definition of "Qualifying Lender" in Clause 12.1 (*Definitions*).

<sup>3</sup> Insert jurisdiction of tax residence.

<sup>4</sup> Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.



## THE SCHEDULE

### Commitment(s)/rights and obligations to be transferred

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

*[Existing Lender]*

*[New Lender]*

By:

By:

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

*[Agent]*

By:

**SCHEDULE 5**  
**FORM OF ACCESSION LETTER**

To: [ ] as Agent

From: [Subsidiary] and Vistry Group PLC

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Agreement as an Additional [Borrower]/[Guarantor] pursuant to Clause [24.2 (*Additional Borrowers*)]/[Clause 24.4 (*Additional Guarantors*)] of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [The Company confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower.]
4. [Subsidiary's] administrative details are as follows:  
Address: [ ]  
Fax No: [ ]  
Attention: [ ]
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[This Accession Letter is entered into by deed.]

Vistry Group PLC

[Subsidiary]

By:

By:

**SCHEDULE 6**  
**FORM OF RESIGNATION LETTER**

To: [ ] as Agent

From: [*resigning Obligor*] and Vistry Group PLC

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 24.3 (*Resignation of a Borrower*)]/[Clause 24.6 (*Resignation of a Guarantor*)], we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor] under the Agreement.
3. We confirm that no Default is continuing or would result from the acceptance of this request.
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Vistry Group PLC

[*Subsidiary*]

By:

By:

**SCHEDULE 7**  
**FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Agent

From: Vistry Group PLC

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
  - (a) **Gearing Ratio:** as at the last day of the previous Calculation Period, the Gearing Ratio was equal or less than [ ] per cent.
  - (b) **Consolidated Tangible Net Worth:** as at the last day of the previous Calculation Period, the Consolidated Tangible Net Worth was equal to or exceeded £[ ].
  - (c) **[Interest Cover Ratio:** for the previous Calculation Period, the Interest Cover Ratio was equal to or exceeded [ ]:1.5]]
  - (d) **Material Subsidiary:** the following companies constitute Material Subsidiary for the purpose of the Agreement [ ].
  - (e) **[Guarantor Coverage:** the gross assets and turnover of the Obligors account for [ ] per cent. of the gross assets and turnover of the Group (calculated in accordance with Clause 21.16 (*Guarantor coverage*) of the Agreement).]<sup>6</sup>
3. [We confirm that no Default is continuing.]<sup>7</sup>

Signed:.....

Director	Director
of	of
Vistry Group PLC	Vistry Group PLC

<sup>5</sup> Include only if applicable.

<sup>6</sup> Include this confirmation only with the delivery of the annual audited consolidated financial statements of the Company given this test is calculated by reference to the annual audited consolidated financial statements of the Company pursuant to Clause 21.16 (*Guarantor coverage*).

<sup>7</sup> If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

## SCHEDULE 8

### FORM OF INCREASE CONFIRMATION

To: [ ] as Agent, and Vistry Group PLC as Company, for and on behalf of each Obligor

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

Dated:

**Vistry Group PLC – £400,000,000 Facility Agreement dated [ ] 2022 (the "Agreement")**

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the "**Relevant Commitment(s)**") 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(s) 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, fax number and attention details for notices to the Increase Lender for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (h) of Clause 2.2 (*Increase*) of the Agreement.
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>8</sup>
9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
  - (a) a company resident in the UK for UK tax purposes; or
  - (b) a partnership each member of which is:
    - (i) a company so resident in the UK; or
    - (ii) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 18 of the CTA) the whole of any

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<sup>8</sup> Delete as applicable – each Increase Lender is required to confirm which of these three categories it falls within.

share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- (c) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 18 of the CTA) of that company.]<sup>9</sup>

10. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [\_\_\_\_]) and is tax resident in [\_\_\_\_]<sup>10</sup>, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify:

- (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
- (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date, that it wishes that scheme to apply to the Agreement.]<sup>11</sup>

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

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

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

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<sup>9</sup> Include only if Increase Lender is a UK Non-Bank Lender.

<sup>10</sup> Insert jurisdiction of tax residence.

<sup>11</sup> Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

## **THE SCHEDULE**

### **Relevant Commitment(s)/rights and obligations to be assumed by the Increase Lender**

*[insert relevant details]*

*[Facility office address, fax number and attention details for notices and account details for payments]*

**[INCREASE LENDER]**

By:

This Increase Confirmation is accepted as an Increase Confirmation for the purposes of the Agreement by the Agent and the Increase Date is confirmed as [\_\_\_\_\_].

**[AGENT]**

By:

**SCHEDULE 9**  
**REFERENCE RATE TERMS**

**CURRENCY:** Sterling.

***Cost of funds as a fallback***

Cost of funds will not apply as a fallback.

***Definitions***

**Break Costs:** None specified.

**Business Day Conventions (definition of "Month" and Clause 9.2 (Non-Business Days)):**

- (a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:
- (i) subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
  - (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
  - (iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.
- (b) If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

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

**Central Bank Rate Adjustment:** In relation to the Central Bank Rate prevailing at close of business on any Business Day, the 20 per cent. trimmed arithmetic mean (calculated by the Agent, or by any other Finance Party which agrees to do so in place of the Agent) of



the Central Bank Rate Spreads for the five most immediately preceding Business Days for which the RFR is available.

For this purpose, "**Central Bank Rate Spread**" means, in relation to any Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Finance Party which agrees to do so in place of the Agent) between:

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

**Daily Rate:**

The "**Daily Rate**" for any Business Day is:

- (a) the RFR for that Business Day; or
- (b) if the RFR is not available for that Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that Business 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 Business Days before that Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment,

rounded, in each case, to four decimal places (with 0.00005 being rounded upwards) and if, in each case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

**Lookback Period:**

Five Business 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 Interest Period or, if that day is not a Business Day, the immediately following Business Day.

**RFR:**

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

**RFR Contingency Period:**

30 days.

***Interest Periods***

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

Periods capable of selection as Interest Periods (paragraph (d) of Clause 9.1 (*Selection of Interest Periods*)): One, three and six Months.

***Reporting Times***

Deadline for Lenders to report market disruption in accordance with Clause 10.2 (*Market disruption*): Not applicable.

Deadline for Lenders to report their cost of funds in accordance with Clause 10.3(*Cost of funds*): Not applicable.

**SCHEDULE 10**  
**DAILY NON-CUMULATIVE COMPOUNDED RFR RATE**

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

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

where:

"**UCCDR<sub>i</sub>**" means the Unannualised Cumulative Compounded Daily Rate for that Business Day "i";

"**UCCDR<sub>i-1</sub>**" means, in relation to that Business Day "i", the Unannualised Cumulative Compounded Daily Rate for the immediately preceding Business Day (if any) during that Interest Period;

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

"**n<sub>i</sub>**" means the number of calendar days from, and including, that Business Day "i" up to, but excluding, the following Business Day; and

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

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

where:

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

"**tn<sub>i</sub>**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the Business Day which immediately follows the last day of the Cumulation Period;

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

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

the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated Business Day is the percentage rate per annum (rounded to four decimal places, with 0.00005 being rounded upwards) calculated as set out below:

$$\left[ \prod_{i=1}^{d_o} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{dcc} \right) - 1 \right] \times \frac{dcc}{tn_i}$$

where:

"**d<sub>0</sub>**" means the number of Business Days in the Cumulation Period;

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

"**i**" means a series of whole numbers from one to d<sub>0</sub>, each representing the relevant Business Day in chronological order in the Cumulation Period;

"**DailyRate<sub>i-LP</sub>**" means, for any Business Day "i" in the Cumulation Period, the Daily Rate for the Business Day which is the applicable Lookback Period prior to that Business Day "i";

"**n<sub>i</sub>**" means, for any Business Day "i" in the Cumulation Period, the number of calendar days from, and including, that Business Day "i" up to, but excluding, the following Business Day;

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


"**tn<sub>i</sub>**" has the meaning given to that term above.

## SIGNATURES TO THE AGREEMENT

**The Company**

**VISTRY GROUP PLC**


By:

DocuSigned by:  
  
B13031BA0B814A3...

**The Original Borrower**

**VISTRY GROUP PLC**


By:

DocuSigned by:  
  
B13031BA0B814A3...

**The Original Guarantors**

**VISTRY GROUP PLC**

By:

DocuSigned by:  
  
B13031BA0B814A3...

**VISTRY HOMES LIMITED**


By:

DocuSigned by:  
  
50B0666068C7467...



**LINDEN LIMITED**

By:

DocuSigned by:  
  
50B0666068C7467...

**VISTRY PARTNERSHIPS LIMITED**

By:

DocuSigned by:  
  
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**VISTRY LINDEN LIMITED**

By:

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**DREW SMITH LIMITED**

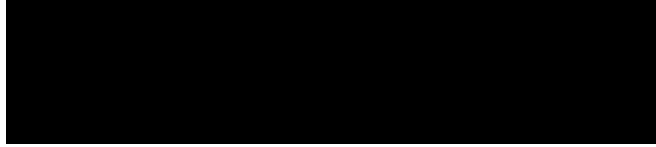
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**The Mandated Lead Arranger**

**HSBC BANK PLC**

By:



**The Original Lenders**

**HSBC BANK PLC**

By:



**The Agent**

**HSBC BANK PLC**

By:

