

DATED

2023

REVOLVING FACILITY AGREEMENT

FACILITY AGREEMENT

for

HIS MAJESTY'S GOVERNMENT OF GIBRALTAR

arranged by

**NATIONAL WESTMINSTER BANK PLC AND THE ROYAL BANK OF SCOTLAND
INTERNATIONAL LIMITED T/A NATWEST INTERNATIONAL**

with

NATIONAL WESTMINSTER BANK PLC

acting as Agent

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THIS AGREEMENT is dated 2023 and made between:

- (1) **HIS MAJESTY'S GOVERNMENT OF GIBRALTAR** whose address for this purpose is 6, Convent Place, Gibraltar (the "**Borrower**");
- (2) **NATIONAL WESTMINSTER BANK PLC and THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED (TRADING AS NATWEST INTERNATIONAL)** as mandated lead arrangers (whether acting individually or together the "**Arranger**");
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 as lenders (the "**Original Lenders**"); and
- (4) **NATIONAL WESTMINSTER 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:

"2020 Facility Agreement" means the facility agreement between His Majesty's Government of Gibraltar as Borrower and National Westminster Bank Plc and The Royal Bank of Scotland International Limited (Trading as NatWest International) as Mandated Lead Arrangers, Lenders and National Westminster Bank Plc as Agent dated 3 December 2020

"Act" means the Public Finance (Borrowing Powers) Act 2008 of Gibraltar as amended from time to time and where the context so admits shall include every other Gibraltar law governing or regulating the power of the Borrower to borrow including in particular but without prejudice to the generality of the words aforesaid the Gibraltar Constitution Order 2006 and the Public Finance (Control and Audit) Act of Gibraltar.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company. Notwithstanding the foregoing, in relation to The Royal Bank of Scotland International Limited t/a NatWest International or National Westminster Bank plc the term "Affiliate" shall not include:

- (a) the UK Government or any member or instrumentality thereof, including His Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof); or
- (b) any persons or entities controlled by or under common control with the UK Government or any member or instrumentality thereof (including His Majesty's Treasury and UK Financial Investments Limited) and which are not part of NatWest Group plc and its subsidiaries or subsidiary undertakings.

"Approved Official" means the Financial Secretary on behalf of the Borrower or such other person as the Minister with responsibility for Public Finance may notify in writing to the Agent.

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

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

"**Authorised Public Debt**" means the aggregate sums of money the Borrower is authorised to borrow under section 3(1) of the Act or such higher limit as might be substituted therefore by any law for the time being amending substituting or replacing the same.

"**Availability Period**" means the period from and including the date of satisfaction of the conditions precedent contained within Part 2 of Schedule 2 (*Conditions precedent to Utilisation*) to and including the date which falls one month before the Termination Date.

"**Available Commitment**" means a Lender's Commitment minus:

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

other than that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

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

"**Break Costs**" means any amount specified as such in any applicable Compounded Rate Supplement.

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

"**Central Bank Rate**" has the meaning given to it in the applicable Compounded Rate Terms.

"**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 or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

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

"**Compounded Rate Basis**" means the aggregate of the Margin and the Compounded Reference Rate.

"**Compounded Rate Interest Payment**" means the aggregate amount of interest that:

- (a) is, or is scheduled to become, payable under any Finance Document; and
- (b) relates to a Loan.

“Compounded Rate Supplement” means a document which:

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

“Compounded Rate Terms” means in relation to:

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

the terms set out in Part 1 (Definitions) of Schedule 6 (Compounded Rate Terms) or in any Compounded Rate Supplement.

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

“Compounding Methodology Supplement” means, in relation to the Daily Non-Cumulative Compounded Reference Rate or the Cumulative Compounded Reference Rate, a document which:

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

"Confidential Information" means all information relating to the Borrower, the Guarantor, 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) the Borrower, the Guarantor or any of its advisers; or
- b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower, the Guarantor 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 33 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by the Borrower or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs a) or b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower 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.

"CTA" means the Corporation Tax Act 2009.

"Cumulative Compounded Reference Rate" means, in relation to an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Part 3 (Cumulative Compounded Reference Rate) of Schedule 6 (Compounded Rate Terms) or in any relevant Compounding Methodology Supplement.

"Daily Non-Cumulative Compounded Reference 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 Part 2 (Daily Non-Cumulative Compounded Reference Rate) of Schedule 6 (Compounded Rate Terms) or in any relevant Compounding Methodology Supplement.

"Default" means an Event of Default or any event or circumstance specified in Clause 20 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender:

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

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

- (i) its failure to pay, is caused by:

- (A) administrative or technical error; or
 - (B) a Disruption Event, and
- payment is made within 5 Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

"Disruption Event" means either or both of:

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

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

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower.

"Event of Default" means any event or circumstance specified as such in Clause 20 (*Events of Default*).

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

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

"FATCA" means:

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

"FATCA Application Date" means:

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

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

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

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between the Arranger and the Borrower (or the Agent and the Borrower) setting out any of the fees referred to in Clause 11 (*Fees*).

"Finance Document" means this Agreement, the Guarantee, any Fee Letter and any other document designated as such by the Agent and the Borrower.

"Finance Party" means the Agent, the 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, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

- i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs a) to h) above.

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to clause 10.1 (Change of Interest Rate).

"Guarantee" means the guarantee dated on or about the date of this Agreement granted by the Guarantor to the Finance Parties in form and substance satisfactory to the Lenders.

"Guarantor" means The Secretary of State for Foreign Affairs at the Foreign Commonwealth and Development Office.

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

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

"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 21 (*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.

"LMA" means the Loan Market Association.

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

"Lookback Period" has the meaning given to it in Part 1 (Definitions) of Schedule 6 (Compounded Rate Terms).

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

"Margin" means 0.45% per cent. per annum

"Market Disruption Rate" has the meaning given to it in the applicable Compounded Rate Terms.

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

- (a) the ability of the Borrower to perform its payment obligations under the Finance Documents; or
- (b) the legality, validity, binding nature or enforceability of the Finance Documents against the Borrower.

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

- a) (subject to paragraph c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

"New Lender" has the meaning given to that term in Clause 21 (*Changes to the Lenders*).

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

"Party" means a party to this Agreement.

"Public Debt" shall have the same meaning as in the Act.

"Qualifying Lender" has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

"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 London interbank market.

"Repeating Representations" means each of the representations set out in Clauses 17.1 to 17.6 and 17.9 to 17.14.

"Reporting Day" has the meaning given to it in the applicable Compounded Rate Terms.

"Reporting Time" has the meaning given to it in the applicable Compounded Rate Terms.

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

"Restricted Person" means, a person that is:

- (a) listed on, or owned or controlled by a person listed on any Sanctions List or a person acting on behalf of such a person
- (b) located in, incorporated under the laws of or owned or controlled by or acting on behalf of a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions or acting on behalf of such a person or

- (c) otherwise a target of Sanctions.

"Rollover Loan" means one or more Loans:

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

"Sanctions" means any economic sanctions laws, regulations, embargoes, local applicable sanctions or restrictive measures administered, enacted or enforced by a Sanctions Authority.

"Sanctions Authority" means together the respective governmental institutions and agencies of any of the United States Government, the United Nations, the European Union, Gibraltar or the United Kingdom including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the United States Department of State, and His Majesty's Treasury of the United Kingdom.

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

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

"Subsidiary" means a subsidiary within the meaning of Section 2 of the Companies Act 2014.

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

"Termination Date" means the earlier of:

- a) 03 December 2026; or
- b) The date on which the Guarantee terminates.

"Total Commitments" means the aggregate of the Commitments, being £500,000,000 at the date of this Agreement.

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

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

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

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

"UK Financial Investments Limited" means the company registered in England and Wales with company number 06720891 whose registered office is c/o MSP Secretaries Limited, 27/28 Eastcastle Street, London, W1W 8DH

"UK Government" means the Government of the United Kingdom.

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

"US" 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 Schedule 3 (*Utilisation Request*).

"VAT" means:

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

1.2 Construction

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

- a) the **"Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Lender"**, the **"Borrower"**, the **"Guarantor"** 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;
- b) **"assets"** includes present and future properties, revenues and rights of every description;
- c) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- d) a **"group of Lenders"** includes all the Lenders;
- e) **"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;

- f) 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);
 - g) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - h) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - i) a time of day is a reference to London time.
- 1.2.2 Section, Clause and Schedule headings are for ease of reference only.
- 1.2.3 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.
- 1.2.4 A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been remedied or waived.
- 1.2.5 A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- a) any replacement page of that information service which displays that rate; and
 - b) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Borrower.
- 1.2.6 A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- 1.2.7 Any Compounded Rate Supplement overrides anything in:
- a) Schedule 6 (Compounded Rate Terms); or
 - b) any earlier Compounded Rate Supplement.
- 1.2.8 A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded Reference Rate or the Cumulative Compounded Reference Rate overrides anything relating to that rate in:
- a) in Part 2 (Daily Non-Cumulative Compounded Reference Rate) of Schedule 6 (Compounded Rate Terms) or Part 3 (Cumulative Compounded Reference Rate) of Schedule 6 (Compounded Rate Terms), as the case may be; or
 - b) any earlier Compounding Methodology Supplement.

1.2.9 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**

1.4.1 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.

1.4.2 Subject to Clause 32.3 (*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

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

2.1.2 In accordance with Section 17 of the Act, all money borrowed under this Agreement and all interest and other fees or charges payable pursuant to this Agreement shall be charged upon and shall be payable out of the Consolidated Fund established under Section 67 of the Gibraltar Constitution Order 2006 without further appropriation, provided that this shall not prohibit the Borrower from repaying amounts payable under this Agreement from any other lawful resources.

2.2 Termination of the 2020 Facility Agreement

2.2.1 Subject to;

a) the conditions precedent listed in Part 2 of Schedule 2 (*Conditions precedent to Utilisation*) being satisfied; and

b) repayment in full of all amounts due under the 2020 Facility Agreement

the 2020 Facility Agreement shall be terminated upon the first Utilisation of this Agreement and this Agreement shall replace in full the 2020 Facility Agreement.

2.2.2 For the avoidance of doubt the Parties agree that the Borrower will only be able to utilise the Commitment of either the 2020 Facility Agreement or this Agreement.

2.3 Finance Parties' rights and obligations

2.3.1 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.

2.3.2 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 the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with sub-clause 2.2.3 below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower 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 the Borrower.

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

3 PURPOSE

3.1 Purpose

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

3.1.1 financing the delivery of the Borrower's policy to:

- a) manage and/or eliminate the threat to the health or safety of the inhabitants of Gibraltar, to the stability of Gibraltar's economy or to the environment, in each case, caused directly or indirectly by the Covid-19 pandemic; and
- b) support any other capital expenditure, investments, public services or economic policy of the Borrower or to provide general working capital and operational funding.

3.1.2 payment of any fees, costs and expenses and Taxes in connection with entry into the Finance Documents.

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

4.1.1 The Borrower may not deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent to Utilisation*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

4.1.2 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 sub-clause 4.1.1 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*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

4.2.1 in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and

4.2.2 the Repeating Representations to be made by the Borrower are true in all material respects.

4.3 **Maximum number of Loans**

The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation 20 or more Loans would be outstanding.

SECTION 3

UTILISATION

5 UTILISATION

5.1 **Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 11am 1 Business Day prior to the proposed Utilisation Date.

5.2 **Completion of a Utilisation Request**

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- a) the proposed Utilisation Date is a Business Day within the Availability Period;
- b) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- c) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

5.2.2 Only one Loan may be requested in each Utilisation Request.

5.3 **Currency and amount**

5.3.1 The currency specified in a Utilisation Request must be sterling.

5.3.2 The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of £5,000,000 or, if less, the Available Facility.

5.4 **Lenders' participation**

- 5.4.1 If the conditions set out in this Agreement have been met, and subject to Clause 6.1 (*Repayment of Loans*) each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- 5.4.2 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.
- 5.4.3 The Agent shall notify each Lender of the amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 26.1 (*Payments to the Agent*), in each case by 1.00pm on the 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

- 6.1.1 The Borrower shall repay that Loan on the last day of its Interest Period.
- 6.1.2 Without prejudice to the Borrower's obligation under sub-clause 6.1.1 above, if:
- a) one or more Loans are to be made available to the Borrower:
 - i. on the same day that a maturing Loan is due to be repaid by the Borrower; and
 - ii. in whole or in part for the purpose of refinancing the maturing Loan; and
 - b) the proportion borne by each Lender's participation in the maturing Loan to the amount of that maturing Loan is the same as the proportion borne by that Lender's participation in the new Loans to the aggregate amount of those new Loans,

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

 - iii. if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
 - (1) the Borrower will only be required to make a payment under Clause 26.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and

- (2) each Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan and that Lender will not be required to make a payment under Clause 26.1 (*Payments to the Agent*) in respect of its participation in the new Loans; and
- iv. if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
 - (1) the Borrower will not be required to make a payment under Clause 26.1 (*Payments to the Agent*); and
 - (2) each Lender will be required to make a payment under Clause 26.1 (*Payments to the Agent*) in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender's participation in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.

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 Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- 7.1.1 that Lender shall promptly notify the Agent upon becoming aware of that event;
- 7.1.2 upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- 7.1.3 to the extent that the Lender's participation has not been transferred pursuant to sub-clause 7.4.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower 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 shall be immediately cancelled in the amount of the participations repaid.

7.2 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 10 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 £500,000) of the Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

7.3 Voluntary prepayment of Loans

- 7.3.1 Subject to clause 7.3.2, the Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders 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 £500,000).
- 7.3.2 On no more than four occasions in each twelve month period beginning on the date this Agreement, the Borrower may if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders 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 £500,000) on a day other than the last day of an Interest Period.

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

- 7.4.1 If:
- a) any sum payable to any Lender by the Borrower is required to be increased under sub-clause 12.2.3; or
 - a) any Lender claims indemnification from the Borrower under Clause 12.2 (*Tax gross-up*), Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with sub-clause 7.4.4 below.

- 7.4.2 On receipt of a notice of cancellation referred to in sub-clause 7.4.1 above, the Available Commitment of that Lender shall be immediately reduced to zero.
- 7.4.3 On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under sub-clause 7.4.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.

- 7.4.4 If:
- a) any of the circumstances set out in sub-clause 7.4.1 above apply to a Lender;
 - b) any Lender becomes a Defaulting Lender; or
 - c) the Borrower becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on 10 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 21 (*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 21.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

7.4.5 The replacement of a Lender pursuant to sub-clause 7.4.4 above shall be subject to the following conditions:

- a) the Borrower shall have no right to replace the Agent;
- b) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
- c) in no event shall the Lender replaced under sub-clause 7.4.4 above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
- d) the Lender shall only be obliged to transfer its rights and obligations pursuant to sub-clause 7.4.4 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.

7.4.6 A Lender shall perform the checks described in sub-clause 7.4.5d) above as soon as reasonably practicable following delivery of a notice referred to in sub-clause 7.4.4 above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

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

- a) If any Lender becomes a Defaulting Lender, the Borrower, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 10 Business Days' notice of cancellation of each Available Commitment of that Lender.
- b) On the notice referred to in paragraph a) above becoming effective, each Available Commitment of the Defaulting Lender shall be immediately reduced to zero.
- c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph a) above, notify all the Lenders.

7.6 **Restrictions**

7.6.1 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.

7.6.2 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.

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

7.6.4 The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

- 7.6.5 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- 7.6.6 If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- 7.6.7 If all or part of any Lender's participation in a Loan 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) will be deemed to be cancelled on the date of repayment or prepayment.

7.7 **Application of prepayments**

Any prepayment of a Loan pursuant to Clause 7.3 (Voluntary prepayment of Loans) shall be applied pro rata to each Lender's participation in that Loan.

SECTION 5

COSTS OF UTILISATION

8 INTEREST

8.1 Calculation of interest

8.1.1 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:

- a) Margin; and
- b) Compounded Reference Rate for that day.

8.1.2 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 shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six monthly intervals after the first day of the Interest Period).

8.3 Default interest

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 8.3.2 below is 2 per cent.. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.

- 8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
- a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - b) the rate of interest applying to the overdue amount during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- 8.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notification of rates of interest

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

This clause 8.4.2 shall not apply to any Compounded Rate Interest Payment determined pursuant to clause 10.2 (Cost of funds).

- 8.4.3 The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.
- 8.4.4 The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest relating to a Loan to which clause 10.2 (Cost of funds) applies.
- 8.4.5 This clause 8.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

9 INTEREST PERIODS

9.1 Selection of Interest Periods

- 9.1.1 The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan.

9.1.2 Subject to this Clause 9, the Borrower may select an Interest Period of 1,2,3 or 6 Months or any other period agreed between the Borrower, the Agent and all the Lenders.

9.1.3 An Interest Period for a Loan shall not extend beyond the Termination Date.

9.1.4 Each Interest Period for a Loan shall start on the Utilisation Date.

9.1.5 A Loan has one Interest Period only.

9.2 **Non-Business Days**

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

10 **CHANGES TO THE CALCULATION OF INTEREST**

10.1 **Market disruption**

If before the Reporting Time for a Loan, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 33 $\frac{1}{3}$ % of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of the Market Disruption Rate, then clause 10.2 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

10.2 **Cost of funds**

10.2.1 If this clause 10.2 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 the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

- a) the Margin; and
- b) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time for that Loan, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan from whatever source it may reasonably select (and, if that rate is less than zero, such rate shall be deemed to be zero).

10.2.2 If this clause 10.2 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

10.2.3 Any alternative basis agreed pursuant to clause 10.2.2 shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.2.4 If this clause 10.2 applies pursuant to clause 10.1 (Market disruption) and:

- a) a Lender's Funding Rate is less than the Market Disruption Rate; or
- b) a Lender does not notify a rate to the Agent by the Reporting Time for that Loan,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of 10.2.1, to be the Market Disruption Rate for that Loan.

10.2.5 If this clause 10.2 applies the Agent shall, as soon as is practicable, notify the Borrower.

10.3 Break Costs

10.3.1 The Borrower shall, within ten Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

10.3.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Commitment fee

11.1.1 The Borrower shall pay to the Agent (for the account of each Lender) a fee computed at the rate of 35% per cent of the Margin per annum on that Lender's Available Commitment for the Availability Period.

11.1.2 The accrued commitment fee is payable 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.

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

11.2 Utilisation fee

11.2.1 The Borrower must pay to the Agent (for the account of each Lender) a utilisation fee computed at the rate of:

- a) for each day on which the aggregate amount of Loans is equal or less than 50% of the Total Commitments, 0% per annum on Loans;
- b) for each day on which the aggregate amount of Loans exceeds 50% of the Total Commitments but is equal or less than 75% of the Total Commitments, 0.15% per annum on Loans; and
- c) for each day on which the aggregate amount of the Loans exceeds 75% of the Total Commitments, 0.30% per annum on Loans;

11.2.2 The utilisation fee is payable on the amount of each Lender's share in the Loans.

11.2.3 Accrued utilisation fee is payable quarterly in arrears. Accrued utilisation fee is also payable to the Agent for a Lender on the date that its Commitment is cancelled and its share in the Loans is prepaid or repaid in full. The accrued utilisation fee is payable on

the last day of each successive period of three Months which ends during the Availability Period.

11.3 **Arrangement fee**

The Borrower shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

11.4 **Agency fee**

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

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

In this Agreement:

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

- a) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (The Original Parties), and
- b) where it relates to a Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party as a Lender

"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) 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 Income Tax Act 2007 of the United Kingdom ("**ITA**") making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or

- (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
- (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
 - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (iii) a Treaty Lender; or
- b) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.

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

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

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

"Treaty Lender" means a Lender which:

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

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

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

- 12.2.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 12.2.2 The Borrower shall promptly upon becoming aware that it 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 Borrower.
- 12.2.3 If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower 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.
- 12.2.4 A payment shall not be increased under sub-clause 12.2.3 above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
- a) 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
 - b) the relevant Lender is a Qualifying Lender solely by virtue of sub-clause (a) of the definition of Qualifying Lender and:
 - i. an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Borrower a certified copy of that Direction; and
 - ii. the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - c) the relevant Lender is a Qualifying Lender solely by virtue of sub-clause (a) of the definition of Qualifying Lender and:
 - i. the relevant Lender has not given a Tax Confirmation to the Borrower; and
 - ii. the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
 - d) the relevant Lender is a Treaty Lender and the Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under sub-clauses 12.2.7 or 12.2.8 (as applicable) below.

12.2.5 If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

12.2.6 Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower 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.

12.2.7

a) Subject to paragraph b) below, a Treaty Lender and the Borrower, if the Borrower makes a payment to which that Treaty Lender is entitled, shall cooperate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.

b)

i. A Treaty Lender which is an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and

ii. a Treaty Lender which is not an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender,

and, having done so, that Lender shall be under no obligation pursuant to paragraph i above.

c) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with sub-clause 12.2.7b) above and:

i a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

ii a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs;

(B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing; or

(C) HM Revenue & Customs has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

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

12.2.8 If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with sub-clause 12.2.7b) above, the Borrower shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in any Loan unless the Lender otherwise agrees.

12.2.9 The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.

12.3 Tax indemnity

12.3.1 The Borrower shall (within ten 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.

12.3.2 Sub-clause 12.3.1 above shall not apply:

- a) 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
- b) 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 sub-clause 12.2.4 of Clause 12.2 (*Tax gross-up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by a Party.

12.3.3 A Protected Party making, or intending to make, a claim under sub-clause 12.3.1 above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

12.3.4 A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Agent.

12.4 Tax Credit

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

12.4.1 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

12.4.2 that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Borrower 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 Borrower.

12.5 Lender status confirmation

Each Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Agent and without liability to the Borrower, which of the following categories it falls in:

12.5.1 not a Qualifying Lender;

12.5.2 a Qualifying Lender (other than a Treaty Lender); or

12.5.3 a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 12.5 then that Lender shall be treated for the purposes of this Agreement (including by the Borrower) 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 Borrower). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 Stamp taxes

The Borrower shall pay and, within ten 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 VAT

If at any time VAT becomes chargeable in Gibraltar:

12.7.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to sub-clause 12.7.2 below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

12.7.2 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):

- a) (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 a) 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
- b) (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.

12.7.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

12.7.4 Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

12.7.5 In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

12.8 **FATCA information**

12.8.1 Subject to sub-clause 12.8.2 below, each Party shall, within ten Business Days of a reasonable request by another Party:

- a) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;

- b) 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
- c) 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.

12.8.2 If a Party confirms to another Party pursuant to sub-clause 12.8.1a) 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.

12.8.3 Sub-clause 12.8.1 above shall not oblige any Finance Party to do anything, and sub-clause 12.8.1c) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

- a) any law or regulation;
- b) any fiduciary duty; or
- c) any duty of confidentiality.

12.8.4 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 sub-clauses 12.8.1a) or 12.8.1b) above (including, for the avoidance of doubt, where sub-clause 12.8.1c) 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**

12.9.1 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.

12.9.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

13 **INCREASED COSTS**

13.1 **Increased Costs**

13.1.1 Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within ten Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made

after the date of this Agreement or (iii) attributable to the implementation or application of or compliance with Basel III or CRD IV or any other law or regulation that implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

13.1.2 In this Agreement

Basel III means:

(A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

(B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III

“CRD IV” means, together the Capital Requirements Regulation (Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012 and the Capital Requirements Directive (Directive 2013/36/EU 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 Directive 2006/48/EC and 2006/49/EC) of the European Parliament and the Council, as either of the same may be amended, supplemented or restated from time to time.

"Increased Costs" means:

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

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

13.2 Increased Cost claims

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

13.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

13.3.1 Clause 13.1 (Increased Costs) does not apply to the extent any Increased Cost is:

- a) attributable to a Tax Deduction required by law to be made by the Borrower;
- b) attributable to a FATCA Deduction required to be made by a Party;
- c) 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 sub-clause 12.3.2 of Clause 12.3 (*Tax indemnity*) applied); or
- d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

13.3.2 In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14 OTHER INDEMNITIES

14.1 Currency indemnity

14.1.1 If any sum due from the Borrower 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:

- a) making or filing a claim or proof against the Borrower;
- b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within ten 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.

14.1.2 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

The Borrower shall, within ten Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- 14.2.1 the occurrence of any Event of Default;
- 14.2.2 a failure by the Borrower 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 25 (*Sharing among the Finance Parties*);

14.2.3 funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

14.2.4 a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 **Indemnity to the Agent**

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

14.3.1 investigating any event which it reasonably believes is a Default;

14.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

14.3.3 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

15 **MITIGATION BY THE LENDERS**

15.1 **Mitigation**

15.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12.1 (*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.

15.1.2 Sub-clause 15.1.1 above does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 **Limitation of liability**

15.2.1 The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (Mitigation).

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

16 **COSTS AND EXPENSES**

16.1 **Transaction expenses**

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

16.1.1 this Agreement and any other documents referred to in this Agreement; and

16.1.2 any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

16.2.1 the Borrower requests an amendment, waiver or consent; or

16.2.2 an amendment is required pursuant to Clause 26.9 (*Change of currency*),

the Borrower shall, within ten 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 Borrower shall, within ten 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 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17 REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party on the date of this Agreement.

17.1 Status

It has the power to own its assets and carry on its business as it is being conducted.

17.2 Binding obligations

The obligations expressed to be assumed by it in each Finance 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 22 (*Changes to the Borrower*), legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

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

- a) any law or regulation applicable to it; or
- b) any agreement or instrument binding upon it or any of its assets.

17.4 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 Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

17.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

17.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

17.5.2 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.

17.6 **Governing law and enforcement**

17.6.1 The choice of English law as the governing law of the Finance Documents will be recognised and enforced in Gibraltar.

17.6.2 Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in Gibraltar.

17.6.3 The execution and delivery by the Borrower of the Finance Documents to which it is a party and the exercise by the Borrower of its rights and the performance by it of its obligations thereunder will constitute commercial acts done and performed for commercial purposes.

17.7 **Deduction of Tax**

It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is:

17.7.1 a Qualifying Lender:

- a) falling within sub-clause 17.7.1a) of the definition of "**Qualifying Lender**"; or
- b) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within sub-clause 17.7.1b) of the definition of "**Qualifying Lender**"; or
- c) falling within sub-clause 17.7.2 of the definition of "**Qualifying Lender**" or;

17.7.2 a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

17.8 **No filing or stamp taxes**

Under Gibraltar law, 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.

17.9 **No default**

17.9.1 No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

17.9.2 No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which is likely to have a Material Adverse Effect.

17.10 No misleading information

17.10.1 Any factual information provided by the Borrower in writing for the purposes of this Agreement 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 is stated.

17.10.2 No information has been given or withheld that results in the information provided being untrue or misleading in any material respect.

17.10.3 Any projection or forecast provided by the Borrower for the purposes of this Agreement was prepared in good faith on the basis of assumptions which, as at the date of such information provided, the Financial Secretary of the Borrower (acting reasonably) considered to be reasonable and arrived at after careful consideration, it being acknowledged by the Lender and the Borrower that there is material uncertainty as to the likely consequences and impacts of Covid-19 on the Borrower.

17.11 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 Gibraltar law applicable to the Borrower.

17.12 No proceedings

17.12.1 No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any competent statutory agency of the Borrower.

17.12.2 No judgment or order of a court, arbitral body or agency which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any competent statutory agency of the Borrower.

17.13 Non-sanctioned Entity

Save to the extent that such representation would conflict with the Council Regulation (EC) No 2271/96 as amended the Borrower, nor any directors, officers, agent, employee or person acting on behalf of the foregoing to the best of their knowledge (having made due and careful enquiry);

17.13.1 is or ever has been a Restricted Person and/or has not acted directly or indirectly on behalf of a Restricted Person;

17.13.2 is subject to Sanctions;

17.13.3 has been the subject of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority; or

17.13.4 is engaging or had engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to breach, directly, or indirectly, any Sanctions, with or for the benefit of any Restricted Party.

17.14 **Anti-corruption Law**

The Borrower has conducted its business in compliance with applicable anti-corruption laws, rules and regulations and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws, rules and regulations.

17.15 **Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

18 **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 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.

18.1 **Information: miscellaneous**

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

18.1.1 copies of such published information concerning the economic, financial and statistical position of the Borrower as the Agent may reasonably require provided that such information is in the public domain or not confidential;

18.1.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, and which is likely to if adversely determined, have a Material Adverse Effect;

18.1.3 promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against the Borrower, and which would have a Material Adverse Effect; and

18.1.4 promptly, such further information regarding the financial condition, business and operations of the Borrower as any Finance Party (through the Agent) may reasonably request.

18.2 **Annual forecast of revenue and expenditure**

18.2.1 The Borrower shall supply to the Agent, as soon as the same becomes available, but in any event within 120 days following the commencement of each of its financial years, an annual forecast of revenue and expenditure (the "**Forecast**").

18.2.2 If the Borrower updates or changes the Forecast it shall within not more than three Business Days of the update or change being made deliver to the Agent such updated or changed Forecast together with a written explanation of the changes to the Forecast.

18.3 **Notification of default**

18.3.1 The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

18.3.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by the Financial Secretary of the Borrower or the Accountant General

of the Borrower 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).

18.4 **Direct electronic delivery by Borrower**

The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 28.5 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

18.5 **"Know your customer" checks**

18.5.1 If:

- a) 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;
- b) any change in the status of the Borrower after the date of this Agreement; or
- c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph c) 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, the Borrower 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 c) 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 c) 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.

18.5.2 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.

19 **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.

19.1 **Authorisations**

The Borrower shall promptly:

19.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

19.1.2 supply certified copies to the Agent of,

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

19.2 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject (including without limitation in respect of the Borrower, the provisions of section 12 of the Act), if failure so to comply is likely to result in a Material Adverse Effect.

19.3 **Act**

19.3.1 The Borrower will not permit the Public Debt to exceed the Authorised Public Debt for so long as monies remain outstanding under this Agreement and the Borrower will notify the Agent of the Public Debt as at 31 March in each year as and when the same is published.

19.3.2 The Borrower will apply and appropriate all sums borrowed hereunder to the fund and purposes authorised under Section 13 of the Act and observe and comply with every requirement restriction and obligation imposed on the Borrower under the Act.

19.4 **Pari Passu ranking**

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of the Finance Parties against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by Gibraltar law applicable to the Borrower.

19.5 **Sanctions Compliance**

Save to the extent that such action would conflict with Council Regulation (EC) No 2271/96 as amended,

19.5.1 the Borrower shall not, nor any director, officer, agent, employee or person acting on behalf of the forgoing, to the best of their knowledge and (having made due and careful enquiry) shall become a Restricted Person or act directly or indirectly on behalf of a Restricted Person;

19.5.2 the Borrower shall, not use any revenue or benefit derived from any activity or dealing with a Restricted Person to be used in discharging any obligation due or owing to the Finance Parties;

19.5.3 the Borrower shall, to the extent permitted by law promptly upon becoming aware of them supply to the Agent details of any claim, action, suit proceedings or investigation against it with respect to Sanctions by any Sanctions Authority;

19.5.4 the Borrower shall not, permit or authorise any other person to directly or indirectly use, lend make payments of contribute or otherwise make available all or any part of the proceeds of the Facility or other transactions contemplated by this Agreement to fund trade, business or other activities;

- a) involving or for the benefit of any Restricted Persons; or
- b) in any other manner that could result in the Borrower or any Finance Party being in breach of any Sanctions or becoming a Restricted Person,

19.5.5 the Borrower shall, comply in all respect with all Sanctions;

19.5.6 the Borrower shall maintain appropriate policies and procedures designed to prevent any action being taken that would be contrary to the undertakings in paragraph 19.5.1 to 19.5.2 above.

19.6 **Anti-corruption Law**

19.6.1 The Borrower shall not directly or indirectly use the proceeds of the Facility 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 (including without limitation Part 24 of the Crimes Act 2011 of Gibraltar).

19.6.2 The Borrower shall conduct its business in compliance with anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

20 **EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clause 20 is an Event of Default (save for Clause 20.10 (Acceleration)).

20.1 **Non-payment**

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

20.1.1 its failure to pay is caused by:

- a) administrative or technical error; or
- b) a Disruption Event; and

20.1.2 payment is made within 3 Business Days of its due date.

20.2 **Other obligations**

20.2.1 The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*)).

20.2.2 No Event of Default under sub-clause 20.2.1 above in relation to Clause 20.2.1 will occur if the failure to comply is capable of remedy and is remedied within 7 Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

20.3 **Misrepresentation**

20.3.1 Any written representation or written statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower 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.

20.3.2 No Event of Default under clause 20.3.1 will occur if:

- a) the event or circumstance causing the representation or statement to be incorrect or misleading is capable of remedy; and
- b) the Borrower shall have remedied such event or circumstance within 10 Business Days after the earlier of:
 - a. the Borrower becoming aware of such incorrect or misleading representation or statement; and
 - b. receipt by the Borrower of written notice from the Agent requiring the event or circumstance to be remedied.

20.4 **Cross default**

- 20.4.1 Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- 20.4.2 Any Financial Indebtedness of the Borrower 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).
- 20.4.3 Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described).
- 20.4.4 No Event of Default will occur under this Clause 20.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within sub-clauses 20.4.1 to 20.4.3 above is less than £50,000,000 (or its equivalent in any other currency or currencies).

20.5 **Sovereign Default**

- 20.5.1 The Borrower:
 - a) is unable or admits inability to pay its debts as they fall due;
 - b) suspends making payments on any of its debts; or
 - c) 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.
- 20.5.2 The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- 20.5.3 A moratorium is declared in respect of any indebtedness of the Borrower.

20.6 **Sovereign Default proceedings**

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

- 20.6.1 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 the Borrower;

20.6.2 a composition, compromise, assignment or arrangement with any creditor of the Borrower;

20.6.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or

20.6.4 enforcement of any Security over any assets of the Borrower, or any analogous procedure or step is taken in any jurisdiction.

20.7 **Unlawfulness**

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

20.8 **Repudiation**

20.8.1 The Borrower or the Guarantor repudiates a Finance Document or evidences (by way of a written statement by an authorised representative of the Guarantor or Borrower (as appropriate) addressed to the Agent) an intention to repudiate a Finance Document.

20.8.2 The Guarantor revokes or evidences (by way of a written statement by an authorised representative of the Guarantor or Borrower (as appropriate) addressed to the Agent) an intention to revoke the Guarantee.

20.9 **Material adverse change**

Any other circumstance arises in relation to the Borrower which means that the Borrower is not or will not be able to perform its payment obligations under the Finance Documents.

20.10 **Acceleration**

20.10.1 On and at any time after the occurrence of an Event of Default is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower and the Guarantor (in accordance with the terms of the Guarantee):

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

SECTION 9

CHANGES TO PARTIES

21 CHANGES TO THE LENDERS

21.1 Assignments and transfers by the Lenders

Subject to this Clause 21, a Lender (the "**Existing Lender**") may:

21.1.1 assign any of its rights; or

21.1.2 transfer by novation any of its rights and obligations,

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

21.2 Borrower consent

21.2.1 The consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:

a) to another Lender or an Affiliate of any Lender; or

a) made at a time when an Event of Default is continuing.

21.2.2 The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower 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 Borrower within that time.

21.3 Other conditions of assignment or transfer

21.3.1 An assignment will only be effective on:

a) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and

b) 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.

21.3.2 A transfer will only be effective if the procedure set out in Clause 21.6 (*Procedure for transfer*) is complied with.

21.3.3 If:

a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

b) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower 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 sub-clause 21.3 shall not apply:

- c) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or
- d) 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 sub-clause 12.2.7b)(B) if the Borrower has not made a Borrower DTTP Filing in respect of that Treaty Lender.

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

21.4 **Assignment or transfer fee**

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

21.5 **Limitation of responsibility of Existing Lenders**

21.5.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- a) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- b) the financial condition of the Borrower or the Guarantor;
- c) the performance and observance by the Borrower or the Guarantor of its obligations under the Finance Documents or any other documents; or
- d) 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.

21.5.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and the Guarantor 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

- b) will continue to make its own independent appraisal of the creditworthiness of the Borrower and the Guarantor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

21.5.3 Nothing in any Finance Document obliges an Existing Lender to:

- a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 21; or
- b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower or the Guarantor of its obligations under the Finance Documents or otherwise.

21.6 Procedure for transfer

21.6.1 Subject to the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with sub-clause 21.6.3 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 sub-clause 21.6.2 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.

21.6.2 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.

21.6.3 Subject to Clause 21.10 (*Pro rata interest settlement*), on the Transfer Date:

- a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower 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**");
- b) the Borrower 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 the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- c) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- d) the New Lender shall become a Party as a "**Lender**".

21.7 Procedure for assignment

21.7.1 Subject to the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with sub-clause 21.7.3 below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to sub-clause 21.7.2 below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

21.7.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "**know your customer**" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

21.7.3 Subject to Clause 21.10 (*Pro rata interest settlement*), on the Transfer Date:

- a) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- b) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the "Relevant Obligations") and expressed to be the subject of the release in the Assignment Agreement; and
- c) the New Lender shall become a Party as a "**Lender**" and will be bound by obligations equivalent to the Relevant Obligations.

21.7.4 Lenders may utilise procedures other than those set out in this Clause 21.7 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 21.6 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 21.2 (*Borrower consent*) and Clause 21.3 (*Other conditions of assignment or transfer*).

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

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

21.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 21, each Lender may without consulting with or obtaining consent from the Borrower, 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:

21.9.1 any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

21.9.2 any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- a) 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
- b) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

21.10 Pro rata interest settlement

21.10.1 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 21.6 (*Procedure for transfer*) or any assignment pursuant to Clause 21.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (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 21.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

21.10.2 In this Clause 21.10 references to "**Interest Period**" shall be construed to include a reference to any other period for accrual of fees.

21.10.3 An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 21.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

22 CHANGES TO THE BORROWER

22.1 Assignments and transfer by Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

SECTION 10

THE FINANCE PARTIES

23 ROLE OF THE AGENT AND THE ARRANGER

23.1 Appointment of the Agent

23.1.1 Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

23.1.2 Each of the Arranger and the Lenders 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.

23.2 Instructions

23.2.1 The Agent shall:

- a) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
- b) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph a) above.

23.2.2 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. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

23.2.3 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.

23.2.4 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.

23.2.5 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.

23.2.6 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.

23.3 Duties of the Agent

23.3.1 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

23.3.2 Subject to sub-clause 23.3.3 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.

23.3.3 Without prejudice to Clause 21.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), sub-clause 23.3.2 above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.

23.3.4 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.

23.3.5 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.

23.3.6 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 Arranger) under this Agreement, it shall promptly notify the other Finance Parties.

23.3.7 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).

23.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

23.5 No fiduciary duties

23.5.1 Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.

23.5.2 Neither the Agent nor the 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.

23.6 Business with the Borrower and its subsidiaries

The Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Borrower's subsidiaries.

23.7 Rights and discretions

23.7.1 The Agent may:

- a) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- b) 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
- c) 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.

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

- a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (*Non-payment*));
- b) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
- c) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of the Guarantor.

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

23.7.4 Without prejudice to the generality of sub-clause 23.7.3 above or sub-clause 23.7.5 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.

23.7.5 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.

23.7.6 The Agent may act in relation to the Finance Documents through its officers, employees and agents.

23.7.7 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.

23.7.8 Without prejudice to the generality of paragraph 23.7.7 above, the Agent:

- i may disclose; and
- ii on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,

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

23.7.9 Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

23.7.10 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.

23.8 **Responsibility for documentation**

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

23.8.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Borrower or any other person in or in connection with any Finance Document or the Information Memorandum or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

23.8.2 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

23.8.3 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.

23.9 **No duty to monitor**

The Agent shall not be bound to enquire:

23.9.1 whether or not any Default has occurred;

23.9.2 as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

23.9.3 whether any other event specified in any Finance Document has occurred.

23.10 **Exclusion of liability**

23.10.1 Without limiting sub-clause 23.10.2 below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:

- a) 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;
- b) 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
- c) without prejudice to the generality of paragraphs a) and b) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

23.10.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this sub-clause 23.10.2 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

23.10.3 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.

23.10.4 Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:

- a) any "**know your customer**" or other checks in relation to any person; or
- b) 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 Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

23.10.5 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.

23.11 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including, 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 26.10 (*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 the Borrower or the Guarantor pursuant to a Finance Document).

23.12 Resignation of the Agent

23.12.1 The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Borrower.

23.12.2 Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

23.12.3 If the Majority Lenders have not appointed a successor Agent in accordance with sub-clause 23.12.2 above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom).

23.12.4 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 sub-clause 23.12.3 above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 23 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.

23.12.5 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. The Borrower shall, within ten Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

23.12.6 The Agent's resignation notice shall only take effect upon the appointment of a successor.

23.12.7 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 sub-clause 23.12.5 above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 23 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

23.12.8 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with sub-clause 23.12.2 above. In this event, the Agent shall resign in accordance with sub-clause 23.12.2 above.

23.12.9 The Agent shall resign in accordance with sub-clause 23.12.2 above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to sub-clause 23.12.3 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:

- a) the Agent fails to respond to a request under Clause 12.8 (*FATCA information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- b) 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
- c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

23.13 Confidentiality

23.13.1 (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.

23.13.2 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.

23.14 Relationship with the Lenders

23.14.1 Subject to Clause 21.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

- a) entitled to or liable for any payment due under any Finance Document on that day; and
- b) 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.

23.14.2 Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 28.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 28.2 (*Addresses*) and sub-clause 28.5.1b) 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.

23.15 Credit appraisal by the Lenders

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

23.15.1 the financial condition, status and nature of the Borrower and the Guarantor;

23.15.2 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;

23.15.3 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

23.15.4 the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

23.16 **Agent's management time**

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and 23.11 (*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 Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

23.17 **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.

24 **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

24.1 No provision of this Agreement will:

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

24.1.2 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

24.1.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25 **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 the Borrower other than in accordance with Clause 26 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

25.1.1 the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;

25.1.2 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 26 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

25.1.3 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 26.5 (*Partial payments*).

25.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 26.5 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

25.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 25.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower 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 the Borrower.

25.4 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:

25.4.1 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

25.4.2 as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

25.5 Exceptions

25.5.1 This Clause 25 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.

25.5.2 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:

- a) it notified that other Finance Party of the legal or arbitration proceedings; and
- b) 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

26 PAYMENT MECHANICS

26.1 Payments to the Agent

26.1.1 On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower 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.

26.1.2 Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

26.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 26.3 (*Distributions to the Borrower*) and Clause 26.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

26.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

26.4 Clawback and pre-funding

26.4.1 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.

26.4.2 Unless sub-clause 26.4.3 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.

26.4.3 If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:

- a) the Agent shall notify the Borrower of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and

- b) 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.

26.5 Partial payments

26.5.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

- a) first, in or towards payment pro rata of any unpaid amount owing to the Agent under the Finance Documents;
- b) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- c) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- d) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

26.5.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in sub-clauses 26.5.1b) to 26.5.1d) above.

26.5.3 Sub-clauses 26.5.1 and 26.5.2 above will override any appropriation made by the Borrower.

26.6 No set-off by Borrower

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

26.7 Business Days

26.7.1 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).

26.7.2 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.

26.8 Currency of account

26.8.1 Subject to sub-clauses 26.8.2 and 26.8.3 below, sterling is the currency of account and payment for any sum due from the Borrower under any Finance Document.

26.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

26.8.3 Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

26.9 Change of currency

26.9.1 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:

- a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
- b) 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).

26.9.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

26.10 Disruption to payment systems etc.

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

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

26.10.2 the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in sub-clause 26.10.1 above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

26.10.3 the Agent may consult with the Finance Parties in relation to any changes mentioned in sub-clause 26.10.1 above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

26.10.4 any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 32 (*Amendments and Waivers*);

26.10.5 the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 26.10; and

26.10.6 the Agent shall notify the Finance Parties of all changes agreed pursuant to sub-clause 26.10.4 above.

26.11 Amounts paid in error

26.11.1 If the Agent pays an amount to another Party and within 3 Business Days of the date of payment the Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent.

26.11.2 Neither:

- a) the obligations of any Party to the Agent; nor
- b) the remedies of the Agent,

(whether arising under this Clause 26.11 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).

26.11.3 All payments to be made by a Party to the Agent (whether made pursuant to this Clause 26.11 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.

26.11.4 In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Party which the Agent determines (in its sole discretion) was made in error.

27 SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, 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.

28 NOTICES

28.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, shall be made by letter.

28.2 Addresses

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

28.2.1 in the case of the Borrower, that identified with its name below;

28.2.2 in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

28.2.3 in the case of the Agent, that identified with its name below,

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

28.3 Delivery

28.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- a) 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 28.2 (*Addresses*), if addressed to that department or officer.

28.3.2 Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).

28.3.3 All notices from or to the Borrower shall be sent through the Agent.

28.3.4 Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to the Guarantor.

28.3.5 Any communication or document which becomes effective, in accordance with sub-clauses 28.3.1 to 28.3.4 above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

28.4 Notification of address

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

28.5 Electronic communication

28.5.1 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:

- a) 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
- b) 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.

28.5.2 Any such electronic communication or delivery as specified in sub-clause 28.5.1 above to be made between the Borrower 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.

28.5.3 Any such electronic communication or document as specified in sub-clause 28.5.1 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.

28.5.4 Any electronic communication or document which becomes effective, in accordance with sub-clause 28.5.3 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.

28.5.5 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 28.5.

28.6 English language

28.6.1 Any notice given under or in connection with any Finance Document must be in English.

28.6.2 All other documents provided under or in connection with any Finance Document must be:

- a) in English; or
- b) 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.

29 CALCULATIONS AND CERTIFICATES

29.1 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.

29.2 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.

29.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

30 PARTIAL INVALIDITY

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

31 REMEDIES AND WAIVERS

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

32 AMENDMENTS AND WAIVERS

32.1 Required consents

32.1.1 Subject to Clause 32.2 (*All Lender matters*) and Clause 32.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders, the Guarantor and the Borrower and any such amendment or waiver will be binding on all Parties.

32.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 32.

32.1.3 Sub-clause 21.10.3 (*Pro rata interest settlement*) shall apply to this Clause 32.

32.2 All Lender matters

Subject to Clause 38.3 (*Other exceptions*) and Clause 32.6 (changes to reference rates) amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

32.2.1 the definition of "**Majority Lenders**" in Clause 1.1 (*Definitions*);

32.2.2 an extension to the date of payment of any amount under the Finance Documents;

32.2.3 a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

32.2.4 an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;

32.2.5 a change to the Borrower or Guarantor other than in accordance with Clause 22 (*Changes to the Borrower*);

32.2.6 any provision which expressly requires the consent of all the Lenders;

32.2.7 Clause 2.2 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 7.1 (*Illegality*), Clause 21 (*Changes to the Lenders*), Clause 22 (*Changes to the Borrower*), Clause 25 (*Sharing among the Finance Parties*), this Clause 32, Clause 36 (*Governing law*) or sub-clause (*Jurisdiction*);

32.2.8 (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of the Guarantee;

shall not be made without the prior consent of all the Lenders and the Guarantor.

32.3 Other exceptions

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

32.4 Disenfranchisement of Defaulting Lenders

32.4.1 For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

- a) the Majority Lenders; or
 - b) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,
- has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,

that Defaulting Lender's Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (a) and (b) above.

32.4.2 For the purposes of this Clause 32.4, the Agent may assume that the following Lenders are Defaulting Lenders:

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

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

32.5 Replacement of a Defaulting Lender

32.5.1 The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 10 Business Days' prior written notice to the Agent and such Lender:

- a) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
- b) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of the undrawn Facility Commitment of the Lender; or

- c) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 21 (*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 is acceptable (in the case of any transfer of a Facility Commitment) to the Issuing Bank and 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 21 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- i in an amount equal to the outstanding principal amount of such Lender’s participation in the outstanding Utilisations and all accrued interest (to the extent that the Agent has not given a notification under Clause 21.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
- ii in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph i above.

32.5.2 Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 32.5 shall be subject to the following conditions:

- a) the Borrower shall have no right to replace the Agent or Security Agent;
- b) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
- c) the transfer must take place no later than 30 Business Days after the notice referred to in paragraph 32.5.1 above;
- d) 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
- e) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph 32.5.1 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.

32.5.3 The Defaulting Lender shall perform the checks described in paragraph (b) above as soon as reasonably practicable following delivery of a notice referred to in paragraph 32.5.1 above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

32.6 **Changes to reference rates**

32.6.1 Subject to Clause 32.3 (*Other exceptions*), if a Rate Replacement Event has occurred any amendment or waiver which relates to:

- a) providing for the use of a Replacement Reference Rate; and
- b)

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

32.6.2 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:

- a) relates to the use of the Reference Rate on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- b) is issued on or after the date of this Agreement,

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

32.6.3 In this Clause 32.6.:

"Published Rate Replacement Event" means:

- a) the methodology, formula or other means of determining the Reference Rate has in the opinion of the Majority Lenders and the Borrower, materially changed;
- b)
 - i. Either:
 - (A) the administrator of the Reference Rate 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 Reference Rate is insolvent,

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

- ii. the administrator of the Reference Rate publicly announces that it has ceased or will cease to provide the Reference Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Reference Rate;
 - iii. the supervisor of the administrator of the Reference Rate publicly announces that the Reference Rate has been or will be permanently or indefinitely discontinued; or
 - iv. the administrator of the Reference Rate or its supervisor announces that the Reference Rate may no longer be used; or
- c) the administrator of the Reference Rate determines that the Reference Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- i. the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
 - ii. the Reference Rate is calculated in accordance with any such policy or arrangement for a period no less than 20 Business Days; or
- d) in the opinion of the Majority Lenders and the Borrower, the Reference Rate 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 Reference Rate by:
 - i. the administrator of the Reference Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by the Reference Rate); or
 - ii. any Relevant Nominating Body,

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

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

33 CONFIDENTIAL INFORMATION

33.1 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 33.2 (*Disclosure of Confidential Information*) and Clause 33.3 (*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.

33.2 Disclosure of Confidential Information

Any Finance Party may disclose:

33.2.1 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 sub-clause 33.2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

33.2.2 to any person:

- a) 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;
- b) 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 the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- c) appointed by any Finance Party or by a person to whom sub-clause 33.2.2a) or b) 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 sub-clause 23.14.2);
- d) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-clauses 33.2.2a) or 33.2.2b) above;

- e) 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;
- f) 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;
- g) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 21.9 (*Security over Lenders' rights*);
- h) who is a Party; or
- i) with the consent of the Borrower;

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

- (A) in relation to sub-clauses 33.2.2a), 33.2.2b) and 33.2.2c) 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 sub-clause 33.2.2d) 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 sub-clauses 33.2.2e), 33.2.2f) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and

33.2.3 to any person appointed by that Finance Party or by a person to whom sub-clauses 33.2.2a) or 33.2.2b) 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 sub-clause 33.2.3 if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and

33.2.4 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 Borrower 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.

33.3 Disclosure to numbering service providers

33.3.1 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 the Borrower the following information:

- a) name of the Borrower;
- b) country of domicile of the Borrower;
- c) date of this Agreement;
- d) Clause 36 (*Governing law*);
- e) the names of the Agent and the Arranger;
- f) date of each amendment and restatement of this Agreement;
- g) amounts of, and names of, the Facility (and any tranches);
- h) amount of Total Commitments;
- i) currency of the Facility;
- j) type of Facility;
- k) ranking of Facility;
- l) Termination Date for the Facility;
- m) changes to any of the information previously supplied pursuant to paragraphs a) to m) above; and
- n) such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

33.3.2 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower 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.

33.3.3 The Borrower represents that none of the information set out in paragraphs a) to o) of sub-clause 33.3.1 above is, nor will at any time be, unpublished price-sensitive information.

33.3.4 The Agent shall notify the Borrower and the other Finance Parties of:

- a) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or the Borrower; and
- b) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

33.4 Entire agreement

This Clause 33 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.

33.5 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.

33.6 Notification of disclosure

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

33.6.1 of the circumstances of any disclosure of Confidential Information made pursuant to sub-clause 33.2.2e) 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

33.6.2 upon becoming aware that Confidential Information has been disclosed in breach of this Clause 33.

33.7 Continuing obligations

The obligations in this Clause 33 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

33.7.1 the date on which all amounts payable by the Borrower 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

33.7.2 the date on which such Finance Party otherwise ceases to be a Finance Party.

34 CONFIDENTIALITY OF FUNDING RATES

34.1 Confidentiality and disclosure

34.1.1 The Agent and the Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs 34.1.2, 34.1.3 and 34.1.4 below.

34.1.2 The Agent may disclose:

- i any Funding Rate to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
- ii any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender, as the case may be.

34.1.3 The Agent may disclose any Funding Rate and the Borrower 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 Borrower, 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 Borrower, 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, as the case may be.

34.2 Related obligations

34.2.1 The Agent and the Borrower 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 the Borrower undertake not to use any Funding Rate for any unlawful purpose.

34.2.2 The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:

- a) of the circumstances of any disclosure made pursuant to sub-clause 1 of Clause 34 (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
- b) upon becoming aware that any information has been disclosed in breach of this Clause 34

34.3 **No Event of Default**

No Event of Default will occur under Clause 20.2(*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 34.

34.4 **Borrower process**

For the avoidance of doubt nothing in this Clause 34 (*Confidentiality of funding*) will restrict the Borrower from complying with its parliamentary process in respect of this Agreement.

34.5 **Publicity**

The Borrower hereby consents to any internal publicity of the Facility within NatWest Group plc.

35 **COUNTERPARTS**

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

SECTION 12

GOVERNING LAW AND ENFORCEMENT

36 **GOVERNING LAW**

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

37 **ENFORCEMENT**

37.1 **Jurisdiction**

37.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

37.1.2 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.

37.1.3 Notwithstanding sub-clauses 37.1.1 and 37.1.2 above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with

jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

37.2 Waiver of Immunity

The Borrower irrevocably and unconditionally:

- 37.2.1 agrees that should the Agent bring legal proceedings against it or its assets in relation to this Agreement no immunity (including for the avoidance of doubt, any Crown immunity) from such legal proceedings (which shall be deemed to include without limitation, suit, attachment prior to judgement, other attachment, the obtaining of judgement, execution or other enforcement) shall be claimed by or on behalf of itself or with respect to its assets;
- 37.2.2 waives any such right of immunity which it or its assets now has or may hereafter acquire and accepts that it can be sued in the same way as a private person;
- 37.2.3 consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such proceedings

37.3 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- 37.3.1 irrevocably appoints Strand Credit Finance Company Limited (CN: 10094514) 150 Strand London England, WC2R 1JA as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- 37.3.2 agrees that failure by a process agent to notify the Borrower 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 LENDERS

Name of Original Lender	Commitment	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
National Westminster Bank plc	£250,000,000	
The Royal Bank of Scotland International Limited t/a Natwest International	£250,000,000	89/R/357663/DPPT

SCHEDULE 2

PART 1

CONDITIONS PRECEDENT TO EXECUTION

1 The Borrower and the Guarantor

- 1.1 A letter from the Financial Secretary confirming the authority of the Borrower under the laws of Gibraltar to enter the Finance Documents and confirming that the Financial Secretary is empowered to execute the Finance Documents on behalf of the Borrower.
- 1.2 A letter signed by the Minister with responsibility for Public Finance approving the borrowing contemplated by this Agreement.
- 1.3 A letter signed by the Financial Secretary confirming the extent of the matters listed in section 3(2) of the Act and confirming that:
- 1.3.1 the borrowing contemplated by this Agreement does not draw down or incur any additional Public Debt in a manner that will cause a breach of the Act in respect of the statutory Public Debt limits, which at present are defined in the Act as follows
- a) the Net Public Debt after such borrowing or drawing shall not exceed the higher of £300,000,000 or 40 per cent. of Gibraltar's Gross Domestic Product; or
- b) the Annual Debt Service Ratio shall not exceed 8 per cent.
- 1.3.2 the borrowing contemplated by this Agreement does not breach the Act in respect of the statutory Public Debt limits by drawing down on the Cash Reserves (as defined in the Act) in a manner which would cause either of 1.3.1(a) or 1.3.1(b) to occur.
- 1.4 A specimen of the signature of the Financial Secretary as authorised signatory on behalf of the Borrower.
- 1.5 Satisfaction of evidence required by each Lender and the Agent for the purpose of any "know your customer" or similar identification procedures.

2 Finance Documents

- 2.1 This Agreement executed by the Borrower.
- 2.2 The Fee Letters executed by the Borrower.

3 Legal opinions

- 3.1 A legal opinion of Hill Dickinson LLP, legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- 3.2 A legal opinion of Hassans legal advisers to the Arranger and the Agent in Gibraltar, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

4 Other documents and evidence

- 4.1 Evidence that any process agent referred to in Clause 37.2 (*Service of process*), has accepted its appointment.

- 4.2 A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 4.3 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

PART 2

CONDITIONS PRECEDENT TO UTILISATION

5 **The Guarantor**

- 5.1 Evidence confirming the authority of the Guarantor to enter the Guarantee.

6 **Finance Documents**

The Guarantee executed by the Guarantor, in full force and effect

7 **Legal opinions**

- 7.1 A legal opinion of Hill Dickinson LLP, legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- 7.2 A legal opinion of Hassans legal advisers to the Arranger and the Agent in Gibraltar, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

8 **Other documents and evidence**

- 8.1 A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 8.2 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

SCHEDULE 3

UTILISATION REQUEST

From: [Borrower]

To: [Agent]

Dated:

Dear Sirs

[Borrower] – [] Facility Agreement dated [] (the "Agreement")

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

Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day)
Amount:	[] or, if less, the Available Facility
Interest Period:	[]
- 3 We confirm that each condition specified in Clause 4.2 (Further conditions precedent) of the Agreement is satisfied on the date of this Utilisation Request.
- 4 The proceeds of this Loan should be credited to [account].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....

The Financial Secretary of His Majesty's Government of Gibraltar

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: [] as Agent

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

Dated:

[Borrower] – [] Facility Agreement dated [] (the " Agreement")

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 21.6 (*Procedure for transfer*) of the Agreement:
 - 2.1 The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 21.6 (*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 and participations in Loans under the Agreement as specified in the Schedule.
 - 2.2 The proposed Transfer Date is [].
 - 2.3 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (Addresses) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in sub-clause 23.3.3 of the Agreement.
- 4 The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - 4.1 [a Qualifying Lender (other than a Treaty Lender);]
 - 4.2 [a Treaty Lender;]
 - 4.3 [not a Qualifying Lender].¹
- 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:
 - 5.1 a company resident in the United Kingdom for United Kingdom tax purposes;

¹ Delete as applicable - Each New Lender is required to confirm which of these three categories it falls within.

- 5.2 a partnership each member of which is:
- 5.2.1 a company so resident in the United Kingdom; or
- 5.2.2 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- 5.3 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]²
- 6 [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []³, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Borrower notify:
- 6.1 each Borrower which is a Party as a Borrower as at the Transfer Date; and
- 6.2 each Additional Borrower which becomes an Additional Borrower after the Transfer Date, that it wishes that scheme to apply to the Agreement.]⁴
- [5/6]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- [6/7]. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are]⁵ governed by English law.
- [7/8]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

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

[Existing Lender] [New Lender]

By: By:

² Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

³ Insert jurisdiction of tax residence.

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

⁵ This clause should follow the approach adopted as regards non-contractual obligations in Clause 38 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed.

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

[Agent]

By:

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: [] as Agent and [] as Borrower

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

Dated:

[Borrower] - [] Facility Agreement

dated [] (the "Agreement")

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 21.7 (Procedure for assignment) of the Agreement:
 - 2.1 The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.
 - 2.2 The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement specified in the Schedule.
 - 2.3 The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph 2.2 above.⁶
- 3 The proposed Transfer Date is [].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 28.2 (Addresses) of the Agreement are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in sub-clause 21.5.3 of the Agreement.
- 7 The New Lender confirms, for the benefit of the Agent and without liability to the Borrower, that it is:
 - 7.1 [a Qualifying Lender (other than a Treaty Lender);]
 - 7.2 [a Treaty Lender;]

⁶ If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at primary documentation stage.

- 7.3 [not a Qualifying Lender].⁷
- 8 [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- 8.1 a company resident in the United Kingdom for United Kingdom tax purposes;
- 8.2 a partnership each member of which is:
- 8.2.1 a company so resident in the United Kingdom; or
- 8.2.2 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- 8.3 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]⁸
- 9 [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []⁹, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Borrower notify:
- 9.1 each Borrower which is a Party as a Borrower as at the Transfer Date; and
- 9.2 each Additional Borrower which becomes an Additional Borrower after the Transfer Date, that it wishes that scheme to apply to the Agreement.]¹⁰
- [8/9]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.8 (Copy of Transfer Certificate or Assignment Agreement) of the Agreement, to the Borrower of the assignment referred to in this Assignment Agreement.
- [9/10]. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- [10/11]. This Assignment Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are]¹¹ governed by English law.

⁷ Delete as applicable - Each New Lender is required to confirm which of these three categories it falls within.

⁸ Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

⁹ Insert jurisdiction of tax residence.

¹⁰ Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

¹¹ This clause should follow the approach adopted as regards non-contractual obligations in Clause 38 (*Governing law*). This should be done (and this footnote deleted) before the Facility Agreement is signed.

[11/12]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[Insert relevant details]

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

[Existing Lender]

[New Lender]

By: By:

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

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

[Agent]

By:

SCHEDULE 6

Compounded Rate Terms

Part 1 - Definitions

In this Agreement:

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

Daily Rate means, for any Business Day:

- (a) the Reference Rate for that Business Day;
- (b) if the Reference Rate 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 mean of the spread of the Reference Rate to the Central Bank Rate over the previous five days on which a Reference Rate has been published, excluding the highest spread (or if there is more than one highest spread, one only of those highest spreads) and lowest spread (or, if there is more than one lowest spread, only one of those lowest spreads) to the Central Bank Rate; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that rate is not available, the last publicly available Central Bank Rate prior to the relevant Business Day plus the mean of the spread of the Reference Rate to the Central Bank Rate over the previous five days on which a Reference Rate has been published, excluding the highest spread (or if there is more than one highest spread, one only of those highest spreads) and lowest spread (or if there is more than one lowest spread, one only of those lowest spreads) to the Central Bank Rate,

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

Lookback Period means 5 Business Days.

Market Disruption Rate means the percentage rate per annum that is the Cumulative Compounded Reference Rate for the Interest Period of the relevant Loan

Reference Rate means the SONIA reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

Reporting Day means 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.

Reporting Time means:

- (a) in relation to the deadline for Lenders to report market disruption in accordance with clause 10.1 (Market disruption), close of business in London on the Reporting Day for the relevant Loan; or
- (b) in relation to the deadline for Lenders to report their cost of funds in accordance with clause 10.2 (Cost of funds), close of business on the Reporting Day for the relevant Loan (or, if earlier, on the date falling 5 Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

SONIA means the sterling overnight index average

Part 2 - Daily Non-Cumulative Compounded Reference Rate

The **Daily Non-Cumulative Compounded Reference 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_i means the Unannualised Cumulative Compounded Daily Rate for that Business Day *i*;

UCCDR_{i-1} 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;

n_i 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_i 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 4 decimal places) calculated as set out below:

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

where:

d0 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 d0, each representing the relevant Business Day in chronological order in the Cumulation Period;

DailyRate_i-LP means, for any Business Day **i** during the Cumulation Period, the Daily Rate for the Business Day which is the Lookback Period prior to that Business Day **i**;

n_i means, for any Business Day **i** during 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_i has the meaning given to that term above.

Part 3 - Cumulative Compounded Reference Rate

The **Cumulative Compounded Reference Rate** for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of **Annualised Cumulative Compounded Daily Rate** in Part 2 (Daily Non-Cumulative Compounded Reference Rate) of this Schedule 6 calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d}$$

where:

d0 means the number of Business Days during the Interest Period;

i means a series of whole numbers from one to d0, each representing the relevant Business Day in chronological order during the Interest Period;

DailyRate_{i-LP} means for any Business Day **i** during the Interest Period, the Daily Rate for the Business Day which is the Lookback Period prior to that Business Day **i**;

n_i means, for any Business Day **i**, the number of calendar days from, and including, that Business Day **i** up to, but excluding, the following Business Day;

dcc means 365; and

d means the number of calendar days during that Interest Period.

THE BORROWER

Signed by

For and on behalf of

HIS MAJESTY'S GOVERNMENT OF GIBRALTAR

ADDRESS: FINANCIAL SECRETARY, 6, CONVENT PLACE, GIBRALTAR

TELEPHONE: 00 350 200 51168

ATTENTION: FINANCIAL SECRETARY

EMAIL: financial.secretary@gibraltar.gov.gi

THE ARRANGERS

NATIONAL WESTMINSTER BANK PLC

By

Address: CENTRAL GOVERNMENT TEAM, 9TH FLOOR, 250 BISHOPSGATE, LONDON EC2M 4AA

Attention: RICHARD LILLEYCROP & GLENN MOY

THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED t/a NATWEST INTERNATIONAL

By:

Address: PO BOX 707, 57 LINE WALL ROAD, GIBRALTAR

Attention: MARK STEVENS

THE AGENT

NATIONAL WESTMINSTER BANK PLC

By:

Address: SYNDICATED LOANS AGENCY, 4th FLOOR, 250 BISHOPSGATE, LONDON EC2M 4AA

Attention: LEE DONNITHORNE

THE LENDERS

NATIONAL WESTMINSTER BANK PLC

By:

Address: CENTRAL GOVERNMENT TEAM, 9th FLOOR, 250 BISHOPSGATE, LONDON EC2M 4AA

Attention: RICHARD LILLEYCROP & GLENN MOY

THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED t/a NATWEST INTERNATIONAL

By:

Address: PO BOX 707, 57 LINE WALL ROAD, GIBRALTAR

Attention: MARK STEVENS