

27 October 2020

**NOVA RESOURCES B.V.**

as Company

and

**VOSTOK COOPER B.V.**

as Parent

arranged by

**VTB BANK (PJSC)**

as Arranger

with

**VTB BANK (PJSC)**

as Agent and Security Agent

and others

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**UP TO USD 4,990,000,000 SENIOR TERM LOAN  
FACILITIES AGREEMENT**

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**LATHAM & WATKINS**

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**THIS AGREEMENT** is dated 27 October 2020 and made between:

- (1) **NOVA RESOURCES B.V.**, a company incorporated under the laws of the Netherlands with company number 67335845 and having its registered office at Strawinskylaan 1151, Tower C - Level 11, 1077 XX Amsterdam, the Netherlands as original borrower and original guarantor (the “**Company**”);
- (2) **VOSTOK COOPER B.V.**, a company incorporated under the laws of the Netherlands with company number 73773123 and having its registered office at Strawinskylaan 1151, Tower C - Level 11, 1077 XX Amsterdam, the Netherlands as original guarantor (the “**Parent**”);
- (3) **THE ENTITIES** listed in Part I (*The Original Guarantors*) of Schedule 1 (*The Original Parties*) as original guarantors (the “**Original Guarantors**”);
- (4) **VTB BANK (PJSC)** as mandated lead arranger (the “**Arranger**”);
- (5) **THE FINANCIAL INSTITUTION** listed in Part II (*The Original Lender*) of Schedule 1 (*The Original Parties*) as the original lender (the “**Original Lender**”);
- (6) **THE FINANCIAL INSTITUTION** listed in Part III (*The Original Secured Hedge Counterparty*) of Schedule 1 (*The Original Parties*) as the original secured hedge counterparty (the “**Original Secured Hedge Counterparty**”);
- (7) **VTB BANK (PJSC)** as agent of the other Finance Parties (the “**Agent**”); and
- (8) **VTB BANK (PJSC)** as security trustee for the Secured Parties (the “**Security Agent**”).

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**2.7 Announcement**” means a press announcement to be released pursuant to Rule 2.7 of the Takeover Code by the Company announcing the terms and conditions of the Acquisition and confirming that, as at the date of such announcement, the Acquisition was recommended to the Target Shareholders by its board of directors.

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of BB+ or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or Ba1 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;
- (b) each Finance Party (or an Affiliate of a Finance Party) which is a bank or financial institution; or
- (c) any other bank or financial institution approved by the Agent.

“**Acceptance Condition**” means the Company has received acceptances for at least 75% in value of the Target Shares to which the Offer relates and at least 75% of the voting rights relating to the Target Shares to which the Offer relates, unless a different percentage is agreed in writing between the Agent and the Company.

**“Accession Deed”** means a document substantially in the form set out in Schedule 13 (*Form of Accession Deed*).

**“Account Bank”** means VTB Bank (Europe) SE or such other bank as may be agreed by the Agent in writing.

**“Accounting Principles”** means the generally accepted accounting principles in the jurisdiction of incorporation of a member of the Group, including IFRS.

**“Acquisition”** means the acquisition by the Company of the Target Shares by way of a Scheme Acquisition or, following an Offer Conversion, by way of an Offer Acquisition and (if applicable) the operation of the Squeeze-Out Procedures, in each case on the terms of the Acquisition Documents.

**“Acquisition Completion Date”** means:

- (a) if the Acquisition is completed by means of the Scheme, the Scheme Effective Date; or
- (b) if the Acquisition is completed by means of an Offer, the Unconditional Date,

in each case in accordance with the terms of the relevant Acquisition Documents (excluding, for the avoidance of doubt, any Squeeze-Out Procedure which may occur after such date).

**“Acquisition Costs”** means all fees, costs and expenses (including any legal and other advisory fees), stamp, registration and other Taxes incurred by the Parent, the Company or any other member of the Group in connection with the Acquisition or the Transaction Documents.

**“Acquisition Documents”** means:

- (a) if the Acquisition is to be effected by means of a Scheme, the Scheme Documents; or
- (b) if the Acquisition is to be effected by means of an Offer, following service of an Offer Conversion Notice, the Offer Transaction Documents,

and in either case, any other document designated in writing as an Acquisition Document by the Agent and the Company.

**“Acquisition Purpose”** means the purposes set out in paragraph (a) of Clause 3.1 (*Purpose*).

**“Additional Borrower”** means a company or other entity which becomes an Additional Borrower in accordance with Clause 28 (*Changes to the Relevant Persons*).

**“Additional Commitment”** has the meaning given to it in Clause 4.3 (*Utilisation of Facility B and Facility C*).

**“Additional Guarantor”** means a company or other entity which becomes an Additional Guarantor in accordance with Clause 28 (*Changes to the Relevant Persons*).

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

**“Additional Secured Hedge Counterparty”** means a bank or financial institution which becomes a Secured Hedge Counterparty in accordance with Clause 26.8 (*Additional Secured Hedge Counterparties*).

**“Additional Security Long-Stop Date”** means the date falling 180 days after the Closing Date.

“**Additional Security Satisfaction Date**” means the date as of which all of the requirements set out in paragraph (a) of Clause 23.33 (*Conditions subsequent*) have been completed to the satisfaction of the Agent (acting reasonably).

“**Adjusted Target Group**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

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

“**Aktogay OpCo 1**” means Kaz Minerals Aktogay LLC, company number (БИН) 09084000623, registration number 23193 – 1930 – TOO, incorporated in Kazakhstan with its address at 8, Zh. Omarova Street, Medeu district, Almaty, Kazakhstan.

“**Aktogay OpCo 2**” means Aktogay Smelter LLC, incorporated in Kazakhstan with its registered address at 142 Bogenbay Batyr Street, Almaty, 050000, Kazakhstan.

“**Annual Financial Statements**” has the meaning given to that term in Clause 21 (*Information Undertakings*).

“**Annual Report**” means, in respect of a Financial Year, a report for that Financial Year in substantially the same form as the annual report prepared in respect of the Target Group for the Target’s 2019 financial year (or such other form as may be agreed between the Agent and the Company) setting out, amongst other things, an updated financial model and a report on the mineral reserves and mineral resources of the Target Group (Non-Brighton) (in accordance with the JORC Code).

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

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Audit Laws**” means the EU Regulation (537/2014) on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC and the EU Directive (2014/56/EU) amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and any law or regulation which implements that EU Directive (2014/56/EU).

“**Auditors**” means:

- (a) in relation to the Target or the Brighton Parent, one of Deloitte Touche Tohmatsu Limited, PricewaterhouseCoopers International Limited, Ernst & Young Global Limited or KPMG International Limited or any of their network firms or any other globally reputable firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed); or
- (b) in relation to the Company, any firm of independent accountants appointed by the Company to act as its auditors from time to time and who, in the reasonable opinion of the Company, has sufficient skill and expertise, or any other firm of auditors approved by the Majority Lenders.

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

**“Availability Period”** means:

- (a) in relation to Facility A, the period from and including the Signing Date to and including the date on which the Certain Funds Period expires;
- (b) in relation to Facility B, the period specified as such in a Commitment Notice in relation to that Facility executed between the Company and the Agent pursuant to paragraph (c) of Clause 4.3 (*Utilisation of Facility B and Facility C*); and
- (c) in relation to Facility C, the period specified as such in a Commitment Notice in relation to that Facility executed between the Company and the Agent pursuant to paragraph (c) of Clause 4.3 (*Utilisation of Facility B and Facility C*),

or, in each case, such other period as may be agreed between the Company and the Agent (acting on the instructions of all of the Lenders) in writing.

**“Available Commitment”** means, in relation to a Facility, a Lender’s Commitment under that Facility minus:

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

**“Available Facility”** means, in relation to a Facility, the aggregate for the time being of each Lender’s Available Commitment in respect of that Facility.

**“Avon”** means Aristus Holdings Limited.

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

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

**“Balance Sheet Asset Value”** means the aggregate balance sheet value of the Target Group (Non-Brighton)’s or, as the case may be, the Group (Brighton)’s property, plant and equipment, in each case as calculated by reference to the most recent consolidated financial statements of the Adjusted Target Group or the Brighton Parent (as applicable) delivered pursuant to Clause 21.2 (*Financial statements*).

**“Borrower”** means the Company or an Additional Borrower.

**“Bozshakol”** means Kaz Minerals Bozshakol LLC, company number 090540005490, incorporated in Kazakhstan with its address at Building 13, Tortkuduk village, Tort-Kudukskiy village region, Ekibastuz city, Pavlodar oblast, Republic of Kazakhstan, 141218.

**“Bozymchak”** means Kaz Minerals Bozymchak LLC, company number 02606200310117, incorporated under the laws of the Kyrgyz Republic with registration number 20338-3301-

OOO and having its registered address at 41 Umetalieva Street, Bishkek 7200100, Kyrgyz Republic.

“**Brighton**” means GDK Baimskaya LLC (ООО “ГДК Баимская”), a limited liability company incorporated in the Russian Federation with company number 1087746085866, having its registered address at 1 Dezhneva Str., Anadyr city 689000, Autonomous region Chukotka, the Russian Federation.

“**Brighton Financing Date**” means members of the Group (Brighton) have entered into definitive agreements pursuant to which Brighton Non-Recourse Financing shall, subject to the share capital of Brighton being free of any Transaction Security, be made available by the relevant creditors to members of the Group (Brighton) in an aggregate amount that is not less than 75% of the total aggregate amount of expenditure required for completion of the first stage of the Brighton Project (as determined by reference to a bankable feasibility study delivered to the Agent).

“**Brighton Investment**” has the meaning given to that term in paragraph (c) of the definition of “Permitted Brighton Transaction”.

“**Brighton Non-Recourse Financing**” means Financial Indebtedness incurred by a member of the Group (Brighton) solely in order to finance the acquisition, development, expansion, operation and/or maintenance of the Brighton Project, the creditors of which have no recourse to any member of the Target Group (Non-Brighton) or the Company (including, without limitation, pursuant to any cost overrun guarantee, completion guarantee or other analogous arrangement) other than in respect of any Security granted by any member of the Target Group (Non-Brighton) or the Company over the share capital of any member of the Group (Brighton) (provided that, in any such case, the liability of the relevant member of the Target Group (Non-Brighton) or the Company does not exceed or extend beyond such share capital). For the avoidance of doubt, any permitted equity investments made by members of the Target Group (Non-Brighton) or the Company shall not constitute Brighton Non-Recourse Financing.

“**Brighton Parent**” means the Holding Company of Brighton being, as at the Signing Date, Kaz Minerals Baimskaya Holdings Limited, a limited liability company incorporated in Cyprus under company number HE387829, having its registered address at Griva Digeni 59, Kaimakliotis Building, Floor 5, 6043 Larnaka, Cyprus.

“**Brighton Pledge Release Date**” means the earlier to occur of:

- (a) the Brighton Financing Date; and
- (b) the date as of which all of the requirements for the occurrence of the Additional Security Satisfaction Date have been satisfied, other than the requirement to enter into the Share Pledge (Brighton).

“**Brighton Project**” means the development of the Baimskaya copper-porphyry system within the licensed plot through construction of the mining and metallurgical complex with a total anticipated processing capacity of 60,000,000 tons of ore per year with two separate concentrators each with an anticipated processing capacity of 30,000,000 tons of ore per year.

“**Brighton SPA**” means the share purchase agreement entered into between the Target, Kaz Minerals Investments Limited and Avon, dated 1 August 2018, relating to the acquisition of the licence to develop the Baimskaya area, an undeveloped copper asset located in the Chukotka region of Russia.

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

- (a) (on and from the first date on which an Additional Obligor incorporated in Kazakhstan accedes to this Agreement) Nur-Sultan (previously Astana); and
- (b) (in relation to any date for payment or purchase of dollars) New York.

**“Capital Expenditure”** means any expenditure or obligation which, in accordance with IFRS, should be treated as capital expenditure in the consolidated financial statements of the Target Group (Non-Brighton) or the Group (Brighton), as the case may be, including (without double counting) purchase of property, plant and equipment, investments in mining assets, purchase of intangible assets and excluding the capitalised stripping costs.

**“Cash”** means, at any time, cash denominated in USD, euro, RUB, KZT or KGS (or any currency freely convertible into those currencies) in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days of the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security or Quasi-Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facilities.

**“Cash Account Pledge Agreement”** means the German law governed cash account pledge agreement in respect of the bank accounts of the Company dated on or about the Signing Date between the Company, the Security Agent and the Account Bank.

**“Cash Equivalent Investments”** means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
  - (iii) which matures within one year after the relevant date of calculation; and

- (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (c) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (e) any other debt security approved by the Majority Lenders,

in each case, denominated in USD, euro, RUB, KZT or KGS (or any currency freely convertible into those currencies) and to which any Obligor is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security or Quasi-Security (other than Security arising under the Transaction Security Documents).

**"Certain Funds Period"** means the period commencing on (and including) the Signing Date and ending on (and including) the earliest to occur of:

- (a) where the Acquisition is to be implemented by way of a Scheme:
  - (i) the date on which the Scheme lapses or is withdrawn with the consent of the Takeover Panel (if required) or by order of the Court (unless, on or prior to that date, the Company has delivered an Offer Conversion Notice to the Agent and the Offer Press Release for the Offer has been released); and
  - (ii) 11:59 p.m. London time on the date on which the Target has become wholly owned by the Company and the SPVs and all of the consideration payable under the Acquisition in respect of the Target Shares or proposals made or to be made under Rule 15 of the Takeover Code in connection with the Acquisition, has in each case been paid in full including in respect of:
    - (A) the acquisition of the Target Shares to be acquired after the Closing Date (including pursuant to the Target's amended articles of association); and
    - (B) any proposals made or to be made in connection with the Acquisition under Rule 15 of the Takeover Code;
- (b) where the Acquisition is to be implemented by way of an Offer:
  - (i) the date on which the Offer lapses, terminates or is withdrawn in accordance with its terms and in compliance with the Takeover Code, the requirements of the Takeover Panel and all applicable laws and regulations; and
  - (ii) the date which is 30 days after the later of (A) the Unconditional Date and (B) the date on which the Offer has closed for further acceptances or, in each case, if the Company has issued the requisite notices to Target Shareholders prior to such date, such longer period as is necessary to complete the Squeeze-Out Procedure; and
- (c) 11:59 p.m. London time on 30 July 2021,

provided that, for the avoidance of doubt, a switch from a Scheme to an Offer (or, for the avoidance of doubt, any permitted amendments to the terms or conditions of a Scheme or an Offer) shall not constitute a lapse, termination or withdrawal for the purposes of this definition.

“**Certain Funds Utilisation**” means a Utilisation made or to be made under Facility A during the Certain Funds Period where such Utilisation is to be made solely for an Acquisition Purpose.

“**Change of Control**” means:

- (a) the Shareholders together:
  - (i) do not, or cease to have the power directly or indirectly (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (A) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the Parent;
    - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or
    - (C) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent, as applicable, are obliged to comply; or
  - (ii) are not, or cease to be the direct or indirect legal and beneficial owners of more than 50 per cent. of the issued share capital of the Parent;
- (b) the Parent:
  - (i) does not or ceases to have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (A) cast, or control the casting of, 100 per cent. of the maximum number of votes that might be cast at a general meeting of the Company;
    - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company; or
    - (C) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company, as applicable, are obliged to comply; or
  - (ii) is not, or ceases to be the direct legal and beneficial owner of 100 per cent. of the issued share capital of the Company,

provided that, in relation to sub-paragraph (b)(i)(A) and sub-paragraph (b)(ii) above:

- (1) the reduction of the Parent’s shareholding in the Company below 100% to not less than 85% as a result of one or more Permitted Share Issues described in paragraphs (a)(ii) and/or (a)(iii) of the definition thereof shall not constitute a Change of Control provided that, in the case of paragraph (a)(iii), the applicable requirements of Clause 8.2 (*Proceeds*) are satisfied; and
- (2) any temporary reduction of the Parent's shareholding in the Company below 100% pursuant to step 4 of the Steps Plan shall not constitute a Change of Control;

- (c) the SPVs collectively are not, or cease to be:
  - (i) at any time prior to the SPV Target Share Materialization Date, the direct legal and beneficial or, as applicable, beneficial owners of at least the number of issued shares of the Target as specified in relation to the SPVs in paragraph (c) of Clause 20.24 (*Ownership*); and
  - (ii) on and from the SPV Target Share Materialization Date (but in any event at any time on or after the date on which the Company delivers the first Utilisation Request in respect of Facility A), the direct legal and beneficial owners of at least 184,230,218 shares of the Target, other than by reason of a Permitted SPV Share Transfer;
- (d) on and from:
  - (i) the Closing Date (or, in respect of SPV4, the date falling two Business Days after the Closing Date), the Company is not, or ceases to be the direct legal and beneficial owner of the entire issued share capital of any SPV; or
  - (ii) the Closing Date, the Parent is not, or ceases to be the direct or indirect legal and beneficial owner of the entire issued share capital of any SPV,

in each case for as long as the relevant SPV has not ceased to be a Guarantor pursuant to Clause 28.4 (*Resignation of Guarantors*);

- (e) on and from the expiration of the Certain Funds Period until the occurrence of a Permitted Target Reorganisation:
  - (i) the Company or the SPVs and the Company together do not, or cease to, have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (A) cast, or control the casting of, 75 per cent. or if greater, the percentage owned by the SPVs and the Company at the end of the Certain Funds Period of the maximum number of votes that might be cast at a general meeting of the Target;
    - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Target; or
    - (C) give directions with respect to the operating and financial policies of the Target with which the directors or other equivalent officers of the Target, as applicable, are obliged to comply;
  - (ii) the Company or the Company and the SPVs together are not, or cease to be, the direct beneficial owners (or, at any time after the first date on which the Company becomes the legal owner of any share capital in the Target, the legal owners) of at least 75 per cent. or if greater, the percentage owned by the SPVs and the Company at the end of the Certain Funds Period of the issued share capital of the Target (excluding any treasury shares held by the Target),

provided that, in relation to sub-paragraph (e)(i)(A) and sub-paragraph (e)(ii) above:

- (1) the reduction of the Company's shareholding or the SPV's and the Company's shareholding in the Target as a result of one or more Permitted Share Issues described in paragraph (c) of the definition thereof shall not constitute a

Change of Control provided that its or their shareholding in the Target remains at least 75 per cent; and

- (2) any temporary reduction of the Company's shareholding or the SPV's and the Company's shareholding in the Target as a result of a Permitted Avon Share Issue shall not constitute a Change of Control provided that the requirements of paragraph (c) of Clause 23.23 (*Share capital*) are satisfied; and
- (f) following the occurrence of a Permitted Target Reorganisation:
  - (i) the Company does not, or ceases to, have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (A) cast, or control the casting of, 100 per cent. of the maximum number of votes that might be cast at a general meeting of the direct Subsidiaries of the Target immediately prior to the Permitted Target Reorganisation;
    - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the direct Subsidiaries of the Target immediately prior to the Permitted Target Reorganisation; or
    - (C) give directions with respect to the operating and financial policies of the direct Subsidiaries of the Target immediately prior to the Permitted Target Reorganisation with which the directors or other equivalent officers of the direct Subsidiaries of the Target immediately prior to the Permitted Target Reorganisation, as applicable, are obliged to comply; or
  - (ii) the Company is not, or ceases to be, the direct legal and beneficial owner of 100 per cent. of the issued share capital of any direct Subsidiary of the Target immediately prior to the Permitted Target Reorganisation.

**“Charged Property”** means all of the assets of the Relevant Persons which from time to time are, or are expressed to be, the subject of the Transaction Security.

**“Clean-Up Period”** means the period beginning on the Signing Date and ending on the date falling 60 days after the Closing Date.

**“Closing Date”** means the first Utilisation Date with respect to Facility A.

**“Code”** means the US Internal Revenue Code of 1986.

**“Commitment”** means a Facility A Commitment, a Facility B Commitment or a Facility C Commitment.

**“Commitment Notice”** means a notice substantially in the form set out in Schedule 8 (*Form of Commitment Notice*).

**“Companies Act”** means the UK Companies Act 2006, as amended.

**“Company Secured Account”** means:

- (a) each Settlement Account; and
- (b) any other account which is:

- (i) held by the Company with the Agent or the Security Agent (or any of their respective Affiliates); and
- (ii) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent,

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

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

**“Confidential Information”** means all information relating to any Relevant Person, the Group, the Target Group, the Finance Documents or a 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 a Facility from either:

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

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

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 41 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group or the Target Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

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

**“Copper Equivalent Production”** means, in respect of any period, the aggregate amount of copper, gold, silver and zinc produced by the Group as either a final product or metal in concentrate converted into copper units using copper, gold, silver and zinc at average LME prices during that period in accordance with the following formula:

Copper Equivalent Production = copper (tonnes) + gold (oz) \* average gold price (\$ / oz) (for the appropriate period) / average copper price (\$ / t) (for the appropriate period) + silver (oz) \*

average silver price (\$ / oz) (for the appropriate period) / average copper price (\$ / t) (for the appropriate period) + zinc (tonnes) \* average zinc price (\$ / t) (for the appropriate period) / average copper price (\$ / t) (for the appropriate period).

**“Core Asset”** means:

- (a) any assets that are necessary for the core activities of the Bozshakol and Aktogay projects; and
- (b) any shares in Bozshakol, Aktogay OpCo 1 or Aktogay OpCo 2.

**“Court”** means the High Court of Justice in England and Wales.

**“Court Meeting”** means, in the event the Acquisition is to be effected by way of a Scheme, the meeting of the holders of the Target Shares (or any adjournment thereof) to be convened by order of the Court under Part 26 of the Companies Act for the purposes of considering and, if thought fit, approving the Scheme.

**“Custodian Bank”** means VTB Bank (Europe) SE.

**“Custody Account Pledge Agreement”** means a German law governed pledge agreement in relation to the Target Shares to be acquired by the Company pursuant to the Offer which are held in a custody account opened with the Custodian Bank and all of the Company’s rights, interests and benefits in relation to such custody account, between the Company, the Security Agent and the Custodian Bank.

**“Debt Purchase Transaction”** means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

**"Declaration of Trust"** means a share purchase agreement and declaration of trust in the agreed form, pursuant to which an SPV transfers the beneficial interest in their respective shares in the Target to the Company and declares a trust over such shares in the Target in favour of the Company.

**“Default”** means an Event of Default or any event or circumstance specified in Clause 25 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

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

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

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

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Designation Schedule**” has the meaning given to that term in the Security Assignment.

“**Disclosed Existing Financing Agreement**” has the meaning given to that term in the definition of “Existing Financial Indebtedness”.

“**Disclosed Existing Guarantee**” has the meaning given to that term in the definition of “Existing Guarantees”.

“**Disclosed Existing Loans**” has the meaning given to that term in the definition of “Existing Loans”.

“**Disclosed Existing Security**” has the meaning given to that term in the definition of “Existing Security”.

“**Disruption Event**” means either or both of:

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

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

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

“**Environment**” means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

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

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

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

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

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

“**Event of Default**” means any event or circumstance specified as such in Clause 25 (*Events of Default*).

“**Existing Brighton Loan**” means the up to USD 500,000,000 loan agreement dated 30 August 2018 as amended on 23 August 2019 and 31 August 2020 between Brighton as borrower and Kaz Minerals Investments Limited as lender.

“**Existing CDB Facilities**” means:

- (a) the Bozshakol facility agreement with China Development Bank Corporation dated 29 December 2014 in an aggregate amount of up to US\$1.844 billion;
- (b) the Aktogay facility agreements with China Development Bank Corporation dated 16 December 2011 in an aggregate amount of up to US\$1.34 billion; and
- (c) the Bozymchak facility agreement with China Development Bank Corporation of 29 December 2014 in an aggregate amount of up to US\$148.5m.

“**Existing Financial Indebtedness**” means the Financial Indebtedness of any member of the Target Group which is outstanding as at the Closing Date and either:

- (a) arises under an agreement specified in Part I (*Disclosed Existing Financing Agreements*) of Schedule 14 (*Disclosed Existing Obligations*) (a “**Disclosed Existing Financing Agreement**”); or
- (b) the aggregate amount of all such Financial Indebtedness does not exceed five per cent. of the total aggregate principal amount of Financial Indebtedness under all Disclosed Existing Financing Agreements which is outstanding as at the Signing Date.

“**Existing Guarantee**” means the guarantees and/or other indemnities given by any member of the Target Group in respect of Financial Indebtedness which are in existence as at the Closing Date and either:

- (a) arise under an agreement specified in Part II (*Disclosed Existing Guarantees*) of Schedule 14 (*Disclosed Existing Obligations*) (“**Disclosed Existing Guarantees**”); or
- (b) the aggregate amount of the Guarantee Obligation in respect of all such guarantees and/or other indemnities does not exceed five per cent. of the total aggregate amount of the Guarantee Obligation in respect of Disclosed Existing Guarantees as at the Signing Date.

“**Existing Loan**” means any loan made by any member of the Target Group which is in existence as at the Closing Date and is either:

- (a) specified in Part III (*Disclosed Existing Loans*) of Schedule 14 (*Disclosed Existing Obligations*) (“**Disclosed Existing Loans**”); or
- (b) the aggregate amount of all such loans does not exceed USD 25,000,000 (or its equivalent in any other currency or currencies) for all members of the Target Group.

“**Existing PXF Facility**” means the pre-export facility agreement amended and restated on 8 June 2017 for up to US\$600 million and increased on 28 January 2020 to up to US\$1 billion with a consortium of banks and Deutsche Bank AG, Amsterdam Branch acting as agent.

“**Existing Security**” means the Security or Quasi-Security granted by any member of the Target Group over its assets which is in existence as at the Closing Date and is either:

- (a) specified in Part IV (*Disclosed Existing Security*) of Schedule 14 (*Disclosed Existing Obligations*) (“**Disclosed Existing Security**”); or
- (b) the aggregate amount of the liabilities secured by all such security does not exceed five per cent. of the total aggregate amount of the liabilities secured by Disclosed Existing Security.

“**Extending Lender**” has the meaning given to that term in paragraph (b) of Clause 6.2 (*Extension of Termination Date*).

“**Facility**” means Facility A, Facility B or Facility C.

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

“**Facility A Commitment**” means:

- (a) in relation to the Original Lender, the amount set opposite its name under the heading “Facility A Commitment” in Schedule 1 (*The Original Lender*) and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement,

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

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

**“Facility B”** means the term loan facility made available under this Agreement as described in paragraph (a)(ii) of Clause 2.1 (*The Facilities*).

**“Facility B Commitment”** means, in relation to any Lender:

- (a) the amount of any Additional Commitment assumed by it in relation to Facility B pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*); and
- (b) the amount of any other Facility B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

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

**“Facility C”** means the term loan facility made available under this Agreement as described in paragraph (a)(iii) of Clause 2.1 (*The Facilities*).

**“Facility C Commitment”** means, in relation to any Lender:

- (a) the amount of any Additional Commitment assumed by it in relation to Facility C pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*); and
- (b) the amount of any other Facility C Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

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

**“Facility Limit”** means:

- (a) in respect of Facility B, USD 1,000,000,000; and
- (b) in respect of Facility C, USD 1,000,000,000.

**“Facility Office”** means:

- (a) in respect of a Lender, the office or offices notified by that 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; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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:

- (a) any letter dated on or about the Signing Date between the Agent and the Company setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in any other Finance Document.

**“Finance Document”** means this Agreement, any Accession Deed, any Compliance Certificate, any Fee Letter, any Commitment Notice, any Indemnity Letter, any Secured Hedging Agreement, any Secured Hedge Counterparty Accession Letter, any Resignation Letter, any Subordination Agreement, any Transaction Security Document, any Utilisation Request and any other document designated as a Finance Document by the Agent and the Company, **provided that** where the term “Finance Document” is used in, and construed for the purposes of, this Agreement, a Secured Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of “Default”;
- (b) the definition of “Material Adverse Effect”;
- (c) paragraph (a) of the definition of “Permitted Transaction”;
- (d) the definition of “Transaction Document”;
- (e) the definition of “Transaction Security Document”;
- (f) paragraph (a)(v) of Clause 1.2 (*Construction*);
- (g) Clause 19 (*Guarantee and Indemnity*);
- (h) paragraph (b) of Clause 23.27 (*Treasury Transactions*);
- (i) Clause 25 (*Events of Default*) (other than paragraph (b) of Clause 25.14 (*Repudiation and rescission of agreements*) and Clause 25.22 (*Acceleration*)); and
- (j) Clause 30 (*The Security Agent*).

“**Finance Lease**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Finance Party**” means the Agent, the Arranger, the Security Agent, a Lender or a Secured Hedge Counterparty **provided that** where the term “Finance Party” is used in, and construed for the purposes of, this Agreement, a Secured Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) the definition of “Secured Parties”;
- (b) paragraph (a)(i) of Clause 1.2 (*Construction*);
- (c) paragraph (c) of the definition of “Material Adverse Effect”;
- (d) Clause 19 (*Guarantee and Indemnity*);
- (e) Clause 23.32 (*Further assurance*); and
- (f) Clause 32 (*Conduct of business by the Finance Parties*).

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

- (a) Facility A (including both drawn and undrawn amounts);
- (b) moneys borrowed and debit balances at banks or other financial institutions;
- (c) any amount raised by acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (d) any amount raised pursuant to note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (e) the amount of any liability in respect of Finance Leases (prior to IFRS 16);
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (g) any Treasury Transaction (and, when calculating the value of that Treasury 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 Treasury Transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme;
- (i) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles);
- (j) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the

agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;

- (k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement, or repurchase or stock lending agreements) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles;
- (l) any derivative transactions, including those entered into in order to protect against changes in prices and/or interest rates;
- (m) any disposal transaction, assets under which can be reacquired by the disposing person (both, after and before an option is exercised); and
- (n) (without double counting) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (m) above.

“**Financial Quarter**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Financial Year**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Funding Rate**” means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 12.3 (*Cost of funds*).

“**Funds Flow Statement**” means a funds flow statement detailing the proposed movement of funds on or before the Closing Date.

“**General Meeting**” means the general meeting of the holders of the Target Shares (or any adjournment thereof) to be convened in connection with the implementation of the Scheme.

“**Group**” means the Company and each of its Subsidiaries from time to time (including, from the Acquisition Completion Date, the Target and each other member of the Target Group) **provided that**, on and from the occurrence of the Additional Security Satisfaction Date, the Group (Brighton) shall be deemed to be excluded from the Group for the purposes of Clause 20 (*Representations*) (other than Clauses 20.17 (*Anti-corruption law*) and 20.26 (*Sanctions*)), Clause 23 (*General undertakings*) (other than Clauses 23.5 (*Anti-corruption law*) and 23.29 (*Sanctions*)) and Clause 25 (*Events of Default*).

“**Group (Brighton)**” means the Brighton Parent and each of its Subsidiaries from time to time.

“**Group Structure Chart**” means the structure chart of the Group in agreed form.

“**Guarantee Obligation**” means, with respect to any person (the “**guaranteeing person**”), under any guarantee or indemnity, an amount equal to the lower of (1) an amount equal to the stated or determinable amount of the primary obligation from time to time in respect of which such guarantee or indemnity is made and (2) if applicable, the maximum amount for which such guaranteeing person may be liable from time to time pursuant to the terms of the instrument embodying such guarantee or indemnity, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof.

“**Guarantor**” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 28 (*Changes to the Relevant Persons*).

“**Hedge Counterparty**” means a Secured Hedge Counterparty or a Third Party Hedge Counterparty.

**“Hedging Agreement”** means any Secured Hedging Agreement or any Third Party Hedging Agreement.

**“Hedging Agreements (Acquisition)”** means each master agreement, confirmation, schedule or other agreement entered in or to be entered into by the Company and a Hedge Counterparty for the purpose of hedging USD/GBP foreign exchange risk relating to the consideration payable for the Target Shares by the Company using the proceeds of Facility A.

**“Hedging Break Costs”** means all costs incurred by a Lender, Secured Hedge Counterparty or any of its Affiliates under or in connection with the early termination of any interest rate hedging arrangement in relation to any Loan (or part thereof), as notified by the relevant Lender or Secured Hedge Counterparty to the Company (through the Agent) together with supporting calculations in reasonable detail.

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

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

**“Impaired Agent”** means the Agent at any time when:

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

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

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

**“Indemnity Letter”** means:

- (a) any indemnity letter dated on or shortly after the Signing Date between ON and VTB Bank (PJSC); or
- (b) any indemnity letter dated on or shortly after the Signing Date between VK and VTB Bank (PJSC).

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

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

**“Interest Period”** means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*).

**“Interpolated Screen Rate”** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

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

each as of the Specified Time for the currency of that Loan.

**“Joint Venture”** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity which is not a member of the Group.

**“JORC Code”** means the 2012 edition of the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves.

**“Legal Opinion”** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 28 (*Changes to the Relevant Persons*).

**“Legal Reservations”** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts (or the equivalent rule in any applicable jurisdiction), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the principle of equity of redemption under English law;
- (d) any limitation on the enforceability of judgments rendered by the English courts:
  - (i) in the courts of a member state of the European Union following the end of the transition period in respect of the United Kingdom's exit from the European Union; and
  - (ii) in the courts of any other jurisdiction, unless there is in effect a treaty between such jurisdiction and the United Kingdom providing for reciprocal enforcement of judgments, and then only in accordance with the terms of such treaty and applicable procedural laws and rules;
- (e) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (f) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**“Lender”** means:

- (a) the Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*),

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

“**Letter of Direction**” means a letter of direction from the Company to an SPV requesting the transfer of the bare legal title to the shares in the Target held on trust by such SPV in favour of the Company pursuant to a Declaration of Trust, to be substantially in the form appended to the relevant Declaration of Trust between the Company and such SPV.

“**LIBOR**” means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal to three months (irrespective of the length of the Interest Period for that Loan); or
- (b) as otherwise determined pursuant to Clause 12.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

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

“**LMA**” means the Loan Market Association.

“**LME**” means the London Metal Exchange.

“**Loan**” means a Facility A Loan, Facility B Loan or Facility C Loan.

“**Major Default**” means, with respect (but only insofar as expressed to apply) to an Obligor only (and not, for the avoidance of doubt, with respect to or relating to any member of the Target Group or any procurement obligation of any Obligor with respect to any member of the Target Group) any circumstances constituting an Event of Default (or, in respect of limb (g)(i) below only, a Default) under any of:

- (a) Clause 25.1 (*Non-payment*) (but only insofar as it relates to payment of principal, interest or, to the extent included in the Funds Flow Statement, fees expressed under a Fee Letter to be due and payable on the Closing Date);
- (b) Clause 25.3 (*Other obligations*) but only insofar as it relates to a breach of any Major Undertaking;
- (c) Clause 25.4 (*Misrepresentation*) but only insofar as it relates to a breach of any Major Representation;
- (d) Clause 25.5 (*Cross default*) but only insofar as it relates to the Financial Indebtedness of the Company;
- (e) paragraph (a) of Clause 25.6 (*Insolvency*) with respect to any Obligor (but, in respect of that Obligor suspending or threatening to suspend making payments on any of its debts, only to the extent that it is by reason of actual or anticipated financial difficulties of that person);
- (f) Clause 25.7 (*Insolvency proceedings*) with respect to any Obligor, but only to the extent of formal legal proceedings falling within any of paragraph (a)(i) of that Clause (other than in relation to a suspension of payment of debts or a moratorium of any indebtedness), paragraph (a)(ii) of that Clause or paragraph (a)(iii) of that Clause (other than solely in respect of any of its assets), and, for each of these purposes, the words “which is frivolous or vexatious and” in paragraph (b) of that Clause shall be deemed to be deleted;

- (g) Clause 25.9 (*Unlawfulness and invalidity*) but only on the basis that each paragraph of that Clause is subject to the Legal Reservations and Perfection Requirements and applies only to the extent that such event(s) or circumstance(s):
  - (i) arise under paragraph (d) of that Clause as a result of the Share Charge (Target/Company) or the Share Charge (Target/SPV) (or the Transaction Security expressed to be created thereunder) ceasing to be legal, valid, binding or enforceable or effective; or
  - (ii) materially and adversely affect the Lenders taken as a whole and, if capable of remedy, are not remedied within 20 Business Days of the earlier of (i) the Parent or the Company becoming aware of such matter and (ii) the Agent giving notice to the Company requiring that the relevant matter be remedied; or
- (h) Clause 25.14 (*Repudiation and rescission of agreements*).

“**Major Representation**” means a representation or warranty with respect (but only insofar as expressed to apply) to an Obligor only (and not, for the avoidance of doubt, with respect to or relating to any member of the Target Group), under any of Clause 20.2 (*Status*) to Clause 20.5 (*Power and authority*) inclusive (but on the basis that paragraph (c) of Clause 20.4 (*Non-conflict with other obligations*) applies only to the extent that such conflict has, or is reasonably likely to have, a Material Adverse Effect) and Clause 20.28 (*Holding Companies*).

“**Major Undertaking**” means, with respect (but only insofar as expressed to apply) to an Obligor only (and not, for the avoidance of doubt, with respect to or relating to any member of the Target Group or any procurement obligation of an Obligor with respect to any member of the Target Group), any of:

- (a) Clause 23.9 (*Acquisitions*);
- (b) Clause 23.11 (*Holding Companies*);
- (c) Clause 23.13 (*Pari passu ranking*);
- (d) Clause 23.14 (*Negative pledge*);
- (e) Clause 23.15 (*Disposals*);
- (f) Clause 23.20 (*Financial Indebtedness*);
- (g) paragraph (d) (*Terms of Scheme*) of Clause 24.1 (*Scheme Undertakings*) (but excluding sub-paragraph (iv) of that paragraph); or
- (h) paragraph (c) (*Terms of Offer*) of Clause 24.2 (*Offer Undertakings*) (but excluding sub-paragraph (vii) of that paragraph).

“**Majority Lenders**” means a Lender or Lenders whose Commitments aggregate more than 66<sup>2/3</sup> per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66<sup>2/3</sup> per cent. of the Total Commitments immediately prior to that reduction).

“**Margin**” means, in relation to any Loan or any Unpaid Sum, 5.5 per cent. per annum, but if:

- (a) all components of the Obligor Coverage Ratio for the most recently completed Relevant Period exceed 75 per cent., then the Margin for each Loan shall be reduced by 0.25 per cent. per annum; and

- (b) any Event of Default (other than under Clause 25.1 (*Non-payment*)) occurs and for as long as it is continuing, the Margin for each Loan shall be increased by 1.00 per cent. per annum.

However:

- (a) any decrease in the Margin for a Loan on the grounds described in sub-paragraph (a) above shall take effect on the first day of the next Interest Period to commence under this Agreement;
- (b) any subsequent increase in the Margin for a Loan on the grounds that the circumstances described in sub-paragraph (a) above cease to apply shall, unless compliance with all requirements of the Obligor Coverage Ratio is restored within the cure period contemplated in Clause 22.3 (*Obligor Coverage Ratio*), take effect on the first day of the next Interest Period to commence under this Agreement; and
- (c) for the purpose of determining the Margin, the Obligor Coverage Ratio and Relevant Period shall be determined in accordance with Clause 22.1 (*Financial definitions*).

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

- (a) the business or financial condition of the Group taken as a whole;
- (b) the ability of a Relevant Person to perform its payment obligations under any Finance Document; or
- (c) subject to the Legal Reservations and the Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents which if capable of remedy, is not remedied within 20 Business Days.

**“Material Company”** means (a) any Relevant Person or (b) any member of the Group whose earnings (calculated on the same basis as EBITDA), gross assets or gross revenue (calculated on an unconsolidated basis) represent more than five percent of aggregate EBITDA, gross assets or gross revenue of the Group.

**“Material License”** means each of the licenses set out in Schedule 15 (*Material Licenses*).

**“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 Issue Proceeds**” has the meaning given to that term in paragraph (c) of Clause 7.3 (*Voluntary prepayment of Loans*).

“**New Lender**” has the meaning given to that term in Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*).

“**Notifiable Debt Purchase Transaction**” has the meaning given to that term in paragraph (b) of Clause 27.2 (*Disenfranchisement of Sponsor Affiliates*).

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

“**Obligors’ Agent**” means the Company, appointed to act on behalf of each other Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors’ Agent*).

“**Obligor Coverage Ratio**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Offer**” means a contractual takeover offer within the meaning of Section 974 of the Companies Act made by the Company to effect the Acquisition substantially on the same terms as set out in the 2.7 Announcement (subject to appropriate amendments), to acquire the Target Shares, as such Offer may, from time to time, be amended, added to, revised, renewed or waived as permitted in accordance with the terms of this Agreement and the terms and conditions of such Offer or otherwise with the consent of the Majority Lenders.

“**Offer Acquisition**” means the acquisition of the Target by the Company to be effected by way of:

- (a) an Offer; and
- (b) the compulsory acquisition of any Squeeze-Out Shares made pursuant to the Squeeze-Out Procedures.

“**Offer Conversion**” means the Company electing to exercise its right to implement the Acquisition by way of an Offer rather than a Scheme in accordance with paragraph (a) of Clause 3.2 (*Conversion from Scheme to Offer*) and by issuing an Offer Press Release.

“**Offer Conversion Notice**” has the meaning given to that term in paragraph (a) of Clause 3.2 (*Conversion from Scheme to Offer*).

“**Offer Document**” means an offer document to be despatched to shareholders of the Target in respect of an Offer.

“**Offer Press Release**” means any announcement made by the Company that it has elected to exercise its right to implement the Acquisition by way of an Offer rather than a Scheme, made pursuant to paragraph 8(c) of Appendix 7 to the Takeover Code.

“**Offer Transaction Documents**” means (a) the 2.7 Announcement, (b) the Offer Document; (c) the Offer Press Release and (d) any other documents sent by the Company to the Target Shareholders, and otherwise made available to such persons, in the manner required by Rule 24.1 of the Takeover Code.

“**Omnibus Pledge Agreement**” means a first-ranking Dutch law omnibus pledge agreement in respect of security over the Company’s bank accounts, receivables, contractual rights and other rights dated on or about the Signing Date between the Company as pledgor and the Security Agent as pledgee.

“**ON**” means Mr Oleg Novachuk.

**“Original Financial Statements”** means:

- (a) in relation to the Parent, its standalone financial statements for its Financial Year ended 31 December 2019; and
- (b) in relation to the Company, its standalone financial statements for its Financial Year ended 31 December 2019.

**“Original Jurisdiction”** means, in relation to a Relevant Person, the jurisdiction under whose laws that Relevant Person is incorporated as at the Signing Date or, in relation to any person that becomes a Relevant Person after the Signing Date, the date on which it becomes a Relevant Person.

**“Original Obligor”** means the Company or an Original Guarantor.

**“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.

**“Perfection Requirements”** means:

- (a) in relation to any Transaction Security Document and/or the Transaction Security created or expressed to be created thereunder, each of the registrations, filings, endorsements, notarisations, payments, stamping requirements, entries, memoranda and/or notifications specified in the relevant Transaction Security Document or otherwise required for the validity or enforceability thereof; and
- (b) in relation to the accession of any Additional Obligor which is incorporated in Kazakhstan, the registration or filing of this Agreement and/or any Accession Deed with the National Bank of Kazakhstan.

**“Periodic Report”** means an Annual Report or a Quarterly Report.

**“Permitted Account”** means:

- (a) each Company Secured Account;
- (b) any account held with the Account Bank, the Original Lender or any of their respective Affiliates; and
- (c) any other account not permitted under paragraph (a) or (b) above in respect of which the prior written consent of the Agent has been obtained.

**“Permitted Acquisition”** means:

- (a) in respect of the Company:
  - (i) the Acquisition;
  - (ii) the acquisition of shares in each SPV as contemplated by, and in accordance with, the Share Exchange Agreement;
  - (iii) the acquisition of shares in the Target pursuant to a Permitted SPV Share Transfer;

- (iv) the acquisition of shares in the Target from ON as contemplated by the Steps Plan; or
- (v) any other acquisition that constitutes a Permitted Holding Company Activity;
- (b) in respect of the Parent, any acquisition that constitutes a Permitted Holding Company Activity;
- (c) in respect of a member of the Target Group (Non-Brighton) or, prior to the Additional Security Satisfaction Date, the Group (Brighton):
  - (i) any acquisition of shares pursuant to a Permitted Share Issue;
  - (ii) any acquisition of shares or other assets pursuant to a Permitted Reorganisation;
  - (iii) any acquisition which is a Permitted Transaction;
  - (iv) any acquisition that constitutes a Permitted Brighton Transaction;
  - (v) any acquisition that constitutes Permitted Capital Expenditure;
  - (vi) any acquisition of securities which are Cash Equivalent Investments;
  - (vii) any acquisition by a member of the Target Group (Non-Brighton) of an asset sold, leased, transferred or otherwise disposed of by another member of the Target Group (Non-Brighton) in circumstances constituting a Permitted Disposal;
  - (viii) any acquisition by a member of the Group (Brighton) of an asset sold, leased, transferred or otherwise disposed of by another member of the Group (Brighton) in circumstances constituting a Permitted Disposal; or
  - (ix) the incorporation or establishment of a new limited liability company or other person with limited liability;
- (d) in respect of a member of the Target Group (Non-Brighton), any acquisition whether by way of a single transaction or a series of transactions (including in the ordinary course of business), but only if the aggregate amount of consideration paid by members of the Group for such acquisition (and, in respect of any acquisition of a company or other legal entity which, upon acquisition, becomes a member of the Group, any Financial Indebtedness remaining in the acquired company (or any such other legal entity) at the date of acquisition) (the “**Total Purchase Price**”) does not, when aggregated with the Total Purchase Price for any other acquisition made under this paragraph, exceed five per cent. of the Balance Sheet Asset Value of the Target Group (Non-Brighton) in any financial year of the Target;
- (e) in respect of a member of the Group (Brighton), any acquisition whether by way of a single transaction or a series of transactions (including in the ordinary course of business), but only if the Total Purchase Price does not, when aggregated with the Total Purchase Price for any other acquisition made by a member of the Group (Brighton) under this paragraph, exceed 3.50 per cent. of the Balance Sheet Asset Value of the Group (Brighton) in any financial year of the Company;
- (f) in respect of any SPV, the acquisition of legal title to any shares in the Target which it beneficially owns; and

- (g) any other acquisition made with the prior written consent of the Majority Lenders.

“**Permitted Avon Share Issue**” means the issuance by the Target of up to a maximum of 21,009,972 shares to Avon pursuant to the terms of the Brighton SPA, in the case of the Scheme, following the record time for the Scheme or, if an Offer Conversion has occurred, following the Offer having been declared wholly unconditional and the Target having been re-registered as a private limited company.

“**Permitted Brighton Transaction**” means:

- (a) any loan made by a member of the Target Group (Non-Brighton) to a member of the Group (Brighton), provided that:
- (i) the aggregate amount of all such loans made in any Financial Year does not exceed the amount of Capital Expenditure that is permitted for the Group (Brighton) in that Financial Year under paragraph (e) (*Capital Expenditure (Group (Brighton))*) of Clause 22.2 (*Financial condition*); and
  - (ii) the Company procures that the full amount of the proceeds of such loan(s) are promptly and directly applied towards funding such Permitted Capital Expenditure;
- (b) any acquisition by any member of the Target Group (Non-Brighton) of the remaining 25 per cent. ownership stake in the Brighton Parent, provided that:
- (i) the total aggregate amount or value of consideration paid by members of the Group for such acquisition (excluding transaction fees and taxes) does not exceed USD 230,000,000 (or its equivalent in other currencies); and
  - (ii) unless the Brighton Pledge Release Date has occurred, such acquired stake becomes subject to the Transaction Security under the Share Pledge (Brighton) or such other Transaction Security Document that is in form and substance satisfactory to the Security Agent by no later than the date on which the Share Pledge (Brighton) must be entered into pursuant to paragraph (a) of Clause 23.33 (*Conditions subsequent*);
- (c) any investment (by way of equity or debt) made by a member of the Target Group (Non-Brighton) in a member of the Group (Brighton) for the purposes of funding Capital Expenditure of a member of the Group (Brighton) (a “**Brighton Investment**”), provided that making such Brighton Investment would not cause the ratio of X to Y to exceed the ratio of 0.25:1.00 where:

“X” means the amount of the proposed Brighton Investment together with the aggregate amount of all other Brighton Investments previously made by members of the Target Group (Non-Brighton) under this paragraph (c)

and

“Y” means the total aggregate amount of Capital Expenditure made by members of the Group (Brighton) which has, as at the date of the proposed Brighton Investment, been financed using Brighton Non-Recourse Financing;

- (d) any loan made by a member of the Group (Brighton) to any member of the Target Group (Non-Brighton) provided that the applicable Subordination Criteria are satisfied;

- (e) without prejudice to paragraph (e) (*Capital Expenditure (Group (Brighton))*) of Clause 22.2 (*Financial condition*), the Existing Brighton Loan; and
- (f) any other acquisition, Capital Expenditure, disposal, loan or other transaction between a member of the Adjusted Target Group and a member of the Group (Brighton) in respect of which the Agent has given its prior written consent.

**“Permitted Capital Expenditure”** means:

- (a) in respect of any member of the Target Group (Non-Brighton), any Capital Expenditure that is permitted under paragraph (d) of Clause 22.2 (*Financial condition*); and
- (b) in respect of any member of the Group (Brighton), any Capital Expenditure that is permitted under paragraph (e) of Clause 22.2 (*Financial condition*).

**“Permitted Disposal”** means:

- (a) in respect of the Company or the Parent, any sale, lease, licence, transfer or other disposal that constitutes a Permitted Holding Company Activity;
- (b) in respect of an SPV, the disposal of its shares in the Target to the Company pursuant to a Permitted SPV Share Transfer;
- (c) any disposal of shares in any SPV:
  - (i) to the Company as contemplated by, and in accordance with, the Share Exchange Agreement; or
  - (ii) pursuant to a Permitted SPV Disposal;
- (d) in respect of any member of the Group other than the Company, any sale, lease, licence, transfer or other disposal on arm’s length terms:
  - (i) of trading stock or cash in the ordinary course of trading of the disposing entity (including for the purpose of making any capital expenditure) and consistent with past practice (including, for the avoidance of doubt, any disposal of trading stock pursuant to and in accordance with a PXF Transaction);
  - (ii) of assets (other than shares, businesses and Real Property) in exchange for other assets comparable or superior as to type, value and quality;
  - (iii) of obsolete or redundant vehicles, plant and equipment for cash;
  - (iv) of cash or Cash Equivalent Investments to the extent not otherwise prohibited under the Finance Documents;
  - (v) arising as a result of any Permitted Security;
  - (vi) which is a Permitted Transaction;
  - (vii) of any asset by a member of the Group (the **“Disposing Company”**) to another member of the Group (the **“Acquiring Company”**), provided that:
    - (A) both the Disposing Company and the Acquiring Company must be from the Adjusted Target Group or, as the case may be, the Group (Brighton);

- (B) if the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor; and
  - (C) if the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset;
- (viii) constituting dealings with trade debtors with respect to the forgiveness of book debts in the ordinary course of business and consistent with past practice;
- (ix) which is a lease, sub-lease or licence of property in the ordinary course of business and consistent with past practice;
- (x) of inventory in the ordinary course of business and consistent with past practice or in connection with any inventory or supply chain financing not prohibited by this Agreement;
- (xi) constituting a conversion of an intra-Group loan into share capital of, or a capital contribution to, the borrower of such a loan which is not prohibited by this Agreement and provided that:
  - (A) the relevant intra-Group loan is not required to be subject to Transaction Security;
  - (B) all components of the Obligor Coverage Ratio for the most recently completed Relevant Period are equal to or exceed 50 per cent; and
  - (C) the conversion of the relevant intra-Group loan could not reasonably be expected to adversely affect any Transaction Security over shares in any member of the Group or Relevant Person that is required under the Finance Documents;
- (e) in respect of any member of the Target Group (Non-Brighton), any sale, lease, licence, transfer or other disposal of assets (other than shares in Brighton or any shares subject to Transaction Security) on arm's length terms not permitted under paragraph (d) above provided that:
  - (i) any such disposal is made for cash consideration only;
  - (ii) at least 50 per cent. (or, in the case of any disposal to an Affiliate of any member of the Group, Relevant Person or the Shareholders, 100 per cent.) of the total consideration is received by the disposing entity in full at the time the disposal is made;
  - (iii) any amount of consideration not paid at the time the disposal is made (if any) shall be paid to the relevant disposing entity not later than 365 days from the date of the relevant disposal;
  - (iv) such disposal does not include any Core Assets; and
  - (v) prior to making the disposal, the Company delivers to the Agent:
    - (A) unless the Company reasonably estimates (and confirms the same in writing to the Agent) that the fair market value of any asset being disposed of is less than USD 5,000,000 (or its equivalent in other currencies) on a standalone basis, a valuation report from a valuation firm satisfactory to the Agent (acting reasonably) confirming that the

sale price for the relevant assets subject to the disposal is equal to or greater than fair market value; and

- (B) a certificate signed by a director of the Company certifying that the proposed disposal would not, if given effect on a pro forma basis as if the disposal occurred on the first day of the most recently ended Relevant Period (by reference to the most recent consolidated IFRS financial statements of the Adjusted Target Group delivered to the Agent under this Agreement), cause the Leverage Ratio to increase or the Interest Coverage Ratio to decrease (assuming, for the purpose of such pro forma calculation, that (1) EBITDA shall be reduced for the amount of any EBITDA generated by the sold asset (2) Total Net Debt shall decrease by the amount of debt which was disposed together with the sold asset (if applicable) and the amount of cash consideration received by the relevant member of the Target Group (Non-Brighton) at the moment of such disposal and (3) any deferred payment of the purchase price (and any interest payable thereon) shall be disregarded); and
- (vi) the relevant Proceeds arising from such disposal are applied in prepayment of the Facilities in accordance with paragraph (b) of Clause 8.2 (*Proceeds*) or, if the Company receives a Proceeds Rejection Notice, in accordance with paragraph (e) of Clause 8.2 (*Proceeds*);
- (f) in respect of any member of the Target Group (Non-Brighton), any sale, lease, licence, transfer or other disposal of assets (other than shares in Brighton or any shares subject to Transaction Security) on arm's length terms not permitted under paragraphs (d) or (e) above provided that the higher of the market value and consideration receivable (when aggregated with the higher of the market value and consideration receivable for any other sale, lease, licence, transfer or other disposal made under this paragraph (f) does not in any 12 month period in aggregate exceed five per cent. of the Balance Sheet Asset Value of the Target Group (Non-Brighton); and
- (g) in respect of any member of the Group (Brighton), any sale, lease, licence, transfer or other disposal of assets, not falling within paragraph (d) above provided that the higher of the market value and consideration receivable (when aggregated with the higher of the market value and consideration receivable for any other sale, lease, licence, transfer or other disposal not falling within paragraph (d) above) does not exceed in aggregate five per cent. of the Balance Sheet Asset Value of the Group (Brighton) in any 12 month period.

**“Permitted Financial Indebtedness”** means Financial Indebtedness:

- (a) in the case of any Obligor, arising under the Finance Documents;
- (b) in the case of the Company or the Parent, which constitutes a Permitted Holding Company Activity;
- (c) in the case of any member of the Target Group (Non-Brighton), which is Existing Financial Indebtedness and any refinancing thereof provided that:
  - (i) in relation to Existing Financial Indebtedness referred to in paragraph (a) of the definition thereof, if the principal amount of such Financial Indebtedness increases following the Signing Date (other than pursuant to the terms of the Disclosed Existing Financing Agreement which applied as at the Signing Date), the amount of such increased principal shall not be permitted under this

- paragraph (c)(i) and shall only constitute Permitted Financial Indebtedness to the extent that it is permitted under another paragraph of this definition or paragraph (b) of the definition of Existing Financial Indebtedness;
- (ii) in relation to Existing Financial Indebtedness referred to in paragraph (b) of the definition thereof, if the principal amount of such Financial Indebtedness increases following the Closing Date, the amount of such increased principal shall not be permitted under this paragraph (c)(ii) and shall only constitute Permitted Financial Indebtedness to the extent that it is permitted under another paragraph of this definition; and
  - (iii) in relation to any refinancing of such Existing Financial Indebtedness:
    - (A) the agreements entered into in connection with any such refinancing are entered into on arm's length terms and do not contain any terms, place any restrictions or otherwise grant any rights or impose any obligations or other conditions which, in each case, could reasonably be expected to result in any Obligor failing to comply with or perform its obligations under any Finance Document to which it is a party; and
    - (B) the final maturity date for such refinancing is later than the final maturity date for the Financial Indebtedness being refinanced or which is to be refinanced;
  - (d) arising under a Permitted Loan or a Permitted Guarantee;
  - (e) arising under any Treasury Transaction permitted by Clause 23.27 (*Treasury Transactions*) provided that, in the case of a Third Party Treasury Transaction, the requirements of paragraph (b) of that Clause are satisfied;
  - (f) incurred by any member of the Group in respect of which the Original Lender and/or any of its Affiliates and or any of its related parties are the sole creditors and the proceeds of which are used to refinance, replace or exchange any Financial Indebtedness of any member of the Group;
  - (g) incurred pursuant to a Permitted Transaction;
  - (h) arising in respect of bank transfer, clearing facilities or corporate credit card facilities used by the Group in the ordinary course of business;
  - (i) arising under any cash pooling, netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (provided that such arrangements shall not involve cash pooling, netting or set-off of balances between (i) the Company and any other member of the Group or (ii) a member of the Group (Non-Brighton) with a member of the Group (Brighton) unless it also constitutes a Permitted Brighton Transaction);
  - (j) arising as a result of daylight exposures of any member of the Group in respect of banking arrangements entered into in the ordinary course of its treasury activities and consistent with past practice;
  - (k) arising under any inventory or supply chain financing arrangements entered into on arm's length terms;
  - (l) arising under a PXF Transaction for a member of the Group;

- (m) in the case of any member of the Target Group (Non-Brighton), not permitted by any of the preceding paragraphs provided that, after giving pro forma effect to the incurrence of the relevant Financial Indebtedness by the relevant member of the Target Group (Non-Brighton) (together with any other Financial Indebtedness incurred under this paragraph, and any Permitted Payments referred to in sub-paragraph (c) of such definition made, in each case since the last day of the most recently ended Relevant Period), the Leverage Ratio is less than 3.50:1.00; and
- (n) in the case of any member of the Group (Brighton), any Brighton Non-Recourse Financing.

**“Permitted Guarantee”** means:

- (a) in the case of the Company or the Parent, any guarantee or indemnity which constitutes a Permitted Holding Company Activity;
- (b) any guarantee or indemnity arising under or pursuant to the Finance Documents;
- (c) in the case of any member of the Group (other than the Company):
  - (i) the endorsement of negotiable instruments in the ordinary course of trade;
  - (ii) any performance or similar guarantee or bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of business and consistent with past practice and not in respect of Financial Indebtedness;
  - (iii) any guarantee or indemnity in respect of the Permitted Financial Indebtedness of another member of the Group, provided that any such guarantor shall not provide any other Security or Quasi-Security in respect of such Financial Indebtedness unless such Security or Quasi-Security is Permitted Security;
  - (iv) any guarantee or indemnity permitted under Clause 23.20 (*Financial Indebtedness*);
  - (v) any Existing Guarantee or any renewal, substitution or replacement thereof, provided that:
    - (A) in relation to an Existing Guarantee referred to in paragraph (a) of the definition thereof, if the Guarantee Obligation of the relevant member of the Group increases under such guarantee following the Signing Date (other than pursuant to the terms of the primary obligation to which that guarantee relates which applied as at the Signing Date), the amount of such increased Guarantee Obligation shall not be permitted under this paragraph (c)(v)(A) and shall only constitute a Permitted Guarantee to the extent that it falls under another paragraph of this definition or paragraph (b) of the definition of Existing Guarantee; or
    - (B) in relation to an Existing Guarantee referred to in paragraph (b) of the definition thereof, if the Guarantee Obligation of the relevant member of the Group increases under such guarantee following the Closing Date, the amount of such increased Guarantee Obligation shall not be permitted under this paragraph (c)(v)(B) and shall only constitute a Permitted Guarantee to the extent that it falls under another paragraph of this definition;

- (vi) any guarantee or indemnity granted by persons or undertakings acquired by a member of the Group pursuant to a Permitted Acquisition after the Closing Date provided that:
  - (A) the guarantee or indemnity was not created in contemplation of the relevant acquisition by a member of the Group;
  - (B) the Guaranteed Obligation has not been increased in contemplation of or since the acquisition of that person or undertaking by a member of the Group (unless such increase is otherwise permitted by another paragraph of this definition); and
  - (C) the guarantee or indemnity is discharged within three months of the date of acquisition of such person or undertaking;
- (vii) any indemnity given in the ordinary course of the documentation of a disposal transaction which is a Permitted Disposal which indemnity is in a customary form and subject to customary limitations, where the purpose of such indemnity is solely to warrant the quality, nature or value of the disposed asset;
- (viii) guarantees or indemnities given by a member of the Group to a landlord in its capacity as such in the ordinary course of business of the Group and consistent with past practice;
- (ix) any guarantee or indemnity given or arising under legislation relating to Tax or corporate law under which any member of the Group assumes general liability for the obligations of another member of the Group incorporated or tax resident in the same country;
- (x) customary indemnities given in mandate, engagement and commitment letters or otherwise to professional advisors and consultants in the ordinary course of the business of the Group and consistent with past practice;
- (xi) customary guarantees and indemnities in favour of the professional liability of directors, officers and employees in their capacity as such; and
- (xii) any guarantee or indemnity given in respect of the netting or set-off arrangements permitted pursuant to paragraph (c) of the definition of "Permitted Security";
- (d) any guarantee granted with the prior written consent of the Majority Lenders;
- (e) in the case of any member of the Group (Brighton) any guarantee of any Brighton Non-Recourse Financing; and
- (f) any guarantee or indemnity not permitted by the preceding paragraphs provided that the amount of the relevant Guarantee Obligation, when aggregated with the aggregate Guarantee Obligations arising in respect of all other guarantees or indemnities made under this paragraph and any Permitted Loans described in paragraph (l) of that definition, does not exceed USD 50,000,000 (or its equivalent in other currencies) at any time,

and provided that, in each case, no member of the Target Group (Non-Brighton) shall guarantee or provide any indemnity in respect of any obligation or liability of a member of the Group (Brighton) and no member of the Group (Brighton) shall guarantee or provide any indemnity

in respect of any obligation or liability of a member of the Target Group (Non-Brighton) other than pursuant to a Permitted Brighton Transaction.

**“Permitted Holding Company Activity”** means:

- (a) acquiring and holding shares in its Subsidiaries (in the case of the Parent, limited to holding shares in the Company and in the case of the SPVs, limited to holding shares in the Target);
- (b) the entry into and performance of its obligations under the Transaction Documents to which it is a party (including payment of any Acquisition Costs and making any other payments thereunder) and any other action or step required to implement the Acquisition or described in the Steps Plan;
- (c) holding Cash and Cash Equivalent Investments;
- (d) in respect of the Company only:
  - (i) opening and maintaining the Permitted Accounts;
  - (ii) making Permitted Loans to a member of the Target Group described in paragraphs (e) and (g) of the definition thereof;
  - (iii) incurring Permitted Financial Indebtedness from the Parent or any member of the Group under Permitted Loans described in paragraphs (f) and (g) of the definition thereof;
  - (iv) incurring Financial Indebtedness from any of the Shareholders in the amount agreed with the Agent in writing prior to its incurrence, provided that (i) such Financial Indebtedness is subordinated to the Facilities pursuant to a Subordination Agreement and (ii) the proceeds of such Financial Indebtedness are applied by the Company towards payment of the option premium in respect of any Hedging Agreement (Acquisition) and/or Acquisition Costs;
  - (v) performing any Relevant Share Issue (provided, in each case, that the applicable requirements of Clause 8.2 (*Proceeds*) are complied with); and
  - (vi) making payments under Treasury Transactions, provided that, in the case of any Third Party Treasury Transaction, such payment is permitted pursuant to the terms of any subordination arrangements approved by the Agent in relation to such Third Party Treasury Transaction pursuant to paragraph (b) of Clause 23.27 (*Treasury Transactions*);
- (e) in respect of the Parent only:
  - (i) incurring Financial Indebtedness from the Shareholders or any of their Affiliates provided that the proceeds of such Financial Indebtedness are on-lent directly to the Company pursuant to a Permitted Loan described in paragraph (f) of the definition thereof; and
  - (ii) making dividends, other distributions and Permitted Loans to its shareholders and receiving and distributing the proceeds of equity injections from such shareholders;
- (f) payment of overhead costs, paying filing fees, paying directors’ salaries and other ordinary course expenses (such as audit fees, professional advisor fees and operating and business expenses), that relate to administrative services provided to, or duties

performed for, members of the Group of a type customarily provided by a Holding Company to its Subsidiaries, provided the aggregate of such expenses (when aggregated with expenses permitted under paragraph (g) below, activities permitted under paragraph (h) below and Permitted Payments referred to in paragraph (e) of the definition thereof) is not in excess of USD 3,000,000 (or its equivalent in any currency or currencies) in any 12 month period;

- (g) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) counsel, accountants and other advisors and consultants, on an arm's length basis and on customary terms, provided that the aggregate of such expenses for the Parent and the Company jointly (when aggregated with expenses permitted under paragraph (f) above, activities permitted under paragraph (h) below and Permitted Payments referred to in paragraph (e) of the definition thereof) is not in excess of USD 3,000,000 (or its equivalent in any currency or currencies) in any 12 month period;
- (h) carrying on business, incurring any liability or owning any asset solely to the extent necessary to maintain its corporate existence or Tax status, provided that the aggregate of such activities for the Parent and the Company jointly (when aggregated with expenses permitted under paragraphs (f) or (g) above and Permitted Payments referred to in paragraph (e) of the definition thereof) is not in excess of USD 3,000,000 (or its equivalent in any currency or currencies) in any 12 month period;
- (i) the provision of administrative, managerial, legal, treasury and accounting services of a type customarily provided by a Holding Company to its Subsidiaries;
- (j) granting the Transaction Security;
- (k) compliance with applicable reporting and other obligations under any applicable laws;
- (l) incurring and discharging liabilities for, or in connection with, Taxes;
- (m) the receipt and the making of any Permitted Payments;
- (n) making claims (and the receipt of any related proceeds) for rebates or indemnification with respect to Taxes and the benefit of a Permitted Payment;
- (o) those activities, rights, liabilities and other obligations arising in connection with any employee or management incentive or participation scheme operated by a member of the Group or Holding Company provided that the aggregate of such liabilities or expenses for the Parent and the Company jointly is not in excess of USD 1,000,000 (or its equivalent in any currency or currencies) in any 12 month period;
- (p) (without prejudice to any restrictive undertaking or Event of Default in relation to the same under this Agreement) activities in connection with any litigation or court or other proceedings that are, in each case, being contested in good faith; and
- (q) other activities incidental or related to any of the foregoing.

**“Permitted Loan”** means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of trading and with a maturity of not more than 180 days;

- (b) any Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition);
- (c) any Existing Loan or any extension, refinancing or replacement thereof provided that the principal amount of such loan does not increase unless otherwise permitted by another paragraph of this definition;
- (d) any loan granted by persons or undertakings acquired by a member of the Group pursuant to a Permitted Acquisition after the Closing Date provided that:
  - (i) the loan was not created in contemplation of the relevant acquisition by a member of the Group;
  - (ii) the principal amount of the loan has not been increased in contemplation of or since the acquisition of that person or undertaking by a member of the Group (unless such increased amount is otherwise permitted by another paragraph of this definition); and
  - (iii) the loan is discharged within three months of the date of acquisition of such person or undertaking;
- (e) in the case of the Company, any downstream loan of the proceeds of Facility B or Facility C to any member of the Target Group for the applicable purpose described in paragraph (b) or, as the case may be, paragraph (c) Clause 3.1 (*Purpose*), provided that the proceeds of such loans are fully applied towards this purpose within five Business Days and further provided that such loan satisfies the applicable Subordination Criteria;
- (f) in the case of the Parent or any member of the Target Group (Non-Brighton), any loan made to the Company for the purposes of the Company making payments to the Finance Parties under this Agreement, provided that (i) the proceeds of such loans are paid to the Company directly to a Company Secured Account for application towards this purpose within two Business Days and (ii) such loan satisfies the Subordination Criteria;
- (g) any loan made by the Parent to the Company and any on-lending of such proceeds by the Company to a member of the Target Group (Non-Brighton) provided that, in each case, such loan satisfies the applicable Subordination Criteria;
- (h) advances of payroll payments to employees in the ordinary course of business and consistent with past practice;
- (i) any loan which constitutes a Permitted Payment or Permitted Transaction provided that any applicable Subordination Criteria are satisfied;
- (j) in the case of a member of the Target Group (Non-Brighton):
  - (i) any loan which constitutes a Permitted Brighton Transaction;
  - (ii) any loan made to any other member of the Target Group (Non-Brighton) or the Company which, if applicable, satisfies all applicable Subordination Criteria;
  - (iii) any intra-group loan or intercompany balance arising under any cash pooling, netting or set-off arrangement entered into by any member of the Target Group (Non-Brighton) with any other member of the Target Group (Non-Brighton) in accordance with paragraph (i) of Permitted Financial Indebtedness;

- (iv) advances paid for property, plant and equipment and mining assets in the ordinary course of business; or
- (v) advances and prepayments provided to suppliers and contractors in the ordinary course of business existing as at the Signing Date, and any refinancing, replacement or extension of such advances or prepayments for the same or lower amount and on equivalent commercial terms;
- (k) in the case of a member of the Group (Brighton):
  - (i) any loan made to any other member of the Group (Brighton);
  - (ii) any intra-group loan or intercompany balance arising under any cash pooling, netting or set-off arrangement entered into by any member of the Target Group (Brighton) with any other member of the Target Group (Brighton) in accordance with paragraph (i) of Permitted Financial Indebtedness; or
  - (iii) any loan to a member of the Target Group (Non-Brighton) which constitutes a Permitted Brighton Transaction;
- (l) any:
  - (i) advances or prepayments extended by any member of the Target Group (Non-Brighton) on normal commercial terms and in the ordinary course of its trading activities and consistent with past practice; or
  - (ii) loans made by a member of the Target Group (Non-Brighton) to an employee or director of any member of the Target Group (Non-Brighton),

provided that the aggregate amount of all such advances, prepayments or loans for all members of the Target Group (Non-Brighton) does not, when aggregated with the Guarantee Obligation of any Permitted Guarantees made under paragraph (f) of that definition, exceed USD 50,000,000 (or its equivalent in any other currency) at any time; and
- (m) any loan granted with the prior written consent of the Majority Lenders.

**“Permitted Payment”** means:

- (a) any payments made by a member of the Group directly or indirectly to any of the Shareholders provided that:
  - (i) such payment may be made no later than 12 months from the Closing Date; and
  - (ii) the amount of such payment will not, when aggregated with all other payments made to any Shareholder under this paragraph (a), exceed USD 75,000,000 (or its equivalent in any other currency or currencies);
- (b) any payment, declaration of a dividend or other distribution (including upstream loans) or any payment of principal or interest in respect of Subordinated Debt made with the prior written consent of the Majority Lenders;
- (c) any payment, declaration of a dividend or other distribution (including upstream loans) made by the Company to the Parent or minority shareholders of the Company (if any), provided that:

- (i) the Additional Security Satisfaction Date has occurred;
- (ii) no Default is continuing at the time such payment, dividend or other distribution is made or, as the case may be, declared, or would result from such payment, dividend or other distribution being made or, as the case may be, declared;
- (iii) the amount of the payment, dividend or other distribution does not, when aggregated with all other payments, dividends or other distributions declared or paid under this paragraph (c), exceed the net income of the Target Group (Non-Brighton) for the previous Financial Year; and
- (iv) any payment, dividend or other distribution attributable to the minority shareholders of the Company (if any) shall be no greater than proportionate to their shareholding;
- (v) based on the most recent consolidated financial statements of the Adjusted Target Group and the related Compliance Certificates which have been delivered to the Agent prior to the date of the relevant declaration or payment, the Leverage Ratio for the most recently completed Relevant Period:
  - (A) did not exceed 3.50:1.00; and
  - (B) would not have exceeded 3.50:1.00 if the Leverage Ratio was recalculated on a pro forma basis taking into account the proposed payment, dividend or other distribution and the aggregate amount of:
    - (1) all other payments, dividends or other distributions declared or made by the Parent under this paragraph (c); and
    - (2) all Permitted Financial Indebtedness incurred by any member of the Group under paragraph (m) of the definition thereof,
 in each case made or incurred since the last day of the most recently ended Relevant Period;
- (d) a payment, declaration of a dividend, return of capital, capital contribution or other distribution, redemption, repurchase, defeasance, retirement, reduction or payment in respect of share capital made by a member of the Group (other than the Company) to its Holding Company and any minority shareholders of such member of the Group provided that, if the member of the Group is not a wholly-owned Subsidiary of its Holding Company, the payment attributable to its minority shareholders shall be no greater than proportionate to their shareholding;
- (e) payment by any member of the Group:
  - (i) of professional fees (not referred to in paragraph (ii) or (iii) below), Taxes, regulatory and administrative, operating and corporate overhead costs and expenses of the Shareholders or of Holding Companies of the Company in relation to the Group;
  - (ii) to any of the Shareholders, Affiliates of the Shareholders or any advisor to the Shareholders for corporate finance, investment, M&A and transaction advice provided to the Group on bona fide arms' length commercial terms; and

- (iii) of monitoring or advisory fees to the Shareholders, Affiliates of the Shareholders and directors'/managers' fees (or directors'/managers' costs and expenses, including customary salary, bonus and other benefits),

provided that (A) no Event of Default is continuing or would result from the making of such payment and (B) the aggregate of all payments under paragraphs (i) to (iii) above together with all payments made under paragraphs (f), (g) and (h) of the definition of Permitted Holding Company Activity does not exceed USD 3,000,000 (or its equivalent in any currency or currencies) in aggregate for the Group in any 12 month period;

- (f) payment of any dividend or other distribution by the Target which, on or prior to the Acquisition Completion Date, has been declared but not yet made by the Target;
- (g) payment by any member of the Group of interest in respect of Financial Indebtedness owed to management of the Group in relation to a management incentive plan or any other payment pursuant to a stock option plan, any other management or employee benefit, bonus or incentive plan or any participation programme up to a maximum amount which does not exceed USD 1,000,000 (or its equivalent in other currencies) in aggregate for all members of the Group in any 12 month period; and
- (h) any distribution made by an SPV to the Company in respect of liabilities pursuant to a Permitted SPV Share Transfer in connection with the liquidation of such SPV that is a Permitted SPV Disposal.

**“Permitted Reorganisation”** means:

- (a) a Permitted SPV Disposal;
- (b) the Permitted Target Reorganisation;
- (c) any reorganisation described in, and conducted in accordance with, the Steps Plan;
- (d) any reorganisation or liquidation involving the business or assets of, or shares of (or other interests in), any member of the Group (other than the Company or the Target) on a solvent basis where:
  - (i) all of the business, assets and shares of (or other interests in) the relevant member of the Group continue to be owned directly or indirectly by the Company in the same or a greater percentage as prior to such reorganisation, other than:
    - (A) the shares of (or other interests in) a member of the Group which has been merged into another member of the Group or which has otherwise ceased to exist (including, without limitation, by way of the collapse of a solvent partnership or solvent winding-up of an entity) as a result of such a reorganisation; or
    - (B) the business, assets and shares of (or other interests in) relevant members of the Group which cease to be owned:
      - (1) as a result of a Permitted Disposal or Permitted Transaction; or
      - (2) as a result of a cessation of business or solvent winding up of a member of the Group in conjunction with a distribution of all or substantially all of its assets remaining after settlement of its

liabilities to its immediate shareholder(s) or other persons directly holding partnership or other ownership interests in such member of the Group;

- (ii) in respect of any Relevant Person or person whose shares are subject to Transaction Security, the prior written consent of the Agent has been obtained (and such reorganisation or liquidation occurs in accordance with all conditions specified in such consent); and
  - (iii) no payments or assets distributed as a result of such reorganisation or liquidation are distributed by any member of the Target Group (Non-Brighton) to any member of the Group (Brighton) (or vice versa) other than in circumstances which constitute a Permitted Brighton Transaction; and
- (e) any reorganisation consented to by the Agent (acting on the instructions of the Majority Lenders).

**“Permitted Security”** means:

- (a) the Transaction Security;
- (b) any lien arising by operation of law and in the ordinary course of business and not as a result of any default or omission by any member of the Group;
- (c) any netting or set-off arrangement entered into by any member of the Group (other than the Company) in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as such arrangement does not give rise to (i) other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors or (ii) any member of the Target Group (Non-Brighton) supporting the liabilities of any member of the Group (Brighton) (or vice versa);
- (d) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Target Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Acquisition Completion Date pursuant to a Permitted Acquisition if:
  - (i) the relevant Security or Quasi-Security is in respect of Permitted Financial Indebtedness (to the extent the liabilities secured constitute Financial Indebtedness);
  - (ii) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
  - (iii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iv) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (f) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Acquisition Completion Date pursuant to a

Permitted Acquisition, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:

- (i) the relevant Security or Quasi-Security is in respect of Permitted Financial Indebtedness (to the extent the liabilities secured constitute Financial Indebtedness);
  - (ii) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
  - (iii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
  - (iv) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (g) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and consistent with past practice and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
  - (h) any Security or Quasi-Security which constitutes a Permitted Transaction;
  - (i) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;
  - (j) any Security or Quasi-Security arising as a consequence of any Finance Lease permitted pursuant to the definition of "Permitted Financial Indebtedness";
  - (k) any Existing Security or any extension, renewal or replacement of any such Security or Quasi-Security where the amount secured is not increased pursuant to the extension, renewal or replacement unless such increase is otherwise permitted to be secured under any other paragraph of this definition;
  - (l) any Quasi-Security under cash margin arrangements in respect of Treasury Transactions permitted under this Agreement;
  - (m) any Security or Quasi-Security arising as a result of legal proceedings discharged within 30 days (or such shorter grace period specified under this Agreement) or otherwise contested in good faith (and not otherwise constituting an Event of Default);
  - (n) any cash collateral held with an Acceptable Bank provided in respect of letters of credit or bank guarantees to the extent such letter or credit or bank guarantees constitute Permitted Financial Indebtedness or any cash deposits provided under the terms of any tender or auction that constitutes a Permitted Acquisition or Permitted Capital Expenditure;
  - (o) any Security arising by operation of law in respect of Taxes which are not overdue for more than 30 days (or such shorter grace period specified under this Agreement) or the liability in respect of which is being contested in good faith (and not otherwise constituting an Event of Default);
  - (p) any Security or Quasi-Security over documents of title and goods and rights relating to those goods as part of a documentary credit transaction provided that any related trade credit constitutes Permitted Financial Indebtedness (to the extent the liabilities secured constitute Financial Indebtedness);

- (q) any Security required by law or a court to be granted in favour of creditors in relation to mergers of members of the Group in order to permit or facilitate the merger occurring, where such merger would constitute a Permitted Reorganisation and to the extent it would not be prohibited under the terms of this Agreement, or otherwise for the purposes of a capital reduction;
- (r) Security or Quasi-Security granted to secure the obligations of members of the Group in respect of pension obligations;
- (s) payments into court or any Security or Quasi-Security arising under any court order or injunction or security for costs arising in connection with any litigation or court proceedings being contested by any member of the Group in good faith (which do not otherwise constitute or give rise to an Event of Default);
- (t) any Security or Quasi-Security granted or arising over any shares issued (including shares issued prior to the Signing Date) in connection with any employee or management incentive scheme operated by any member of the Group which is not a member of the Group as at the Signing Date;
- (u) any Security or Quasi-Security over (i) any rental deposits or concession payments in respect of any property leased or licensed by member of the Group in the ordinary course of business or consistent with past practice or (ii) pre-paid expenses or similar deposit arrangements made with third parties under contracts entered into by members of the Group in the ordinary course of business and consistent with past practice;
- (v) any Quasi-Security resulting due to any right of set-off arising under contracts entered into by members of the Group in the ordinary course of business and consistent with past practice;
- (w) any Security over cash paid into an escrow or similar account held with an Acceptable Bank in connection with a Permitted Disposal or Permitted Acquisition or any Security over cash granted in the ordinary course of business and consistent with past practice;
- (x) any security or right of set-off arising over any bank accounts or custody accounts or other clearing banking facilities held by members of the Group in the ordinary course of its banking arrangements with any bank or financial institution under the standard terms and conditions of such bank or financial institution;
- (y) any Security or Quasi Security granted in connection with any inventory or supply chain financing that is Permitted Financial Indebtedness provided that such Security is limited to assets which are the subject of that financing;
- (z) in each case provided that the Brighton Financing Date has occurred:
  - (i) any Security or Quasi-Security granted by a member of the Target Group (Non-Brighton) over the shares of a member of the Group (Brighton) in connection with any Brighton Non-Recourse Financing; or
  - (ii) any Security or Quasi-Security granted by any member of the Group (Brighton) in connection with any Brighton Non-Recourse Financing;
- (aa) any Quasi-Security which arises by operation of any sale and leaseback transaction permitted by the definition of Permitted Disposal to the extent granted by the relevant member of the Group over assets comprised within or constituted by such arrangements;

- (bb) any Security in support of any PXF Transaction that constitutes Permitted Financial Indebtedness, provided that such Security is limited to Security over (i) rights under export, sales or supply contracts and any associated letters of credit and/or (ii) bank accounts of the relevant borrower, one or more producers and/or any trader involved in the relevant PXF Transaction or (iii) any other Security in respect of which the prior written consent of the Agent has been obtained; and
- (cc) any Security and Quasi-Security granted with the prior written consent of the Majority Lenders.

“**Permitted Share Issue**” means the issuance of:

- (a) shares by the Company:
  - (i) to the Parent, provided that such newly issued shares immediately become subject to the Transaction Security and any Perfection Requirements as specified in the relevant Transaction Security Document are satisfied within the timeframe set out in such Transaction Security Document;
  - (ii) to management or employees pursuant to incentive or participation schemes, provided that:
    - (A) the Additional Security Longstop Date has occurred; and
    - (B) the dilutive effect of all such share issuances on the Parent’s ownership of each class of issued shares of the Company shall not exceed 3.00 per cent.; or
  - (iii) to any third party investor, provided that:
    - (A) the dilutive effect of all such share issuances on the Parent’s ownership of each class of all issued shares of the Company shall not exceed 12 per cent.; and
    - (B) the issuance is for immediately receivable cash consideration and the Company applies all Proceeds of any such issuance towards prepayment of the Facilities in accordance with paragraph (b) of Clause 8.2 (*Proceeds*) or, if the Company receives a Proceeds Rejection Notice, in accordance with paragraph (e) of Clause 8.2 (*Proceeds*);
- (b) shares by a member of the Group (other than the Company) which is a direct or indirect Subsidiary of the Company to its immediate shareholders provided that:
  - (i) the existing shares of the Subsidiary held by the relevant shareholders are not subject to or expressed to be subject to the Transaction Security or, if the existing shares of the Subsidiary held by such shareholders are the subject of the Transaction Security, the newly-issued shares simultaneously become subject to the Transaction Security on the same terms and all applicable Perfection Requirements are satisfied in accordance with the requirements of the relevant Transaction Security Document; and
  - (ii) such issuance of shares would not reduce the direct or indirect ownership interest of the Parent in such member of the Group (expressed as a percentage of the capital of the relevant member of the Group);

- (c) shares by the Target to management or employees pursuant to incentive or participation schemes, provided that:
  - (i) the Additional Security Longstop Date has occurred; and
  - (ii) the dilutive effect of any such share issuances on the Company's ownership of each class of issued shares of the Target shall not exceed 3.00 per cent;
- (d) shares by the Target pursuant to a Permitted Avon Share Issue provided that, in respect of any such Permitted Avon Share Issue, the requirements of paragraph (c) of Clause 23.23 (*Share capital*) are satisfied;
- (e) any shares which constitute a Permitted Transaction; and
- (f) any shares in respect of which the prior written consent of the Majority Lenders has been obtained.

**“Permitted SPV Disposal”** means the liquidation, sale or other disposal of an SPV provided that, at the time of such liquidation, sale or disposal:

- (a) the SPV has no legal or beneficial interest in any shares in the Target, having transferred all such shares to the Company pursuant to a Permitted SPV Share Transfer;
- (b) no liabilities or obligations exist between the SPV and any member of the Group; and
- (c) the SPV has ceased to be a Guarantor pursuant to Clause 28.4 (*Resignation of Guarantors*).

**“Permitted SPV Share Transfer”** means any transfer by an SPV to the Company of its shares in the Target which satisfies all of the following criteria:

- (a) the transfer is effected pursuant to the Permitted SPV Share Transfer Documents or such other legal documentation satisfactory to the Agent (acting reasonably);
- (b) all necessary Authorisations required to be obtained in respect of such transfer by any Relevant Person or the Group have been obtained (and such transfer is conducted in compliance with the terms of each such Authorisation);
- (c) the relevant shares in the Target become subject to the Transaction Security created by the Share Charge (Target/Company) immediately upon the completion of the transfer; and
- (d) any liability or other obligation owed by the Company to the relevant SPV in connection with such transfer (including, without limitation, any intercompany debt or receivable which arises in connection with any deferred or unpaid purchase price) is:
  - (i) subordinated to the Financial Indebtedness under the Finance Documents on the terms of a Subordination Agreement or otherwise on terms reasonably acceptable to the Agent (acting on the instructions of all the Lenders); and
  - (ii) assigned by the SPV for the benefit of the Secured Parties by way of first ranking Security in form and substance satisfactory to the Agent.

**“Permitted SPV Share Transfer Documents”** means:

- (a) a Declaration of Trust; and

(b) a Letter of Direction.

**“Permitted Target Reorganisation”** means any reorganisation (including by way of solvent liquidation) exclusively involving the Target and the Company provided that all of the following criteria are satisfied:

- (a) the Company shall be the surviving entity;
- (b) all of the business, assets and shares of (or other interests in) the Target continue to or will become owned directly by the Company in the same or a greater percentage as prior to such reorganisation (other than the shares of (or other interests in) the Target which have been merged into the Company or which have otherwise ceased to exist); and
- (c) at the time such restructuring is effected:
  - (i) the Additional Security Satisfaction Date has occurred;
  - (ii) the Obligors are in compliance with the Obligor Coverage Ratio; and
  - (iii) no Default would occur as a result of such restructuring.

**“Permitted Transaction”** means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) any Permitted Reorganisation;
- (c) any payments or other transactions contemplated by the Steps Plan;
- (d) any Permitted Brighton Transaction; and
- (e) any other transaction entered into with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

**“Prepayment Amount”** has the meaning given to that term in paragraph (d) of Clause 7.3 (*Voluntary prepayment of Loans*).

**“Prepayment Fee”** has the meaning given to that term in paragraph (d) of Clause 7.3 (*Voluntary prepayment of Loans*).

**“Proceeds”** has the meaning given to that term in Clause 8.2 (*Proceeds*).

**“Process Agent Letter”** means the letter dated on or around the Signing Date from the Obligors to [REDACTED], appointing [REDACTED], as process agent pursuant to Clause 47.4 (*Service of process*).

**“PXF Transaction”** means any transaction or series of transactions entered into by any member of the Group (other than the Company) pursuant to the Existing PXF Facility or any extension, refinancing or replacement thereof or otherwise for the purpose of, or that has the commercial effect of, providing pre-export financing (as exporter or producer and borrower) and/or prepayment financing (as seller or trader and borrower) to any member of the Group (other than the Company).

**“Quarter Date”** means the last day of a Financial Quarter.

**“Quarterly Report”** means a quarterly production and sales report in relation to the Target Group (Non-Brighton) in substantially the same form as the quarterly report prepared in respect of the Target Group for the Target’s most recent financial quarter (or such other form as may be agreed between the Agent and the Company).

**“Quasi-Security”** has the meaning given to that term in Clause 23.14 (*Negative pledge*).

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined two Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

**“RAS”** means the generally accepted accounting principles in the Russian Federation.

**“Real Property”** means:

- (a) any freehold, leasehold or immovable property; and
- (b) any buildings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

**“Receiver”** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

**“Receiving Agent”** means such person or persons appointed in their capacity as receiving agent to the Offer.

**“Receiving Agent Agreement”** means the agreement to be entered into between the Company and the Receiving Agent prior to the occurrence of an Offer Conversion identifying the scope and duties of the Receiving Agent.

**“Receiving Agent’s Certificate”** means a certificate issued by the Receiving Agent to the Company or its financial adviser in accordance with Note 7 on Rule 10 of the Takeover Code confirming, amongst other things, the number of valid acceptances which have been received in respect of the Offer and the number of Target Shares otherwise acquired.

**“Reference Banks”** means the principal London offices of such banks as may be appointed by the Agent in consultation with the Company with the consent of such banks.

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

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

- (a) if:
  - (i) the Reference Bank is a contributor to the applicable Screen Rate; and
  - (ii) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or

- (b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market.

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

**“Related Person”** with respect to any Shareholder, means:

- (a) any spouse, family member or relative of such Shareholder, any trust or partnership for the benefit of one or more of such Shareholder and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof; or
- (b) any trust, corporation, partnership or other entity for which one or more of the Shareholders and other Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof.

**“Relevant Disposal”** has the meaning given to that term in Clause 8.2 (*Proceeds*)

**“Relevant Jurisdiction”** means, in relation to a Relevant Person:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

**“Relevant Loan”** has the meaning given to that term in paragraph (c) of Clause 5.3 (*Currency and amount*).

**“Relevant Market”** means the London interbank market.

**“Relevant Nominating Body”** has the meaning given to that term in Clause 40.8 (*Replacement of Screen Rate*).

**“Relevant Period”** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**“Relevant Person”** means an Obligor or a Security Provider, **provided that** where the term “Relevant Person” is used in, and construed for the purposes of, this Agreement, each of ON and VK shall be a Relevant Person only for so long as they remain a Security Provider and solely for the purposes of:

- (a) Clause 2.2 (*Finance Parties' rights and obligations*);
- (b) Clause 16 (*Other Indemnities*) to Clause 19 (*Guarantee and indemnity*);
- (c) Clause 23.14 (*Negative pledge*) and Clause 23.32 (*Further assurance*);

- (d) Clause 25.1 (*Non-payment*), Clause 25.3 (*Other obligations*), Clause 25.4 (*Misrepresentation*), Clause 25.9 (*Unlawfulness and invalidity*) and Clause 25.14 (*Repudiation and rescission of agreements*);
- (e) Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*);
- (f) Clause 29 (*Role of the Agent, the Arranger and Others*);
- (g) Clause 30 (*The Security Agent*) (other than Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*));
- (h) Clause 31 (*Application of Proceeds*) (other than Clause 31.7 (*Application and consideration*));
- (i) Clause 32 (*Conduct of Business by the Finance Parties*) to Clause 34 (*Payment Mechanics*); and
- (j) Clause 36 (*Notices*).

“**Relevant Share Issue**” has the meaning given to that term in Clause 8.2 (*Proceeds*).

“**Relevant Year**” means each consecutive period of 12 Months, with the first such period starting on the Signing Date.

“**Remediable Default**” means any failure to comply with any provision of Clauses 21.8 (*Information: miscellaneous*) (in respect of a breach caused by late delivery only), 21.9 (*Notification of Default*), 23.1 (*Authorisation*) to 23.6 (*Taxation*), Clause 23.8 (*Change of business*), Clause 23.10 (*Joint ventures*), Clause 23.12 (*Preservation of assets*), Clause 23.16 (*Arm’s length basis*), Clause 23.18 (*No guarantees or indemnities*), Clause 23.19 (*Dividends and share redemption*), Clause 23.20 (*Financial indebtedness*), Clauses 23.24 (*Access*) to 23.32 (*Further assurance*), paragraph (c) of Clause 24.1 (*Scheme Undertakings*) or paragraph (c) of Clause 24.2 (*Offer Undertakings*).

“**Remediable Misrepresentation**” means any misrepresentation arising under any of Clause 20.6 (*Validity and admissibility in evidence*), Clause 20.9 (*No filing or stamp tax*), Clause 20.10 (*No default*), Clause 20.12 (*Original Financial Statements*), Clauses 20.14 (*No breach of laws*) to 20.17 (*Anti-corruption law*), Clause 20.19 (*Ranking*), Clauses 20.22 (*Shares*) to 20.25 (*Year-end*) and Clauses 20.27 (*Acquisition Documents, disclosures and other documents*) to 20.28 (*Holding Companies*).

“**Repayment Date**” means each date set out in the table in paragraph (a) of Clause 6.1 (*Repayment of Loans*) or, as the case may be, paragraph (c) of Clause 6.2 (*Extension of Termination Date*).

“**Repayment Instalment**” means each repayment instalment set out in the table in paragraph (a) of Clause 6.1 (*Repayment of Loans*) or, as the case may be, paragraph (c) of Clause 6.2 (*Extension of Termination Date*).

“**Repeating Representations**” means each of the representations set out in Clause 20.2 (*Status*) to Clause 20.7 (*Governing law and enforcement*), Clause 20.10 (*No default*), paragraph (a)(v) of Clause 20.11 (*No misleading information*), paragraph (e) of Clause 20.12 (*Original Financial Statements*), Clause 20.17 (*Anti-corruption law*) and Clause 20.26 (*Sanctions*).

“**Replacement Benchmark**” has the meaning given to that term in Clause 40.8 (*Replacement of Screen Rate*).

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

“**Resignation Letter**” means a letter substantially in the form set out in Schedule 10 (*Form of Resignation Letter*).

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

“**Restricted Country**” means a country or territory that is the subject of country or territory-wide Sanctions.

“**Restricted Party**” means a person, entity or other party that is:

- (a) subject to any Sanctions or named on any Sanction List; or
- (b) owned or controlled directly or indirectly by a person, entity or other party referred to in paragraph (a) above.

“**Sanctions**” means any economic or financial sanctions or trade embargoes or other restrictive measures administered, enacted or enforced by a Sanctions Authority.

“**Sanctions Authority**” means:

- (a) the Security Council of the United Nations;
- (b) the U.S. government or any U.S. government agency (including OFAC, the U.S. State Department, the U.S. Department of Commerce or the U.S. Department of the Treasury);
- (c) the European Union (or any of its member states);
- (d) the UK government (including, without limitation, any of Her Majesty’s Treasury, the Foreign and Commonwealth Office and the UK Department for Business Innovation & Skills); and
- (e) the Russian Federation.

“**Sanctions List**” means the Specially Designated Nationals and Blocked Persons list, the Sectoral Sanctions Identifications list and the List of Foreign Sanctions Evaders maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty’s Treasury, or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

“**Scheme**” or “**Scheme Acquisition**” means a scheme of arrangement under Part 26 of the Companies Act to be proposed by the Target to the Target Shareholders in connection with the Acquisition substantially on the terms and conditions set out in the 2.7 Announcement and Scheme Circular, as such scheme may from time to time be amended, added to, revised, renewed or waived as permitted in accordance with the terms of this Agreement or as otherwise imposed by the Court or with the consent of the Majority Lenders.

“**Scheme Circular**” means a circular (including any supplementary circular) to be issued by the Target to its shareholders and persons with information rights containing, amongst other things, the notices of the General Meeting and Court Meeting and proposals for and the terms of the Scheme pursuant to Part 26 of the Companies Act.

**“Scheme Court Order”** means an order of the Court sanctioning the Scheme pursuant to section 899 of the Companies Act.

**“Scheme Documents”** means each of the 2.7 Announcement, the Scheme Circular, the Scheme Court Order and any other document designated as a “Scheme Document” by each of (i) the Agent and (ii) the Company.

**“Scheme Effective Date”** means the date on which the Scheme becomes effective in accordance with its terms.

**“Screen Rate”** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Company.

**“Screen Rate Replacement Event”** has the meaning given to that term in Clause 40.8 (*Replacement of Screen Rate*).

**“Secured Hedge Counterparty”** means the Original Secured Hedge Counterparty or any Additional Secured Hedge Counterparty.

**“Secured Hedge Counterparty Accession Letter”** means a document substantially in the form set out in Schedule 9 (*Form of Secured Hedge Counterparty Accession Letter*).

**“Secured Hedging Agreement”** means:

- (a) each Hedging Agreement (Acquisition) to which a Secured Hedge Counterparty is a party; and
- (b) any other master agreement, confirmation, schedule or other agreement entered into or to be entered into by any Borrower and a Secured Hedge Counterparty for the purpose of hedging interest rate risk, foreign exchange risk, or any other liabilities and/or risks in relation to the Facilities.

**“Secured Parties”** means each Finance Party from time to time party to this Agreement, and any Receiver or Delegate.

**“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.

**“Security Provider”** means:

- (a) until such time as the Share Charge (Target/ON) has been released by the Security Agent, ON;
- (b) if ON or VK has executed an Indemnity Letter pursuant to the requirements of paragraph 9(b) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*), then until such time as the Indemnity Letter to which he is a party terminates in accordance with its terms or is released by VTB Bank (PJSC), ON and VK; and

- (c) any other person which is not an Obligor but which, at any time, grants or purports to grant Security to the Security Agent and/or the other Secured Parties in respect of any Secured Obligations pursuant to a Transaction Security Document.

“**Security Assignment**” means the English law governed deed of security assignment dated on or about the Signing Date and entered into by, among others, the Original Obligors as original assignors and the Security Agent as assignee.

“**Settlement Account**” means the Settlement Account (GBP) or the Settlement Account (USD).

“**Settlement Account (GBP)**” means the account held by the Company with the Account Bank denominated in GBP and identified by number [REDACTED] IBAN [REDACTED], and which is subject to Security in favour of the Security Agent which Security is in form and substance reasonably satisfactory to the Security Agent as the same may be redesignated, substituted or replaced from time to time with the prior written consent of the Agent.

“**Settlement Account (USD)**” means the account held by the Company with the Account Bank denominated in USD and identified by number [REDACTED]; IBAN [REDACTED], and which is subject to Security in favour of the Security Agent which Security is in form and substance reasonably satisfactory to the Security Agent as the same may be redesignated, substituted or replaced from time to time with the prior written consent of the Agent.

“**Share Charge (Target/Company)**” means the English law governed charge over shares in the Target dated on or about the Signing Date and between the Company as chargor and the Security Agent as chargee.

“**Share Charge (Target/ON)**” means the English law governed charge over shares in the Target dated shortly after the Signing Date and between ON as chargor and the Security Agent as chargee.

“**Share Charge (Target/SPV)**” means the English law governed charge over shares in the Target dated on or about the Signing Date between SPV 1, SPV 2, SPV 3 and SPV 4 as chargors and the Security Agent as chargee.

“**Share Exchange Agreement**” means the share exchange agreement entered into between, among others, the Company, the Parent and the SPVs, pursuant to which the parties to such agreement agree to effect the transfers set out in steps 4, 5(a) and 5(b) of the Steps Plan, conditional, and with effect, upon the Scheme becoming effective in accordance with its terms (or, in the event of an Offer Conversion, the Offer being declared wholly unconditional).

“**Share Exchange Party**” has the meaning given to that term in paragraph (a) of Clause 20.29 (*Share Exchange Agreement*).

“**Share Pledge (Brighton)**” means a Russian law governed pledge over 100 per cent. of the shares in the Brighton between the Brighton Parent as pledgor and the Security Agent as pledgee.

“**Share Pledge (Brighton Parent)**” means a Cyprus law governed pledge over 75 per cent. of the shares in the Brighton Parent (as may be increased to 100 per cent. following a Permitted Acquisition of shares in Brighton Parent) between the Holding Company of the Brighton Parent as pledgor and the Security Agent as pledgee.

“**Share Pledge (Company)**” means the Dutch law governed pledge over shares in the Company dated on or about the Signing Date between the Parent as pledgor and the Security Agent as pledgee.

“**Shareholders**” means ON, VK and each of their Related Persons.

“**Signing Date**” means the date of this Agreement.

“**Specified Time**” means a day or time determined in accordance with Schedule 11 (*Timetables*).

“**Sponsor Affiliate**” means each Shareholder, each of its Affiliates, any trust of which any Shareholder or any of its Affiliates is a trustee, any partnership of which any Shareholder or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, any Shareholder or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least six months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by any Shareholder or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate.

“**SPV**” means each of SPV 1, SPV 2, SPV 3 and/or SPV 4 and collectively the “**SPVs**”, unless it has ceased to be Party to this Agreement as a Guarantor in accordance with Clause 28 (*Changes to the Relevant Persons*).

“**SPV 1**” means Kinton Trade Ltd., a private limited company incorporated in the British Virgin Islands under company number 561683 with registered office address at Craigmuir Chambers, P.O Box 71, Road Town, Tortola VG1110, British Virgin Islands.

“**SPV 2**” means Harper Finance Limited, a private limited company incorporated in the British Virgin Islands under company number 410873 with registered office address at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola VG1110, British Virgin Islands.

“**SPV 3**” means Perry Partners S.A., a private limited liability company with registration number 606416, incorporated under the laws of the British Virgin Islands, having its registered office address at 3076 Sir Francis Drake’s Highway, P.O. Box 3463, Tortola, Road Town, British Virgin Islands.

“**SPV 4**” means Cuprum Holding Limited, a legal entity organised in the form of a limited liability company and registered under the laws of Malta with company registration number C 28661 whose registered office is at 4, V. Dimech Street, Floriana FRN 1504, Malta.

“**SPV Target Share Materialization Date**” means the date as of which:

- (a) SPV1 is or has become the direct legal and beneficial owner of 5,216,522 ordinary shares in the Target;
- (b) SPV2 is or has become the direct legal and beneficial owner of 29,706,901 ordinary shares in the Target;
- (c) SPV3 is or has become the direct legal and beneficial owner of 13,362,470 ordinary shares in the Target; and
- (d) SPV4 is or has become the direct legal and beneficial owner of 135,944,325 ordinary shares in the Target.

**“Squeeze-Out Date”** means, upon becoming entitled to exercise the “Squeeze Out Procedure”, the first date on which all Squeeze-Out Shares are acquired by the Company pursuant to exercise of such procedure.

**“Squeeze-Out Loan”** means the aggregate principal amount of any Loan made or to be made available to the Company for the purpose of satisfying the consideration payable for the acquisition of the Squeeze-Out Shares pursuant to the operation of the Squeeze-Out Procedures, or the principal amount outstanding for the time being of that Loan.

**“Squeeze-Out Procedures”** means, if the Company becomes entitled to give notice under section 979 of the Companies Act, the procedure to be implemented under section 979 of the Companies Act following the Unconditional Date to acquire the Squeeze-Out Shares.

**“Squeeze-Out Shares”** means those outstanding Target Shares which, as at the date on which the Company becomes entitled to exercise the Squeeze-Out Procedures, the Company has not acquired, contracted to acquire or in respect of which it has not received valid acceptances pursuant to the Offer.

**“Steps Plan”** means the steps paper relating to the Group delivered to the Agent under Clause 4.1 (*Initial conditions precedent*).

**“Subordinated Debt”** means any loans or Financial Indebtedness made available by the Parent or any Shareholder to the Company that satisfy the Subordination Criteria or otherwise on terms satisfactory to the Agent.

**“Subordination Agreement”** means:

- (a) the Subordination Agreement (Group);
- (b) the Subordination Agreement (Shareholders); and
- (c) any other subordination agreement or subordination arrangements in form and substance satisfactory to the Agent.

**“Subordination Agreement (Group)”** means the subordination agreement dated on or about the Signing Date between, among others, the Company, the Parent and the Agent.

**“Subordination Agreement (Shareholders)”** means the subordination agreement dated on or about the Signing Date between, among others, the Company, the Shareholders and the Agent.

**“Subordination Criteria”** means:

- (a) in relation to any Financial Indebtedness in respect of which the Company is the borrower and any member of the Group or any Relevant Person (other than a Shareholder) is a creditor:
  - (i) such Financial Indebtedness is subordinated to the Financial Indebtedness under the Finance Documents on the terms of a Subordination Agreement or otherwise on terms reasonably acceptable to the Agent (acting on the instructions of all the Lenders); and
  - (ii) the relevant member of the Group or Relevant Person as creditor has assigned its rights to such Financial Indebtedness by way of first ranking Security for the benefit of the Secured Parties in form and substance satisfactory to the Agent;

- (b) in relation to any Financial Indebtedness in respect of which the Company is the borrower and any Shareholder is a creditor, such Financial Indebtedness is subordinated to the Financial Indebtedness under the Finance Documents on the terms of the Subordination Agreement (Shareholders) or otherwise on terms reasonably acceptable to the Agent (acting on the instructions of all the Lenders);
- (c) in relation to any Financial Indebtedness in respect of which the Company is the creditor and any other member of the Group or any Relevant Person is the borrower, the Company has assigned its rights to such Financial Indebtedness by way of first ranking Security for the benefit of the Secured Parties in form and substance satisfactory to the Agent; or
- (d) in relation to any Financial Indebtedness in respect of which a member of the Group (Brighton) is the creditor and a member of the Target Group (Non-Brighton) or the Company is the borrower, such Financial Indebtedness is unsecured and subordinated to the Financial Indebtedness under the Finance Documents on the terms of a Subordination Agreement or otherwise on terms reasonably acceptable to the Agent (acting on the instructions of all the Lenders), provided that, in relation to any such Financial Indebtedness incurred prior to the Closing Date, no member of the Target Group shall be required to accede to a Subordination Agreement until the date falling five Business Days after the date on which the Target is re-registered as a private limited company.

“**Subsidiary**” means any person (referred to as the “**first person**”) in respect of which another person (referred to as the “**second person**”):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
- (d) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or
- (e) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (f) together with the first person are managed on a unified basis.

For the purposes of this definition: (i) a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries; (ii) a second person shall be treated as satisfying any one of conditions (a) to (f) above in respect of any person in relation to which any of its Subsidiaries are, or are to be treated as, satisfying any of conditions

(a) to (f) above; and (iii) a first person shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security.

“**Takeover Code**” means the UK City Code on Takeovers and Mergers, as administered by the Takeover Panel, as may be amended from time to time.

“**Takeover Panel**” means the UK Panel on Takeovers and Mergers.

“**Target**” means Kaz Minerals PLC, a company incorporated in England and Wales with registration number 05180783 and whose registered address is 6<sup>th</sup> Floor, Cardinal Place, 100 Victoria Street, London, SW1E 5JL.

“**Target Group**” means:

- (a) prior to the occurrence of the Permitted Target Reorganisation, the Target and its Subsidiaries (and any entities included in the consolidated financial statements of the Target under IFRS); and
- (b) at any time on or after the occurrence of the Permitted Target Reorganisation, the Company and its Subsidiaries (and any entities included in the consolidated financial statements of the Target under IFRS)

“**Target Group (Non-Brighton)**” means the Target Group but excluding any person that is also a member of the Group (Brighton).

“**Target Shareholders**” means all the holders (legal and/or beneficial) of shares, warrants and options (if any) in the Target (excluding any treasury shares held by the Target), other than those shares, warrants and options (if any) in the Target owned and/or controlled by the SPVs, VK or ON.

“**Target Shares**” means the issued or unconditionally allotted and fully paid ordinary shares of 20 pence each in the capital of the Target at the Signing Date and any further shares in the capital of the Target which may be issued or unconditionally allotted pursuant to the exercise of any outstanding substitution or conversion rights or otherwise, together with all related rights and all warrants and options (if any) in respect of the share capital of Target, in each case held (legally and/or beneficially) by one or more of the Target Shareholders.

“**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 Termination Date (Original) or, if extended pursuant to paragraph (c) of Clause 6.2 (*Extension of Termination Date*), the Termination Date (Extended).

“**Termination Date (Original)**” means the date falling 60 Months after the Signing Date.

“**Termination Date (Extended)**” means the date falling 84 Months after the Signing Date.

“**Third Party Hedge Counterparty**” means any person (other than a Secured Hedge Counterparty) that is the counterparty of any Obligor or member of the Group under a Third Party Hedging Agreement.

“**Third Party Hedging Agreement**” means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by any Obligor or member of the Group with any person that is not a Secured Hedge Counterparty for the purpose of hedging interest rate risk, foreign exchange risk, or any other liabilities and/or risks in relation to the Facilities.

**“Third Party Treasury Transaction”** means any Treasury Transaction entered into by any Obligor or member of the Group pursuant to a Third Party Hedging Agreement.

**“Total Commitments”** means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments.

**“Total Facility A Commitments”** means the aggregate of the Facility A Commitments, being USD 2,990,000,000 at the Signing Date.

**“Total Facility B Commitments”** means the aggregate of the Facility B Commitments, which may be an amount up to USD 1,000,000,000.

**“Total Facility C Commitments”** means the aggregate of the Facility C Commitments, which may be an amount up to USD 1,000,000,000.

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

**“Transaction Documents”** means the Finance Documents, the Receiving Agent Agreement and the Acquisition Documents.

**“Transaction Security”** means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

**“Transaction Security Documents”** means:

- (a) each Transaction Security Document (CP), each Transaction Security Document (Offer) and each Transaction Security Document (CS);
- (b) any other document creating or expressed to create any Security over all or any part of its assets to secure the obligations of any of any Relevant Person under any of the Finance Documents entered into by a member of the Group or, if it has been designated in accordance with paragraph (c) below, any other person and
- (c) any other document designated as a “Transaction Security Document” by the Security Agent and the chargor under that document (or the Company on its behalf).

**“Transaction Security Document (CP)”** means:

- (a) the Cash Account Pledge Agreement;
- (b) the Omnibus Pledge Agreement;
- (c) the Security Assignment;
- (d) the Share Pledge (Company);
- (e) the Share Charge (Target/Company); and
- (f) the Share Charge (Target/SPV).

**“Transaction Security Document (CS)”** means:

- (a) the Share Pledge (Brighton);
- (b) the Share Pledge (Brighton Parent);

- (c) the Share Charge (Target/ON); and
- (d) any other Transaction Security referred to in Clause 23.33 (*Conditions subsequent*).

**“Transaction Security Document (Offer)”** means:

- (a) the Custody Account Pledge Agreement; and
- (b) a Designation Schedule in relation to the Receiving Agent Agreement.

**“Transfer Certificate”** means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

**“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.

**“Treasury Transactions”** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

**“UK Bail-In Legislation”** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**“Unconditional Date”** means the date on which the Offer becomes, or is declared to be, unconditional in all respects in accordance with the requirements of the Takeover Code.

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

**“US”** means the United States of America.

**“Utilisation”** means a utilisation of a Facility.

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

**“Utilisation Request”** means a notice substantially in the form set out in Schedule 4 (*Utilisation Request*).

**“Valuation Report”** means a valuation report prepared in respect of the Target (or, following the Permitted Target Reorganisation, the Company) by the Valuer which:

- (a) is conducted in accordance with the most recent valuation standards of the International Valuation Standards Council;
- (b) sets out all calculations in USD; and
- (c) specifies the fair value and liquidation value (assuming for this purpose that the relevant shares could be sold within 180 days) in respect of:

- (i) 100 per cent. of the total share capital of the Target (or, as applicable, the Company), and the value of one share when calculated on this basis; and
- (ii) the percentage of the total share capital of the Target (or, as applicable, the Company) which is, at the time of the valuation report, subject to the Transaction Security, and the value of one share when calculated on this basis.

**“Valuation Report Delivery Date”** means:

- (a) the date falling six months after the Closing Date; and
- (b) the last day of each successive six month period thereafter.

**“Valuer”** means any of Deloitte Touche Tohmatsu Limited, PricewaterhouseCoopers International Limited, Ernst & Young Global Limited or KPMG International Limited or any other firm agreed with the Agent (provided that the firm selected shall not be the current auditor of the Original Lender for its international accounts).

**“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.

**“VK”** means Mr Vladimir Kim.

**“Vostoksvetmet”** means Vostoksvetmet LLC, a company incorporated under the laws of the Republic of Kazakhstan with business identification number 140740012829 and having its principal place of business at Ust-Kamenogorsk, A. Protozanova st, 121, Republic of Kazakhstan.

**“Write-down and Conversion Powers”** means:

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

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) the “**Agent**”, the “**Arranger**”, any “**Finance Party**”, any “**Hedge Counterparty**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Relevant Person**”, any “**Secured Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) any account is to be construed as a reference to that account as it may be renumbered, redesignated or replaced and to any of its sub-accounts from time to time;
  - (iii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of the Company or the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;
  - (iv) assets includes present and future properties, revenues and rights of every description;
  - (v) any reference to a “**Finance Document**” or a “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (vi) a “**group of Lenders**” includes all the Lenders;
  - (vii) “**guarantee**” means (other than in Clause 19 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (viii) “**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;

- (ix) 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);
  - (x) 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;
  - (xi) “**shares**” or “**share capital**” or “**shareholding**” includes a participatory interest or any equivalent ownership interest in any jurisdiction, and “**shareholders**” in such circumstances means participants;
  - (xii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (xiii) a time of day is a reference to Moscow time.
- (b) Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) To the extent that any representation or other provision of any Finance Document is qualified by reference to, or expressed to be subject to the completion of, any Perfection Requirement, such qualification or proviso shall apply only for so long as the required period for completion of that Perfection Requirement set out in any Finance Document (or any extension of time granted by the Security Agent for that Perfection Requirement, if any) has not been exceeded unless failure to comply with such requirement is due to an act or omission by a Finance Party or their legal counsel.
  - (e) 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 waived.
  - (f) Notwithstanding any provision to the contrary in any Finance Document, there shall be no obligation for Kaz Minerals Finance plc or any of its Subsidiaries (or for any Obligor to procure that Kaz Minerals Finance plc or any of its Subsidiaries) perform any of the obligations under this Agreement or any other Finance Document to the extent it would breach sections 677 to 683 of the Companies Act 2006 unless and until Kaz Minerals Finance plc has re-registered as a private company.

### 1.3 Currency symbols and definitions

- (a) “**\$**”, “**USD**” and “**dollars**” denote the lawful currency of the United States of America.
- (b) “**RUB**” denotes the lawful currency for the time being of the Russian Federation.
- (c) “**€**”, “**EUR**” and “**euro**” denote the single currency of the Participating Member States.
- (d) “**HKD**” denotes the lawful currency for the time being of Hong Kong.
- (e) “**GBP**” denotes the lawful currency of the United Kingdom.
- (f) “**KZT**” denotes the lawful currency of Kazakhstan.
- (g) “**KGS**” denotes the lawful currency of the Kyrgyz Republic.

## 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the Third Parties Act) to enforce or enjoy the benefit of any term of this Agreement.
- (b) Subject to paragraph (a) of Clause 40.3 (*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.

## 1.5 Dutch terms

In each Finance Document a reference to:

- (a) a necessary action to authorise, where applicable, includes, without limitation, any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*) including, where relevant, obtaining an unconditional and positive advice (advise) from each competent works council;
- (b) a winding-up, administration or dissolution includes a Dutch entity being:
  - (i) declared bankrupt (*failliet verklaard*); or
  - (ii) dissolved (*ontbonden*);
- (c) a moratorium includes *surseance van betaling* and a moratorium declared includes *surseance verleend*;
- (d) other procedure or step taken in connection with the winding-up, administration, dissolution or moratorium includes a Dutch entity having filed a notice under or in connection with section 36 of the Dutch Tax Collection Act (*Invorderingswet*);
- (e) a trustee in bankruptcy includes a curator;
- (f) administrator includes *bewindvoerder*; and
- (g) an attachment includes a *beslag*.

## 1.6 Anti-boycott and blocking legislation

No provision of Clause 8.3 (*Sanctions Event*), Clause 20.26 (*Sanctions*) or Clause 23.29 (*Sanctions*) or, only insofar as it relates to any illegality or unlawfulness arising due to Sanctions, Clause 7.1 (*Illegality*), shall be applied in relation to any Party in a manner which would violate or expose a Party or any of its directors, officers or employees to any liability under any anti-boycott or blocking law, regulation or statute that is in force from time to time in the United Kingdom or European Union (and/or any of its member states) that are applicable to such entity (including, to the extent applicable, EU Regulation (EC) 2271/96 and Section 7 of the German Foreign Trade Ordinance (*Verordnung zur Durchführung des Außenwirtschaftsgesetzes (Außenwirtschaftsverordnung – AWW)*)).

## 2. THE FACILITIES

### 2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available:

- (i) a dollar term loan facility in an aggregate amount equal to the Total Facility A Commitments;
  - (ii) subject to the commitment of Additional Commitments in relation to Facility B pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*), a dollar term loan facility in an aggregate amount equal to the Total Facility B Commitments; and
  - (iii) subject to the commitment of Additional Commitments in relation to Facility C pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*), a dollar term loan facility in an aggregate amount equal to the Total Facility C Commitments.
- (b) Facility A will be made available to the Company and Facility B and Facility C will be made available to the Company and, if it has become an Additional Borrower pursuant to Clause 28 (*Changes to the Relevant Persons*), each other Borrower.

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

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Relevant Person is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by a Relevant Person which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Relevant Person.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.
- (d) Paragraphs (a) to (c) above are without prejudice to the provisions of Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*).

## **2.3 Obligors' Agent**

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Deed irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including in the case of a Borrower, Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

- (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,

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

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

### 3. PURPOSE

#### 3.1 Purpose

- (a) The Company shall apply all amounts borrowed by it under Facility A towards:
  - (i) converting such amounts from USD into GBP and financing the consideration payable by the Company to the holders of the Target Shares either: (A) pursuant to the Scheme; or (B) if the Offer Conversion occurs, pursuant to the Offer including, if applicable, pursuant to the operation of the Squeeze-Out Procedures; and
  - (ii) payment of the associated Acquisition Costs up to a maximum amount of USD 70,000,000 (or its equivalent in any other currency or currencies) (other than any Acquisition Costs payable to the Original Lender or its Affiliates).
- (b) Each Borrower shall apply all amounts borrowed by it under Facility B (including by on-lending to the relevant members of the Target Group) towards the refinancing and discharge of the principal amount of the Existing PXF Facility and the payment of accrued interest and any associated early repayment fees (including break costs).
- (c) Each Borrower shall apply all amounts borrowed by it under Facility C (including by on-lending to the relevant members of the Target Group) towards the refinancing and discharge of the principal amount of the Existing CDB Facilities and the payment of accrued interest and any associated early repayment fees (including break costs).

#### 3.2 Conversion from Scheme to Offer

- (a) At any time before the Scheme Effective Date and subject to the terms of this Agreement, the Company may give written notice to the Agent (an "**Offer Conversion Notice**") that it wishes to withdraw the Scheme and to launch the Offer instead.
- (b) Within 21 days of the date of the Offer Conversion Notice, the Company shall, to the extent that it is able to do so, procure that the Scheme is withdrawn.

### 3.3 Monitoring

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

## 4. CONDITIONS OF UTILISATION

### 4.1 Initial conditions precedent

(a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if:

- (i) on or before the issue of the 2.7 Announcement, the Agent has received (or has waived the requirement to receive) all of the documents and other evidence listed in Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*);
- (ii) if the Offer Conversion occurs, on or before the issue of the Offer Press Release, in addition to the documents and other evidence required to be delivered by paragraph (i) above, the Agent has received (or has waived the requirement to receive) all of the documents and other evidence listed in Part 2 (*Conditions precedent to be satisfied before the issue of the Offer Press Release*) of Schedule 2 (*Conditions precedent*); and
- (iii) on or before the Utilisation Date for that Utilisation, the Agent has received (or has waived the requirement to receive) all of the documents and other evidence listed in Part 3 (*Conditions precedent to be satisfied on or before first Utilisation*) of Schedule 2 (*Conditions precedent*),

(as applicable, the “**Relevant Conditions**”), in each case, but only if and to the extent so required in accordance with the relevant part of Schedule 2 (*Conditions precedent*), to be in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders in writing promptly upon being so satisfied or (as applicable) upon a Relevant Condition being satisfied (each such notification being a “**CP Satisfaction Notification**”).

- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the relevant notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give those notifications. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (c) Each CP Satisfaction Notification shall be irrevocable and upon receipt by the Company of a CP Satisfaction Notification, the Lenders shall not be able to decline to comply with Clause 5.4 (*Lenders' participation*) in respect of the applicable Relevant Condition by reason of this Clause 4.1 and the applicable Relevant Conditions shall be deemed satisfied for all purposes.

### 4.2 Utilisations during the Certain Funds Period

(a) Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if on the proposed Utilisation Date no Major Default is continuing or would result from the proposed Utilisation.

- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*) and subject as provided in Clause 7.1 (*Illegality*) (to the extent such Clause relates to a Lender's ability to fund, issue or maintain its participation in any Certain Funds Utilisation) and Clause 8.1 (*Exit*)), none of the Finance Parties shall be entitled to:
- (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (ii) rescind, terminate or cancel this Agreement or Facility A or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (iii) refuse to participate in the making of a Certain Funds Utilisation;
  - (iv) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or
  - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

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

#### 4.3 Utilisation of Facility B and Facility C

- (a) As of the Signing Date, each of Facility B and Facility C is uncommitted.
- (b) If, following the Acquisition Completion Date, the Company wishes for all or part of Facility B or Facility C to become committed, it shall first discuss the following matters with the Agent (acting on the instructions of all of the Lenders under Facility B or, as the case may be, Facility C):
  - (i) the Facility to be committed;
  - (ii) the proposed amount to be committed under such Facility by each Lender (the "**Additional Commitments**") (it being acknowledged that such amount shall not, when aggregated with all other Additional Commitments under that Facility, exceed the Facility Limit for that Facility), the Lenders who are proposed to provide those Additional Commitments and the amount of their respective proposed Additional Commitments;
  - (iii) the proposed Borrower(s) for the Additional Commitments;
  - (iv) the proposed Availability Period for the Additional Commitments;
  - (v) the amount of the commitment fee that will be payable on the Additional Commitments pursuant to Clause 13.1 (*Commitment fee*); and
  - (vi) any other documents and other evidence required to be delivered to the Agent (acting on the instructions of the Lenders providing the proposed Additional Commitments) as conditions precedent to delivery of any Utilisation Request in respect of the relevant Facility.

- (c) Upon the matters referred to in paragraph (b) above being agreed between the Company and the Agent (acting on the instructions of the Lenders providing the proposed Additional Commitments), the Company may deliver to the Agent:
- (i) a Commitment Notice duly completed to reflect such agreement and signed by the Company and (if the Company is not the Borrower, the proposed Borrower(s)); and
  - (ii) a legal opinion of independent legal counsel acceptable to the Agent in respect of the capacity of, and due execution by, the Company (and, if applicable, the proposed Borrower(s)) of the Commitment Notice,

and, upon such Commitment Notice being countersigned by the Agent (such date being a “**Commitment Date**”):

- (A) the Additional Commitments shall become committed for the purposes of this Agreement and be treated as Available Commitments and Commitments of the Lenders under the relevant Facility which have agreed to provide such Additional Commitments; and
- (B) each Lender shall, subject to paragraphs (e) and (f) below, be obliged to comply with Clause 5.4 (*Lenders’ participation*) in relation to a Utilisation of its Additional Commitments.

Notwithstanding anything else in this Clause, the Agent is not obliged to sign any Commitment Notice unless it has been instructed to do so by all of the Lenders providing the proposed Additional Commitments.

- (d) On each Commitment Date:
- (i) the relevant Additional Commitments will be assumed by the Lender(s) specified in the relevant Commitment Notice in the amounts specified therein;
  - (ii) each such Lender and each of the other Finance Parties shall assume such obligations towards one another and acquire such rights against one another as that Lender and those Finance Parties would have assumed and acquired had that Lender been an Original Lender with its aggregate Commitments as at the relevant Commitment Date;
  - (iii) the Obligors and any such Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and that Lender would have assumed and/or acquired had that Lender been an Original Lender with its aggregate Commitments as at the Commitment Date; and
  - (iv) the existing Commitments of the Lenders shall continue in full force and effect.
- (e) Without prejudice to paragraphs (b) and (c) above, the Company shall, prior to any Borrower submitting any Utilisation Request in respect of any Additional Commitments under Facility B or Facility C, deliver to the Agent (in each case in form and substance satisfactory to the Majority Lenders):
- (i) a funds flow statement in relation to the proposed refinancing of the Existing CDB Facilities or, as the case may be, Existing PXF Facility;
  - (ii) a certificate signed by the Company confirming:

- (A) the amount of the Financial Indebtedness under the Existing CDB Facilities or, as the case may be, Existing PXF Facility which shall be refinanced (and any interest, fees, costs and expenses) that will be payable as at the proposed Utilisation Date for Facility B or Facility C (as the case may be); and
- (B) to the best knowledge and belief of the Company, there are no grounds to believe that the creditor(s) will not, upon receiving payment of the amount referred to in paragraph (ii)(A) above and completion of any necessary formalities under local law, promptly release any guarantees or Security provided by any member of the Group in respect of such Financial Indebtedness;
- (iii) an irrevocable payment instructions confirming that the proceeds of the relevant Utilisation shall be applied directly in accordance with the funds flow referred to in paragraph (i) above;
- (iv) in circumstances where the Company is to be the borrower in respect of the relevant Utilisation (A) executed copies of the relevant intra-group loans pursuant to which the proceeds of the Utilisation shall be down-streamed by the Company to the Target Group and (B) evidence (in form and substance satisfactory to the Agent) that such loans have been assigned for the benefit of the Secured Parties by way of first ranking Security; and
- (v) each of the documents and other evidence (if any) specified in the relevant Commitment Notice as contemplated under paragraph (b)(vi) above.
- (f) Subject to Clause 4.1 (*Initial conditions precedent*) and the other paragraphs above of this Clause 4.3, the Lenders under Facility B and Facility C will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in respect of Facility B and Facility C if on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) no Default is continuing or would result from the proposed Utilisation; and
  - (ii) the Repeating Representations to be made by each Relevant Person are true in all material respects.

#### **4.4 Maximum number of Utilisations**

- (a) The Company may not deliver a Utilisation Request in respect of Facility A if as a result of the proposed Utilisation more than 25 (or such higher number as the Agent may agree to) Facility A Loans would be outstanding.
- (b) A Borrower (or the Company) may not deliver a Utilisation Request in respect of Facility B if as a result of the proposed Utilisation two or more Facility B Loans would be outstanding.
- (c) A Borrower (or the Company) may not deliver a Utilisation Request in respect of Facility C if as a result of the proposed Utilisation two or more Facility C Loans would be outstanding.

## **5. UTILISATION**

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

A Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or, in respect of a Utilisation of Facility A, not later than 9:30 a.m. on the date falling two Business Days before the proposed Utilisation Date or such later time as may be agreed between the Agent and the Company in writing).

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

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

### **5.3 Currency and amount**

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of any proposed Utilisation of Facility A must be:
  - (i) if the Acquisition is implemented by means of a Scheme, an amount at least equal to USD 10,000,000 (or, if less, the Available Facility); and
  - (ii) if the Acquisition is implemented by means of an Offer, an amount at least equal to USD 1,000,000 (or, if less, the Available Facility).
- (c) The amount of any proposed Utilisation of Facility B must be an amount at least equal to USD 100,000,000 (or, if less, the Available Facility).
- (d) The amount of any proposed Utilisation of Facility C must be an amount at least equal to USD 100,000,000 (or, if less, the Available Facility).

### **5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment for the relevant Facility to the relevant Available Facility immediately prior to making the Loan.

## 5.5 Limitations on Utilisations

Each of Facility B and Facility C is, subject to the assumption of any Additional Commitments in relation to Facility B or Facility C (as applicable) by any Lender pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*), uncommitted and in any event may only be utilised if the Acquisition Completion Date has occurred.

## 5.6 Cancellation of Commitment

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

## 6. REPAYMENT

### 6.1 Repayment of Loans

- (a) Subject to Clause 6.2 (*Extension of Termination Date*) below, the Borrowers under each Facility shall repay the Loans under that Facility in instalments by repaying on each date specified in the table below an amount which reduces the outstanding aggregate Loans under that Facility by an amount equal to the relevant specified percentage of all the Loans under that Facility borrowed by the Borrowers as at close of business in New York City on the last day of the Availability Period relating to that Facility (or in respect of the Termination Date (Original), by an amount equal to the aggregate amount of all Loans that are outstanding on that date together with all other amounts outstanding under the Finance Documents):

<b>Repayment Date</b>	<b>Repayment Instalment (expressed as percentage of all the Loans under the relevant Facility borrowed as at the close of business in New York City on the last day of the Availability Period for that Facility)</b>
The date falling 39 Months after the Signing Date	5.00 %
The date falling 42 Months after the Signing Date	5.00 %
The date falling 45 Months after the Signing Date	5.00 %
The date falling 48 Months after the Signing Date	5.00 %
The date falling 51 Months after the Signing Date	5.00 %
The date falling 54 Months after the Signing Date	5.00 %
The date falling 57 Months after the Signing Date	5.00 %
Termination Date (Original)	The remaining balance of the Loans together with all other amounts outstanding under the Finance Documents

- (b) The Company may not reborrow any part of any Facility which is repaid.

## 6.2 Extension of Termination Date

- (a) The Company may, any time during the period starting on the date falling 12 Months prior to the Termination Date (Original) and ending on the date falling three Months prior to the Termination Date (Original), deliver a written notice to the Agent requesting that the Termination Date under this Agreement be extended to the Termination Date (Extended).
- (b) If any Lender (each acting in its absolute discretion) instructs the Agent to accept the Company's request (each such Lender, an "**Extending Lender**"), then the Agent shall notify the Company in writing whereupon:
- (i) the Termination Date for the Loans made by the Extending Lenders shall be extended to the Termination Date (Extended); and
  - (ii) the repayment schedule for the Loans made by the Extending Lenders shall be as set out in paragraph (c) below.
- (c) In the event that the Agent gives the notification referred to in paragraph (b) above, the Borrowers under each Facility shall repay the Loans under that Facility made by the Extending Lenders in instalments by repaying on each date specified in the table below an amount which reduces the outstanding aggregate Loans under that Facility by an amount equal to the relevant specified percentage of all the Loans under that Facility borrowed by the Borrowers as at close of business in New York City on the last day of the Availability Period relating to that Facility (or in respect of the Termination Date (Extended), by an amount equal to the aggregate amount of all Loans due to the Extending Lenders that are outstanding on that date together with all other amounts outstanding under the Finance Documents):

<b>Repayment Date</b>	<b>Repayment Instalment (expressed as percentage of all the Loans under the relevant Facility borrowed as at the close of business in New York City on the last day of the Availability Period for that Facility)</b>
The date falling 39 Months after the Signing Date	5.00 %
The date falling 42 Months after the Signing Date	5.00 %
The date falling 45 Months after the Signing Date	5.00 %
The date falling 48 Months after the Signing Date	5.00 %
The date falling 51 Months after the Signing Date	5.00 %
The date falling 54 Months after the Signing Date	5.00 %
The date falling 57 Months after the Signing Date	5.00 %
The date falling 60 Months after the Signing Date	5.00 %

The date falling 63 Months after the Signing Date	5.00 %
The date falling 66 Months after the Signing Date	5.00 %
The date falling 69 Months after the Signing Date	5.00 %
The date falling 72 Months after the Signing Date	5.00 %
The date falling 75 Months after the Signing Date	5.00 %
The date falling 78 Months after the Signing Date	5.00 %
The date falling 81 Months after the Signing Date	5.00 %
Termination Date (Extended)	The remaining balance of the Loans together with all other amounts outstanding under the Finance Documents

- (d) For the avoidance of doubt, the repayment schedule in this Clause 6.2 (*Extension of Termination Date*) shall only apply in respect of Loans made by Extending Lenders, and the repayment schedule for Loans made by any Lender which is not an Extending Lender shall continue to be determined under Clause 6.1 (*Repayment of Loans*) above.
- (e) The Borrowers may not reborrow any part of any Facility which is repaid.

### **6.3 Application of Repayment Instalments**

- (a) Subject to paragraph (b) below, each Repayment Instalment for each Facility shall be applied to Loans made under that Facility pro rata.
- (b) If the Target accedes to this Agreement as an Additional Borrower and borrows any Loans under Facility B or Facility C, then an amount equal to each Repayment Instalment payable in respect of that Facility thereafter shall instead be applied towards repayment of Facility A Loans pro rata until they have been fully repaid (at which time Repayment Instalments shall again be applied against Facility B Loans and Facility C Loans (as applicable)).

### **6.4 Effect of prepayment on scheduled repayments and reductions**

If any Loan is prepaid in accordance with Clause 7.3 (*Voluntary prepayment of Loans*) or Clause 8.2 (*Proceeds*) then the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in chronological order by the amount of the Loan prepaid.

## **7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION**

### **7.1 Illegality**

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

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, each Available Commitment of that Lender will be immediately cancelled and that Lender shall not be obliged to fund any Loan; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 40.5 (*Replacement of Lender*), each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

## 7.2 Voluntary cancellation

- (a) The Company may, at any time following the issuance of the 2.7 Announcement until the date falling two Business Days after the issuance of the 2.7 Announcement, cancel up to USD 300,000,000 of the Available Facility under Facility A by delivering a written notice to the Agent.
- (b) The Company 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 USD 10,000,000) of any Available Facility.
- (c) Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

## 7.3 Voluntary prepayment of Loans

- (a) Subject to the other provisions of this Clause 7.3, the Borrower to which a Loan has been made may, if it or the Parent 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 that Loan by a minimum amount of USD 10,000,000).
- (b) Except as permitted under paragraph (c) below, the Company may not prepay Loans under paragraph (a) above during the first Relevant Year without the consent of the Agent. The Agent shall provide such consent upon the Company agreeing to pay a prepayment fee in the amount agreed between the Majority Lenders and the Company.
- (c) A Borrower may, at any time during the period starting from the date falling four Months after the Signing Date (but not earlier than the Acquisition Completion Date) and ending on the last day of the second Relevant Year, prepay Loans under paragraph (a) above in an aggregate amount of up to USD 350,000,000 using cash proceeds arising from the issuance of shares in the Company and/or the Target to any person that is not a member of the Group or its Affiliate in each case that is permitted under this Agreement ("**New Issue Proceeds**"), and no Prepayment Fee shall apply to any such prepayment.
- (d) If a Borrower prepays any Loan under paragraph (a) above, the relevant Borrower or the Company shall, on the date of the relevant prepayment, pay to the Agent (for distribution on a pro rata basis among the relevant Lender(s) and/or Secured Hedge Counterparties entitled to receive it):

- (i) in respect of any prepayment during the first Relevant Year only, any applicable Hedging Break Costs; and
  - (ii) a prepayment fee (the “**Prepayment Fee**”) on the aggregate amount of the Loans prepaid (the “**Prepayment Amount**”) calculated in accordance with paragraph (e) below. For the avoidance of doubt, for the purposes of calculating the Prepayment Fee only, any New Issue Proceeds shall be excluded from the Prepayment Amount (subject to the requirements and limitations in paragraph (c) above).
- (e) The Prepayment Fee payable in respect of any prepayment under paragraph (a) above shall be:
- (i) where the relevant prepayment falls on a date within the second Relevant Year, an amount equal to 1.95 per cent. of the Prepayment Amount;
  - (ii) where the relevant prepayment falls on a date within the third Relevant Year, an amount equal to 1.45 per cent. of the Prepayment Amount; and
  - (iii) where the relevant prepayment falls on a date that is on or after the first day of the fourth Relevant Year, nil.

#### **7.4 Right of cancellation and repayment in relation to a single Lender**

- (a) If:
- (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from an Obligor under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased costs*),

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender’s participation in the Utilisations.

- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Available Commitment(s) of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender’s participation in any outstanding Utilisation together with all interest and other amounts accrued under the Finance Documents and that Lender’s corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

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

- (a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 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 immediately be reduced to zero.

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

## 8. MANDATORY PREPAYMENT AND CANCELLATION

### 8.1 Exit

Upon the occurrence of:

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

the Company shall promptly notify the Agent upon becoming aware of that event, and:

- (i) a Lender shall not be obliged to fund a Loan; and
- (ii) if a Lender so requires and notifies the Agent, the Agent shall, by not less than 10 Business Days' notice to the Company, cancel the Commitments of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest and all amounts accrued under the Finance Documents, immediately due and payable, at which time the Commitments of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

### 8.2 Proceeds

- (a) For the purposes of this Clause 8.2:

“**Proceeds**” means, without double counting:

- (i) the consideration receivable by any member of the Group for any Relevant Disposal and after deducting (in each case, without double counting):
  - (A) reasonable fees, costs and expenses incurred by any member of the Group with respect to that Relevant Disposal to persons who are not members of the Group;
  - (B) any Tax incurred and required to be paid or reasonably reserved for by the seller in connection with that Relevant Disposal (as reasonably determined by the seller); and
  - (C) amounts to be repaid to the entity disposed of in respect of intra-Group indebtedness that is Permitted Financial Indebtedness, provided that such intra-Group indebtedness was not incurred or increased in contemplation of such Relevant Disposal; or
- (ii) the aggregate amount receivable by the Company for the subscription of any Relevant Share Issue and after deducting (without double counting) any reasonable expenses which are incurred by any member of the Group with respect to that Relevant Share Issue to persons who are not members of the Group.

“**Relevant Disposal**” means a Permitted Disposal referred to in paragraph (e) of the definition thereof.

“**Relevant Share Issue**” means a Permitted Share Issue referred to in paragraph (a)(iii) of the definition thereof.

- (b) Subject to the other provisions of this Clause 8.2, the Borrowers shall, as soon as reasonably practicable but not later than within 20 Business Days of receipt of any Proceeds by any member of the Group, apply and/or procure the application of an amount equal to the Proceeds in or towards prepaying Utilisations in the manner contemplated by Clause 6.4 (*Effect of prepayment on scheduled repayments and reductions*).
- (c) The Company shall, promptly upon receipt of any Proceeds by any member of the Group, notify the Agent indicating the amount and (in reasonable detail) source of such Proceeds (a “**Proceeds Receipt Notice**”).
- (d) Each Lender shall have the right to refuse its share of the prepayment of all or part of the Proceeds notified to the Agent in any Proceeds Receipt Notice by notifying the Agent to this effect within five Business Days of the date of such Proceeds Receipt Notice. Any Lender which does not so notify the Agent by close of business on the fifth Business Day after the date of delivery of the relevant Proceeds Receipt Notice shall be deemed not to have waived its share of the relevant prepayment. The Agent shall, by no later than close of business on the seventh Business Day after receipt of a Proceeds Receipt notice, inform the Company as to whether any Lenders have agreed to waive their share of a prepayment (and, if so, the aggregate amount waived) by delivering to the Company a written notice that sets out this information (a “**Proceeds Waiver Notice**”).
- (e) If the Company receives a Proceeds Waiver Notice, it shall within 10 Business Days, apply the full amount of the waived Proceeds towards repayment or prepayment of other Financial Indebtedness of the Group as selected by the Company unless such repayment or prepayment would incur greater fees, costs or expenses than a repayment or prepayment of the equivalent principal amount under this Agreement. The Company, promptly after making such repayment or prepayment, deliver a certificate to the Agent confirming that the Proceeds have been so applied and providing details of the relevant Financial Indebtedness which was repaid or prepaid.

### 8.3 Sanctions Event

If:

- (a) any member of the Group is or becomes a Restricted Party;
- (b) any representation or statement made in Clause 20.26 (*Sanctions*) proves to have been incorrect or misleading in any respect at the time it was made or deemed to be repeated; or
- (c) any of provision of Clause 23.29 (*Sanctions*) is breached,

then:

- (i) a Lender may promptly notify the Agent upon becoming aware of the relevant event and request the Agent notify the Company;
- (ii) upon the Agent notifying the Company, to the extent requested by the Lender in its notice to the Agent, the Available Commitment of that Lender will be immediately cancelled; and

(iii) unless the Lender's participation has already been transferred pursuant to Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*) or the relevant events or circumstances have been remedied to the satisfaction of the relevant Lender prior to the time by which prepayment falls due under paragraphs (A) to (C) below of this Clause 8.3, each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the earlier of:

(A) the date falling 20 Business Days after the date on which the Agent has notified the Company;

(B) the last day of any applicable grace period permitted by law; and

(C) the date on which the relevant Lender would be in breach of Sanctions unless the relevant participation is prepaid,

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

## **9. RESTRICTIONS**

### **9.1 Notices of cancellation or prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, Voluntary Prepayment and cancellation*) shall (subject to the terms of those Clauses) 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.

### **9.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and without premium or penalty (other, than, for the avoidance of doubt, any applicable Hedging Break Costs or Prepayment Fee).

### **9.3 No reborrowing of the Facilities**

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

### **9.4 Prepayment in accordance with Agreement**

No Borrower shall 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.

### **9.5 No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

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

If the Agent receives a notice under Clause 7 (*Illegality, Voluntary Prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Company or the affected Lender and Secured Hedge Counterparties, as appropriate.

## **9.7 Effect of repayment and prepayment on Commitments**

If all or part of any Lender's participation in a Utilisation is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.3 (*Utilisation of Facility B and Facility C*)), 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.

## **9.8 Application of prepayments**

Any prepayment of a Utilisation (other than a prepayment pursuant to Clause 7.1 (*Illegality*), Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*) or Clause 8.1 (*Exit*)) shall be applied pro rata to each Lender's participation in that Utilisation.

## **10. INTEREST**

### **10.1 Calculation of interest**

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

- (a) Margin; and
- (b) LIBOR.

### **10.2 Payment of interest**

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

### **10.3 Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two 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 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### **10.4 Notification of rates of interest**

- (a) The Agent shall promptly notify the relevant Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the relevant Borrower (or the Company) of each Funding Rate relating to a Loan.

### **11. INTEREST PERIODS**

#### **11.1 Interest Periods**

- (a) Each Loan has successive Interest Periods.
- (b) Subject to paragraphs (d) and (e) below, each Interest Period for each Loan shall be three Months.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date in respect of that Loan or (if already made) on the last day of its preceding Interest Period.
- (d) The first Interest Period for any Loan made under any Facility other than the first Loan made under Facility A (each such Loan, a “**Subsequent Loan**”) shall end on the last day of the Interest Period then current (or commencing) for the first Loan made under Facility A which is then outstanding when that Subsequent Loan is made.
- (e) An Interest Period for a Loan shall not extend beyond a Repayment Date or the applicable Termination Date.

#### **11.2 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).

#### **11.3 Consolidation of Loans**

If two or more Interest Periods:

- (a) relate to Loans made under the same Facility to the same Borrower; and
- (b) end on the same date,

then the Loans to which those Interest Periods relate shall be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

### **12. CHANGES TO THE CALCULATION OF INTEREST**

#### **12.1 Unavailability of Screen Rate**

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
  - (i) the currency of a Loan; or

- (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR for that Loan and Clause 12.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

## **12.2 Calculation of Reference Bank Rate**

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

## **12.3 Cost of funds**

- (a) If this Clause 12.3 applies, 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:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each Lender as soon as practicable and in any event within five Business Days of the first day of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 12.3 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 12.3 applies but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

## **12.4 Notification to Company**

If Clause 12.3 (*Cost of funds*) applies the Agent shall, as soon as is practicable, notify the Company.

## **13. FEES**

### **13.1 Commitment fee**

- (a) The Company shall pay to the Agent (for the account of each relevant Lender) a fee in dollars computed at the rate of:
  - (i) in respect of Facility A, 1.00 per cent. per annum on that Lender's Available Commitment under Facility A for the relevant Availability Period (subject to paragraph (e) below); and
  - (ii) in respect of Facility B and Facility C, the rate per annum specified in the applicable Commitment Notice on that Lender's Facility B Commitments and/or Facility C Commitments (as applicable) for the relevant Availability Period.
- (b) Subject to paragraph (c) and (d) below, the accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No 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.
- (d) In respect of any accrued commitment fee payable in respect of the period from (but excluding) the date falling six Months after the Signing Date to and including the expiry of the Certain Funds Period, such commitment fee shall be payable within one Business Day following the expiry of the Certain Funds Period.
- (e) For the purposes of calculating the commitment fee payable under this Clause in respect of Facility A:
  - (i) any cancellation of the Available Facility under Facility A pursuant to paragraph (a) of Clause 7.2 (*Voluntary cancellation*) shall be deemed to have reduced each Lender's Available Commitment with effect from the Signing Date and the commitment fee shall be calculated accordingly; and
  - (ii) the expiry of the Availability Period for Facility A for any of the reasons described in paragraph (a)(i) or (b)(i) of the definition of Certain Funds Period shall be deemed to be the date of the Company's notification to the Agent pursuant to Clause 21.10 (*Notification of expiry of Certain Funds Period*) that the Certain Funds Period has expired.

### **13.2 Facility fees**

The Company shall (or shall, in accordance with the relevant Fee Letter, procure that the relevant Borrower will) pay to the relevant Lender or Lenders the facility fees in the amount and at the times agreed in a Fee Letter.

## **14. TAX GROSS UP AND INDEMNITIES**

### **14.1 Definitions**

- (a) In this Agreement:

**“Dutch Treaty Lender”** means a Lender which in respect of the relevant payment:

- (i) is treated a resident of a Treaty State for the purposes of the relevant Treaty;
- (ii) does not carry on a business in the Netherlands through a permanent establishment with which that Lender's participation in the Loans is effectively connected; and
- (iii) satisfies any other conditions which must be satisfied under the relevant Treaty for it to obtain full exemption from Tax imposed by the Netherlands, subject to the completion of procedural formalities.

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

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

- (i) is a Dutch Treaty Lender; or
- (ii) fulfils the conditions imposed by Dutch domestic law to receive interest payments from a Borrower without any Tax Deduction (subject to the completion of any necessary procedural formalities).

**“Tax Credit”** means a credit against, relief or remission for, or repayment of, or any deduction used in determining any Tax.

**“Tax Deduction”** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**“Tax Payment”** means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

**“Treaty State”** means a jurisdiction having a double taxation agreement (a **“Treaty”**) with the Netherlands which, with respect to a payment of interest and other relevant payments under the Finance Documents to be made by a Borrower, provides for a full exemption from Tax imposed by the Netherlands on this payment.

- (b) Unless a contrary indication appears, in this Clause 14 a reference to determines or determined means a determination made in the discretion of the person making the determination (acting in good faith).

## **14.2 Tax gross-up**

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

- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment 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.
- (f) A Finance Party and each Obligor which makes a payment to which that Finance Party is entitled shall take reasonable steps to co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction, provided that this paragraph (f) shall not in any way limit the obligations of any Obligor to pay amounts by way of a gross-up under this Clause 14.2.

### 14.3 Tax indemnity

- (a) Each Obligor shall (within five 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 has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*); or
    - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

#### 14.4 Tax Credit

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

- (a) a Tax Credit is attributable to (i) an increased payment of which that Tax Payment forms part, (ii) that Tax Payment, (iii) a Tax Deduction in consequence of which that Tax Payment was required, or (iv) the circumstances giving rise to such Tax Deduction or Tax Payment; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

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

#### 14.5 Lender status confirmation

Each Lender which is not the Original Lender shall indicate, in the Transfer Agreement or Assignment Agreement which it executes on becoming a Party to this Agreement, after the date of this Agreement, for the benefit of the Agent and without liability to the Obligors, which of the following categories it falls in:

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

#### 14.6 Stamp taxes

The Company shall pay and, within five Business Days of demand, indemnify each Secured Party against any cost, loss or liability that such Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document other than in connection with the transfer or assignment of an interest herein by the Original Lender or an Affiliate of the Original Lender to a transferee who is not an Affiliate of such Lender, where such transfer or assignment is not requested or required by the Company or otherwise required under this Agreement.

#### 14.7 VAT

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

to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

#### **14.8 FATCA information**

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

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### 14.9 FATCA Deduction

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

### 15. INCREASED COSTS

#### 15.1 Increased costs

- (a) Subject to Clause 15.3 (*Exceptions*) each Obligor shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the Signing Date or (iii) the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
  - (i) **Basel III** means:
    - (A) “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 on 16 December 2010, each as amended, supplemented or restated, together with the agreements on capital requirements, a leverage ratio and liquidity standards contained therein;

- (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rule text” published by the Basel Committee on Banking Supervision in November 2011, as amended supplemented or restated; and
  - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to Basel III.
- (ii) “**CRD IV**” means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
  - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.
- (iii) “**Increased Costs**” means:
- (A) a reduction in the rate of return from any 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.

## 15.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming, in reasonable detail, the amount of its Increased Costs.

## 15.3 Exceptions

- (a) Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;

- (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied);
  - (iv) attributable to the implementation or application of or compliance with the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the Signing Date (but excluding any amendment arising out of Basel III) (“Basel II”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates);
  - (v) attributable to the implementation or application of, or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) but only to the extent that such cost was known (or could reasonably be expected to have been known) by the relevant Finance Party as at the date it became party to this Agreement; or
  - (vi) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 15.3 references to a Tax Deduction has the same meaning given to the term in Clause 14.1 (*Definitions*).

## 16. OTHER INDEMNITIES

### 16.1 Currency indemnity

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

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

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

### 16.2 Other indemnities

- (a) The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss

or liability (other than one indemnified under Clause 14 (*Tax Gross Up and Indemnities*) or Clause 15 (*Increased Costs*), or which would have been so indemnified but for an exclusion in those clauses) properly incurred by it as a result of:

- (i) the occurrence of any Event of Default;
  - (ii) a failure by any Relevant Person 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 33 (*Sharing Among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower or the Company 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
  - (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
- (b) The Company shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 16.2 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

### **16.3 Indemnity to the Agent**

The Company shall promptly indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) 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 fraud, gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

## **16.4 Indemnity to the Security Agent**

- (a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) any failure by the Company to comply with its obligations under Clause 18 (*Costs and expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (v) any default by any Relevant Person in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property (to the extent permitted under applicable law, in the case of any Charged Property that is subject to the jurisdiction of the laws of Kazakhstan or Kyrgyzstan) in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## **17. MITIGATION BY THE LENDERS**

### **17.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax Gross Up and Indemnities*) or Clause 15 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Relevant Person under the Finance Documents.

### **17.2 Limitation of liability**

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).

- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **18. COSTS AND EXPENSES**

### **18.1 Transaction expenses**

The Company shall, within five Business Days of demand, pay the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees, subject to any relevant agreed cap) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate, without double counting) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Finance Documents executed after the Signing Date,

provided that, in respect of paragraph (a) above only, any individual expenses in excess of USD 2,000 (or its equivalent in other currencies) or aggregate expenses in excess of USD 25,000 (or its equivalent in other currencies) have received the prior written consent of the Company.

### **18.2 Amendment costs**

If:

- (a) a Relevant Person requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 34.10 (*Change of currency*),

the Company shall, within five Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees, subject to any relevant agreed cap) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate, without double counting) in responding to, evaluating, negotiating or complying with that request or requirement.

### **18.3 Enforcement and preservation costs**

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

## **19. GUARANTEE AND INDEMNITY**

### **19.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Relevant Person of all that Relevant Person's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Relevant Person does not pay any amount when due under or in connection with any Finance Document, that

Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Relevant Person not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

## **19.2 Continuing guarantee**

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

## **19.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Relevant Person or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 19 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **19.4 Waiver of defences**

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

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

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

### **19.5 Guarantor intent**

Without prejudice to the generality of Clause 19.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and or expenses associated with any of the foregoing.

### **19.6 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **19.7 Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 19.

### **19.8 Deferral of Guarantors' rights**

Until all amounts which may be or become payable by each Relevant Person under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (a) to be indemnified by any Relevant Person;
- (b) to claim any contribution from any other guarantor of any Relevant Person's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other

guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

- (d) to bring legal or other proceedings for an order requiring any Relevant Person to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 19.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Relevant Person, and/or
- (f) to claim or prove as a creditor of any Relevant Person in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by any Relevant Person under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 34 (*Payment mechanics*).

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

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

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

### **19.10 Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

### **19.11 Guarantee limitations**

Without prejudice to Clause 23.26 (*Financial assistance*), this guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor.

## **20. REPRESENTATIONS**

### **20.1 General**

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

## **20.2 Status**

- (a) Each Original Obligor is a limited liability company or corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) Each Additional Obligor is a limited liability corporation, company, limited partnership, limited liability partnership, corporate partnership limited by shares or joint stock corporation duly incorporated and validly existing under the law of its Original Jurisdiction.
- (c) Each of its Subsidiaries is a limited liability corporation, company, limited partnership, limited liability partnership, corporate partnership limited by shares or joint stock corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (d) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted if failure to have or do so has, or is reasonably likely to have, a Material Adverse Effect.

## **20.3 Binding obligations**

Subject to the Legal Reservations and Perfection Requirements:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

## **20.4 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any Relevant Person; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event under any such agreement or instrument to an extent which, in respect of an Additional Obligor only, has, or is reasonably likely to have, a Material Adverse Effect.

## **20.5 Power and authority**

- (a) 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 or will be a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

## 20.6 Validity and admissibility in evidence

- (a) All Authorisations required:
- (i) 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
  - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 20.9 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected after the Signing Date and in any event no later than the dates specified in Clause 20.9 (*No filing or stamp taxes*).

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of each Relevant Person have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect

## 20.7 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of governing law of the Finance Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions; and
- (b) any judgement or (if the relevant Finance Document provides for resolution of disputes by way of arbitration) arbitral award obtained in relation to a Finance Document to which it is a party in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

## 20.8 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 25.7 (*Insolvency proceedings*) (other than any legal proceedings or other procedures or steps, including but not limited to winding-up petitions, which are frivolous or vexatious and are discharged, stayed or dismissed within 30 days of commencement and in respect of which, adequate reserves are being maintained for payment of any claims arising from any such legal proceedings or other procedures or steps); or
- (b) creditors' process described in Clause 25.8 (*Creditors' process*),

has been taken or, to the knowledge of any Obligor, threatened in relation to any Relevant Person and none of the circumstances described in Clause 25.6 (*Insolvency*) applies to any Relevant Person.

## 20.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction 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, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents (other than in connection with the transfer or assignment of an interest herein by a Lender) or

the transactions contemplated by the Finance Documents, except for the Perfection Requirements.

#### **20.10 No default**

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

#### **20.11 No misleading information**

- (a) Save as disclosed in writing to the Agent and the Arranger prior to the Signing Date:
  - (i) any financial projection or forecast provided to the Agent or the Arranger in writing in respect of its evaluation of the Acquisition or the Facilities has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
  - (ii) the expressions of opinion or intention provided by or on behalf of an Obligor in writing in respect of the Agent or the Arranger's evaluation of the Acquisition or the Facilities were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
  - (iii) no event or circumstance has occurred or arisen that results in the information, opinions, intentions, forecasts or projections referred to in paragraphs (a)(i) or (a)(ii) being untrue or misleading in any material respect;
  - (iv) all material information provided by or on behalf of the Shareholders, the Parent or the Company to a Finance Party in connection with its evaluation of the Acquisition, the Facilities and/or the Target Group on or before the date of this Agreement and not superseded before that date is accurate and not misleading in any material respect; and
  - (v) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.
- (b) In relation to any Periodic Report:
  - (i) any factual information contained in such Periodic Report provided by it or on its behalf to a Finance Party in writing was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given; and

- (ii) no event or circumstance has occurred or arisen and no information has been omitted from any Periodic Report and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in any Periodic Report being untrue or misleading in any material respect.
- (c) All information supplied by it or, on and from the Acquisition Completion Date, any member of the Target Group (or on its behalf or on behalf of any member of the Target Group) to the Valuer for the purposes of, or in connection with, each Valuation Report was true and accurate in all material respects, and is not misleading in any material respect, as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.

## 20.12 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary.
- (b) Its unaudited Original Financial Statements fairly represent its financial condition and results of operations for the relevant Financial Year, Financial Half-Year or Financial Quarter unless expressly disclosed to the Agent in writing to the contrary prior to the Signing Date.
- (c) There has been no material adverse change in its assets, business or financial condition since the date of its Original Financial Statements.
- (d) The Original Financial Statements of the Company do not consolidate the results, assets or liabilities of any person or business which does not form part of the Group.
- (e) The most recent financial statements (or, in the case of paragraph (iii) below, balance sheet and profit and loss account) delivered pursuant to Clause 21.2 (*Financial statements*):
  - (i) in relation to the financial statements of the Parent or a member of the Group:
    - (A) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
    - (B) give a true and fair view of (if audited) or fairly represent (if unaudited) the Parent's or relevant member of the Group's consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate; and
  - (ii) in relation to an SPV, fairly represents its financial condition as at the date and/or in respect of the time period for which such balance sheet and profit and loss account were prepared.
- (f) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- (g) The balance sheet of each SPV referred to in item 9(f) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*) and delivered to the Agent pursuant to Clause 4.1 (*Initial conditions*

*precedent*) fairly represents its financial condition as at the end of and for the period to which they relate.

### **20.13 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which could reasonably be expected to be adversely determined and if so adversely determined, could reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it, any member of the Group or any Relevant Person.

### **20.14 No breach of laws**

- (a) It has not, and no member of the Group has, breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any Obligor or any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

### **20.15 Environmental laws**

- (a) Each Obligor and member of the Group is in compliance with Clause 23.3 (*Environmental compliance*) and to the best of its knowledge and belief no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against any Obligor or member of the Group where that claim is reasonably likely to be adversely determined and which, if so determined, would be reasonably likely, to have a Material Adverse Effect.

### **20.16 Taxation**

- (a) Neither it nor any member of the Group is materially overdue in the filing of any Tax returns and neither it or any member of the Group is overdue in the payment of any amount in respect of Tax unless:
  - (i) such amount is not in excess of USD 5,000,000 (or its equivalent in any other currency);
  - (ii) such payment is being contested in good faith;
  - (iii) adequate reserves are being maintained for the said Taxes; and
  - (iv) such payment can be lawfully withheld and failure to pay those Taxes does not have or could reasonably be expected not to have a Material Adverse Effect.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it any other member of the Group with respect to Taxes such that a liability of, or claim against, any member of the Group of USD 5,000,000 (or its equivalent in any other currency) or more shall arise or could reasonably be expected to arise.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

### **20.17 Anti-corruption law**

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

### **20.18 Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group or Relevant Person other than as permitted by this Agreement.
- (b) No Obligor or member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

### **20.19 Ranking**

Subject to the Legal Reservations and completion of any applicable Perfection Requirements, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

### **20.20 Good title to assets**

It and each member of the Group has a good and valid title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted other than where it could reasonably be expected not to have a Material Adverse Effect.

### **20.21 Legal and beneficial ownership**

- (a) Subject to paragraphs (b) to (d) below, each Relevant Person is the sole legal and beneficial or, as applicable, beneficial owner of the respective assets over which it purports to grant Security free from any claims, third party rights or competing interests other than as permitted under paragraph (c) (in relation to the Charged Property referred to therein) or paragraph (d) of Clause 23.14 (*Negative pledge*).
- (b) In the event that the Acquisition is completed by means of the Scheme, on the Scheme Effective Date, the Company will become the beneficial owner of, and will be entitled, subject only to payment of applicable stamp duty and completion of necessary registration formalities (which shall be completed in accordance with the applicable requirements of the Finance Documents), to become the legal registered owner of, the Target Shares, free from any claims, third party rights or competing interests whatsoever.
- (c) In the event the Offer Conversion occurs and the Acquisition is completed by means of the Offer:
  - (i) on the Unconditional Date or, if later, on the date of receipt by the Company of an acceptance complete in all respects, the Company will become the beneficial owner of, and will be entitled, subject only to payment of applicable stamp duty and completion of necessary registration formalities (which shall be completed in accordance with the applicable requirements of the Finance Documents), to become the legal registered owner of, the Target Shares tendered for acceptance

under the Offer at that time, free from any claims, third party rights or competing interests whatsoever; and

- (ii) upon completion of the Squeeze-Out Procedures, the Company will become the legal and beneficial owner of all of the Target Shares free from any claims, third party rights or competing interests whatsoever.
- (d) Pursuant to paragraphs (b) and (c) above, the Target Shares are beneficially but not legally owned by the Company until those shares are registered in the register of shareholders of the Target, and the Parent and the Company will procure that registration will be made as soon as reasonably practicable after the Acquisition Completion Date, or in the event the Acquisition is implemented by way of an Offer:
- (i) in respect of those Target Shares acquired by the Company from accepting Target Shareholders, as soon as reasonably practicable after the Unconditional Date or, if later, the date of receipt by the Company of an acceptance complete in all respects; and
  - (ii) in respect of any Squeeze-Out Shares, as soon as reasonably practicable after the relevant Squeeze-Out Shares are acquired by the Company under the Squeeze-Out Procedures.

## 20.22 Shares

- (a) The shares of any member of the Group and the Target which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights other than pursuant to the Acquisition.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security, save for the articles of association of the Target which provide that its directors may refuse to register a transfer of its shares and/or any instrument of transfer.
- (c) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (other than the Parent).
- (d) There is no shareholders' agreement (or similar) in relation to the shares in the Company. As at the Signing Date, the shares of the Company which are expressed to be subject to Share Pledge (Company) constitute all the share capital of the Company.
- (e) Any shareholders' agreement (or similar) in relation to the shares in the Parent do not and could not restrict or inhibit any transfer of the shares in the Company on creation or enforcement of the Transaction Security.

## 20.23 Group Structure

Assuming the Acquisition and the transactions contemplated by the Share Exchange Agreement and Permitted SPV Share Transfer Documents have been completed in full, the Group Structure Chart delivered to the Agent pursuant to Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*) is true, complete and accurate in all material respects.

## 20.24 Ownership

- (a) The Shareholders together own directly or indirectly 100 per cent. of the issued share capital of the Parent.
- (b) Prior to the occurrence of a Permitted Share Issue described in paragraphs (a)(ii) or (a)(iii) of the definition thereof, the Parent owns directly 100 per cent. of the issued share capital of the Company (save for any temporary reduction of the Parent's shareholding in the Company pursuant to step 4 of the Steps Plan).
- (c) As at the Signing Date:
  - (i) SPV 1 is the direct legal and beneficial owner of at least 5,216,522 ordinary shares in the Target;
  - (ii) SPV 2 is the direct legal and beneficial owner of at least 29,706,901 ordinary shares in the Target;
  - (iii) SPV 3 is the direct legal and beneficial owner of at least 13,362,470 ordinary shares in the Target;
  - (iv) SPV 4 is the:
    - (A) direct legal and beneficial owner of at least 56,539,732 ordinary shares in the Target; and
    - (B) in addition to the shares referred to in paragraph (iv)(A) above, the beneficial owner of at least 79,404,593 ordinary shares in the Target; and
  - (v) ON is the direct legal and beneficial owner of at least 1,848,991 ordinary shares in the Target.
- (d) In relation to any shares in the Target referred to in paragraph (c) above in respect of which, as at the Signing Date, an SPV holds beneficial but not legal title:
  - (i) the relevant SPV has the right to be registered as the legal owner of the relevant number of shares in the Target and has commenced procedures to procure that such legal title vests in such SPV promptly following the Signing Date; and
  - (ii) to the best knowledge and belief of each SPV and the Company (after making due and careful enquiry), there is no reason to expect that the SPV Target Share Materialization Date will not occur prior to the expiry of the time period specified in paragraph 3 of Schedule 3 (*Conditions subsequent*).

## 20.25 Year-end

The financial year-end of each member of the Group falls on 31 December.

## 20.26 Sanctions

Neither it nor any of Relevant Person, nor (to its knowledge) any directors or officers of it or any of Relevant Person:

- (a) is a Restricted Party;
- (b) is violating any Sanctions;

- (c) is subject to any claim, proceeding, formal notice or investigation with respect to Sanctions; or
- (d) is engaging in any trade, business or other activities with or for the benefit of any Restricted Party (excluding, if applicable, any Finance Party or its Affiliates) or Restricted Country (unless it is conducting such business in compliance with the Sanctions applicable to dealing with that Restricted Country and any relevant license).

#### **20.27 Acquisition Documents, disclosures and other documents**

- (a) The Company has delivered to the Agent a complete and correct copy of the Scheme Documents (if and when issued) or, as the case may be, the Offer Transaction Documents (if and when issued), including all schedules and exhibits thereto. The release of the Offer Press Release and the posting of the Offer Transaction Documents (if an Offer is pursued) has been or will be, prior to their release or posting (as the case may be) duly authorised by the Company.
- (b) The 2.7 Announcement and the Scheme Circular (in each case if and when issued) when taken as a whole, with respect to the information that relates to the Parent or the Company only, do not (or will not if and when issued) contain (to the best of its knowledge and belief (having taken all reasonable care to ensure that such is the case)) any statements which are not in all material respects in accordance with the facts.
- (c) Each of the Acquisition Documents complies in all material respects with the Companies Act and the Takeover Code, subject to any applicable waivers by or requirements of the Takeover Panel.
- (d) If a Scheme is pursued, the undertaking to be given by the Company to the Court to be bound by the Scheme will, prior to it being given, be duly authorised by the Company.
- (e) The 2.7 Announcement contains a statement that the board of directors of the Target intend to recommend the Acquisition.

#### **20.28 Holding Companies**

Except as may arise under the Transaction Documents to which it is a party:

- (a) neither the Company nor the Parent has traded or incurred any liabilities or commitments (actual or contingent, present or future); and
- (b) no SPV has any liabilities or commitments (actual or contingent, present or future), other than as part of any Permitted Holding Company Activity.

#### **20.29 Share Exchange Agreement**

- (a) Subject to the Legal Reservations, the obligations expressed to be assumed by each Obligor and each other person that is a party to the Share Exchange Agreement (a “**Share Exchange Party**”) are legal, valid, binding and enforceable obligations.
- (b) The entry into and performance by each Share Exchange Party of, and the transactions contemplated by, the Share Exchange Agreement do not and will not conflict with:
  - (i) any law or regulation applicable to it;
  - (ii) the constitutional documents of any Share Exchange Party (other than an individual); or

- (iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event under any such agreement or instrument.
- (c) Each Share Exchange Party 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 Share Exchange Agreement and the transactions contemplated by the Share Exchange Agreement.
- (d) No limit on the powers of any Share Exchange Party (other than an individual) that is party to the Share Exchange Agreement will be exceeded as a result of the effecting the transactions contemplated by the Share Exchange Agreement.
- (e) All Authorisations required:
  - (i) to enable each Share Exchange Party lawfully to enter into, exercise its rights and comply with its obligations in the Share Exchange Agreement; and
  - (ii) to make the Share Exchange Agreement admissible in evidence in its Relevant Jurisdictions,

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

### **20.30 Times when representations made**

- (a) All the representations and warranties in this Clause 20 (other than paragraphs (b) and (c) of Clause 20.11 (*No misleading information*)) are made by each Obligor on the Signing Date and on the Closing Date.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.
- (c) To the extent that they relate to the Scheme, the representations and warranties in Clause 20.27 (*Acquisition Documents, Disclosures and other Documents*) are deemed to be made by each Obligor on the date of the 2.7 Announcement (if they relate to the 2.7 Announcement) and on the date the Scheme Circular is published (to the extent they relate to the Scheme Documents).
- (d) If an Offer Conversion occurs, the representations and warranties in Clause 20.27 (*Acquisition Documents, Disclosures and other Documents*) to the extent that they relate to the Offer, are deemed to be made by each Obligor on the date of the Offer Press Release (if they relate to the Offer Press Release) and on the date the Offer Document is published (to the extent they relate to the Offer Document).
- (e) As at the date of the execution of an Accession Deed, each Additional Obligor (or, where otherwise stated, the Company in respect of such Additional Obligor) shall make all of the representations and warranties set out in this Clause 20 in respect of itself only other than the representations and warranties set out in Clause 20.11 (*No misleading information*), Clause 20.12 (*Original Financial Statements*), Clause 20.23 (*Group Structure Chart*), Clause 20.24 (*Ownership*), Clause 20.27 (*Acquisition Documents, disclosures and other Documents*) and Clause 20.28 (*Holding Companies*).
- (f) The representations and warranties in paragraphs (b) of Clause 20.11 (*No misleading information*) are deemed to be made by each Obligor on the date that any Periodic Report is delivered pursuant to Clause 21.6 (*Periodic Reports*).

- (g) The representations and warranties in paragraph (c) of Clause 20.11 (*No misleading information*) are deemed to be made by each Obligor on the date that any Valuation Report is delivered pursuant to Clause 21.7 (*Valuation Reports*).
- (h) Each representation or warranty deemed to be made after the Signing Date shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 21. INFORMATION UNDERTAKINGS

### 21.1 General

- (a) The undertakings in this Clause 21 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.
- (b) In this Clause 21:
  - (i) “**Annual Financial Statements**” means each set of financial statements for a Financial Year delivered pursuant to paragraph (a)(i), (b)(i), (c)(i), (d)(i), (d)(ii), (e)(i) or (e)(ii) of Clause 21.2 (*Financial statements*);
  - (ii) “**Semi-Annual Financial Statements**” means each set of financial statements delivered pursuant to paragraph (c)(ii), (d)(iii) or (d)(iv) of Clause 21.2 (*Financial statements*); and
  - (iii) “**Quarterly Financial Statements**” means the financial statements delivered pursuant to paragraph (a)(ii), (b)(ii), (c)(iii), (d)(v), (d)(vi), (e)(iii) or (e)(iv) of Clause 21.2 (*Financial statements*).

### 21.2 Financial statements

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

- (a) in respect of the Company, as soon as they are available, but in any event by not later than:
  - (i) 180 days after the end of each of its Financial Years, the annual audited standalone financial statements of the Company for that Financial Year; and
  - (ii) 60 days after the end of each of its first, second and third Financial Quarters, the quarterly standalone financial statements of the Company for that Financial Quarter;
- (b) in respect of the Parent, as soon as they are available, but in any event by not later than:
  - (i) 180 days after the end of each of its Financial Years, the annual standalone financial statements of the Parent for that Financial Year; and
  - (ii) 60 days after the end of each of its first, second and third Financial Quarters, the quarterly standalone financial statements of the Parent for that Financial Quarter;
- (c) in respect of the Target Group, as soon as they are available, but in any event by not later than:

- (i) 120 days after the end of each of the Financial Years of the Target (or, following the Permitted Target Reorganisation, the Company), the audited annual consolidated financial statements of the Target Group for that Financial Year;
  - (ii) 90 days after the end of the first Financial Half-Year in each Financial Year of the Target (or, following the Permitted Target Reorganisation, the Company), the reviewed semi-annual consolidated financial statements of the Target Group for that Financial Half-Year; and
  - (iii) 45 days after the end of each of the first and third Financial Quarters of the Target in each Financial Year of the Target (or, following the Permitted Target Reorganisation, the Company) and commencing with the first relevant Financial Quarter falling after the Closing Date, the quarterly consolidated financial statements of the Target Group for that Financial Quarter;
- (d) in respect of the Adjusted Target Group, as soon as they are available, but in any event by not later than:
- (i) in respect of the first set of such statements to be delivered after the Signing Date, the later of:
    - (A) 150 days after the end of the 2020 Financial Year of the Target; and
    - (B) 60 days after the Closing Date,
 the audited annual consolidated financial statements of the Adjusted Target Group for that Financial Year;
  - (ii) other than as described in paragraph (d)(i) above, 120 days after the end of each of the Financial Years of the Target (or, following the Permitted Target Reorganisation, the Company), the audited annual consolidated financial statements of the Adjusted Target Group for that Financial Year;
  - (iii) in respect of the first set of such statements to be delivered after the Signing Date, 120 days after the end of the first Financial Half-Year of the Target in 2021, the reviewed semi-annual consolidated financial statements of the Adjusted Target Group for that Financial Half-Year;
  - (iv) other than as described in paragraph (d)(iii) above, 90 days after the end of the first Financial Half-Year in each Financial Year of the Target (or, following the Permitted Target Reorganisation, the Company), the reviewed semi-annual consolidated financial statements of the Adjusted Target Group for that Financial Half-Year;
  - (v) in respect of the first set of such statements to be delivered after the Signing Date (which shall be in respect of the most recent Financial Quarter falling prior to the Closing Date only and provided that such Financial Quarter ends on 31 March or 30 September), the later of:
    - (A) 75 days after the end of the relevant Financial Quarter in 2021; and
    - (B) 60 days after the Closing Date,
 the quarterly consolidated financial statements of the Adjusted Target Group for that Financial Quarter; and

- (vi) other than as described in paragraph (d)(v) above, 45 days after the end of each of the first and third Financial Quarters of the Target in each Financial Year of the Target (or, following the Permitted Target Reorganisation, the Company), the quarterly consolidated financial statements of the Adjusted Target Group for that Financial Quarter;
- (e) in respect of the Brighton Parent, as soon as they are available, but in any event by not later than:
  - (i) in respect of the first set of such statements to be delivered after the Signing Date, the later of:
    - (A) 150 days after the end of the 2020 Financial Year of the Brighton Parent; and
    - (B) 60 days after the Closing Date,
 the audited annual consolidated financial statements of the Brighton Parent for that Financial Year;
  - (ii) other than as described in paragraph (e)(i) above, 180 days after the end of each of the Financial Years of Brighton, the audited annual consolidated financial statements of the Brighton Parent for that Financial Year;
  - (iii) in respect of the first set of such statements to be delivered after the Signing Date (which shall be in respect of the most recent Financial Quarter falling prior to the Closing Date only and provided that such Financial Quarter ends on 31 March, 30 June or 30 September), the later of:
    - (A) 75 days after the end of the relevant Financial Quarter in 2021; and
    - (B) 60 days after the Closing Date,
 the quarterly consolidated financial statements of the Brighton Parent for that Financial Quarter; and
  - (iv) other than as described in paragraph (e)(iii) above, 60 days after the end of each of the first, second and third Financial Quarters of Brighton, the quarterly consolidated financial statements of the Brighton Parent for that Financial Quarter; and
- (f) in respect of each SPV (for so long as such SPV remains a Guarantor), as soon as they are available, but in any event by not later than:
  - (i) 180 days after the end of each of its Financial Years, a balance sheet and profit and loss account of that SPV for that Financial Year; and
  - (ii) 60 days after the end of each of its first, second and third Financial Quarters, a balance sheet and profit and loss account of that SPV for that Financial Quarter,

provided that the deadline by which the Company must deliver any of the financial statements referred to in paragraphs (a), (b), (f) or (in each case in respect of the third Financial Quarter of 2021 only) (c)(iii), (d)(vi) or (e)(iv) above (and, if applicable, any corresponding Compliance Certificate) shall be extended by an additional 30 days in respect of any Financial Year, Financial Half-Year or Financial Quarter ending during the period of 12 Months starting on the first Utilisation Date.

### 21.3 Provision and contents of Compliance Certificate

- (a) The Company shall supply a Compliance Certificate to the Agent with:
  - (i) each set of the Adjusted Target Group's audited annual consolidated financial statements delivered pursuant to paragraph (d)(i) or (d)(ii) of Clause 21.2 (*Financial statements*);
  - (ii) each set of Adjusted Target Group's reviewed semi-annual consolidated financial statements delivered pursuant to paragraph (d)(iii) or (d)(iv) of Clause 21.2 (*Financial statements*); and
  - (iii) each set of the Adjusted Target Group's quarterly consolidated financial statements delivered pursuant to paragraph (d)(v) or (d)(vi) of Clause 21.2 (*Financial statements*).
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (*Financial covenants*). Each Compliance Certificate shall also provide a detailed breakdown of the calculation of each component, financial metric and computation required to be specified therein.
- (c) Each Compliance Certificate shall be signed by one director of the Company and, if required to be delivered with the annual and semi-annual consolidated financial statements of the Adjusted Target Group, shall be reported on by the Auditors in the form agreed by the Company and the Majority Lenders.

### 21.4 Requirements as to financial statements

- (a) The Company shall procure that each set of Annual Financial Statements, Semi-Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Company shall procure that:
  - (i) each set of Annual Financial Statements in respect of the Company, Target Group, Adjusted Target Group and Brighton Parent is audited by the Auditors;
  - (ii) each set of Semi-Annual Financial Statements in respect of the Target Group and Adjusted Target Group is reviewed by the Auditors; and
  - (iii) each set of Quarterly Financial Statements is signed by one director.
- (b) Each set of financial statements delivered pursuant to Clause 21.2 (*Financial statements*):
  - (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of the Annual Financial Statements), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of each set of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the auditors of those Annual Financial Statements and accompanying those Annual Financial Statements; and
  - (ii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements (or, in the case of Brighton, RAS) unless, in

relation to any set of financial statements, the Company notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and the Auditors deliver to the Agent:

- (A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements were prepared; and
- (B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (*Financial covenants*) has been complied with, to determine the Margin as set out in the definition of Margin and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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

- (c) If the Agent wishes to discuss the financial position of any member of the Group or Relevant Person with the auditors of that member of the Group or Relevant Person, the Agent may notify the Company, stating the questions or issues which the Agent wishes to discuss with those auditors. In this event, the Company must ensure that those auditors are authorised (at the expense of the Company):
  - (i) to discuss the financial position of the relevant member of the Group or Relevant Person with the Agent on request from the Agent; and
  - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.
- (d) Notwithstanding any other term of this Agreement no Default or Event of Default shall occur, or be deemed to occur, as a result of any restriction on the identity of the Auditors or the Valuer contained in this Agreement being prohibited, unlawful, ineffective, invalid or unenforceable pursuant to the Audit Laws.
- (e) Notwithstanding any of the foregoing or any other term of this Agreement, the requirements of this Clause 21.4 shall not apply to any Annual Financial Statements or Semi-Annual Financial Statements of any member of the Target Group for any Financial Year or Financial Half-Year ending prior to the Closing Date or required to be delivered prior to the date on which the Target is re-registered as a private limited company.

## **21.5 Year-end**

The Company shall procure that each financial year-end of each Obligor falls on 31 December.

## **21.6 Periodic Reports**

- (a) The Company shall, by no later than 60 days after the end of each Financial Quarter starting with the first full Financial Quarter ending after the Closing Date, supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) a Quarterly Report prepared by the Company in respect of that Financial Quarter.
- (b) The Company shall, by no later than 120 days after the end of each of its Financial Years starting with the first Financial Year ending after the Closing Date, supply to the

Agent (in sufficient copies for all the Lenders, if the Agent so requests) an Annual Report prepared by the Company in respect of that Financial Year.

## **21.7 Valuation Reports**

- (a) The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) a Valuation Report by no later than each Valuation Report Delivery Date.
- (b) The valuation of the shares in the Target (or, following the Permitted Target Reorganisation, the Company) set out in each Valuation Report shall be calculated as at a valuation date not earlier than 120 days prior to the delivery date of that Valuation Report.
- (c) The Company shall use reasonable endeavours to procure that each Valuation Report is capable of being relied upon by the Finance Parties.
- (d) Each Obligor shall (and the Company shall ensure that each member of the Group will) make available all such information and cooperation as may reasonably be required by the Valuer for the purposes of, or in connection with, the preparation of the Valuation Report.

## **21.8 Information: miscellaneous**

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

- (a) at the same time as they are dispatched, copies of all documents dispatched by any Obligor or (after the Closing Date) the Target to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Relevant Person or member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against any member of the Group in respect of the Offer, the Scheme or the Acquisition Documents;
- (d) promptly upon becoming aware of any downgrade to the credit rating of any Obligor or member of the Group required to be maintained pursuant to Clause 23.28 (*Credit rating*), the details of such downgrade (including such documentation and other information as the Agent may request which shall, for the avoidance of doubt, be treated by the Finance Parties as Confidential Information);
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (f) promptly on request, such further information regarding the financial condition, assets and operations of the Group, the Target Group (after the Closing Date), any member of the Group and/or any member of the Target Group (after the Closing Date) (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any member of the Group under this Agreement,

any changes to the management of the Group and/or the Target Group (after the Closing Date) as any Finance Party through the Agent may reasonably request.

Notwithstanding the foregoing, no member of the Group, the Company nor the Parent shall be required to supply or disclose to the Agent or to any other Finance Party any information or other matter if it could reasonably be expected to result in any member of the Group, the Company and/or the Parent being (1) required to make an announcement pursuant to the EU Market Abuse Regulation, the rules of the London Stock Exchange, the rules of the Kazakhstan Stock Exchange or any other applicable law or regulation (including, to the extent applicable, the rules of any other internationally recognised exchange) which it would not otherwise have been required to make or (2) in breach of the EU Market Abuse Regulation, the rules of the London Stock Exchange, the rules of the Kazakhstan Stock Exchange or any other applicable law or regulation (including, to the extent applicable, the rules of any other internationally recognised exchange), provided that the Company shall, to the extent permitted by law, regulation or the rules of any stock exchange, notify the Agent that certain information is being withheld from disclosure in reliance on this provision.

### **21.9 Notification of default**

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

### **21.10 Notification of expiry of Certain Funds Period**

The Company shall as soon as reasonably practicable (but in any event within 10 Business Days) notify the Agent upon the occurrence of any event that causes the Certain Funds Period to expire under paragraph (a)(i) or (b)(i) of the definition thereof.

### **21.11 “Know your customer” checks**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signing Date;
  - (ii) any change in the status of any Relevant Person or the composition of the shareholders of any Relevant Person after the Signing Date; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than 10 Business Days’ prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its or the Parent’s Subsidiaries becomes an Additional Obligor pursuant to Clause 28 (*Changes to the Relevant Persons*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## 22. FINANCIAL COVENANTS

### 22.1 Financial definitions

In this Agreement:

“**Adjusted Target Group**” means the Company and each member of the Target Group (Non-Brighton).

“**Borrowings**” means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Adjusted Target Group for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);

- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability of an entity which is not a member of the Adjusted Target Group which liability would fall within one of the other paragraphs of this definition or (ii) any liabilities of any member of the Adjusted Target Group relating to any post-retirement benefit scheme;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the applicable Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles;
- (j) any Treasury Transaction (and, when calculating the value of that Treasury 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 Treasury Transaction, that amount) shall be taken into account); and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above,

provided that the following shall not be included in Borrowings:

- (i) indebtedness owed by one member of the Group to another member of the Group (provided that, in relation to any indebtedness owed by a member of the Group (Brighton) to a member of the Adjusted Target Group, such indebtedness is evidenced by a Permitted Loan which satisfies the applicable Subordination Criteria); and
- (ii) Subordinated Debt, provided that such Subordinated Debt is subordinated to the Facilities on the terms of a Subordination Agreement or otherwise to the satisfaction of the Agent.

“**EBITDA**” means, in respect of any Relevant Period, the economic indicator (calculated on the basis of IFRS consolidated financial statements) being the consolidated profit of the Adjusted Target Group before taxation, without double counting (excluding the results from discontinued operations):

- (a) **before deducting** any Finance Charges, commission, fees, discounts, prepayment fees, premiums, charges and other finance costs whether paid, payable or capitalised by any member of the Adjusted Target Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) **after deducting** any mineral extraction tax and royalties paid, payable or capitalised (calculated on a consolidated basis) in respect of that Relevant Period;
- (c) **not including** any interest received or to be received and other finance income;

- (d) **before taking into account** gains and losses on any exchange rate fluctuations
- (e) **after adding back** any amount attributable to depreciation, amortisation, depletion and impairment of non-current assets and impairment of loans provided;
- (f) **after deducting** the capitalised stripping costs (or before taking into account increase or decrease of capitalised stripping costs);
- (g) **before taking into account** any Pension Items; and
- (h) **before deducting** any Acquisition Costs
- (i) **before taking into account** any gain or loss resulted from participation in associates or joint ventures in respect of which profit or loss is not consolidated with revenue;
- (j) **before taking into account** any unrealised profit or loss resulting from derivative transactions (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (k) **before taking into account** any profit or loss resulting from acquisition, sale or any other alienation or loss of non-current assets;
- (l) **before taking into account** any Exceptional Items;
- (m) **excluding** the charge to profit represented by the expensing of stock options, in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Adjusted Target Group before taxation.
- (n) **before taking into account** any profit or loss resulting from revaluation of non-current assets; and
- (o) **before taking into account** any profit or loss resulting from revaluation or alienation of the loans provided,

provided that, for the purposes of this definition:

- (i) if the IFRS Test:
  - (A) is not satisfied, EBITDA shall be calculated in accordance with IFRS 16; and
  - (B) is satisfied, EBITDA shall be calculated in accordance with IFRS in force prior to IFRS16 (and IFRS 16 shall not be taken into account); and
- (ii) each of the elements in paragraphs (a) to (o) above shall be taken into account without double counting and only to the extent affecting the profit (loss) prior to taxation.

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

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment; and

- (c) disposals of assets associated with discontinued operations.

**“Finance Charges”** means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid or payable by any member of the Adjusted Target Group (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period:

- (a) **including** the interest (but not the capital) element of payments in respect of Finance Leases;
- (b) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Adjusted Target Group under any interest rate hedging arrangement;
- (c) **excluding** any Acquisition Costs;
- (d) **excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes; and
- (e) **taking no account** of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis,

and so that no amount shall be added (or deducted) more than once.

**“Finance Lease”** means any lease or hire purchase contract, a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability. For the purposes of this definition, the accounting treatment of such liabilities shall be determined by reference to IFRS 16 if the IFRS Test is not satisfied or, if the IFRS Test is satisfied, by reference to IFRS in force prior to IFRS 16 (and in such case IFRS 16 shall not be taken into account).

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

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

**“Financial Year”** means the annual accounting period of the Target Group ending on 31 December in each year.

**“Half-Year Date”** means each of 30 June and 31 December.

**“IFRS Test”** means, in respect of any Relevant Period, rental expenses (including capital and operating leases) of the Adjusted Target Group for that Relevant Period are greater than 5% of EBITDA (calculated on the basis of IFRS in force prior to IFRS 16).

**“Interest Cover”** means the ratio of EBITDA to Finance Charges in respect of any Relevant Period.

**“Leverage Ratio”** means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to EBITDA in respect of that Relevant Period.

**“Non-Group Entity”** means any investment or entity (which is not itself a member of the Adjusted Target Group (including associates and Joint Ventures)) in which any member of the Adjusted Target Group has an ownership interest.

“**Pension Items**” means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.

“**Obligor Coverage Ratio**” means the set of financial ratios set out in paragraph (a) of Clause 22.2 (*Financial Condition*).

“**Quarter Date**” means each of 31 March, 30 June, 30 September and 31 December.

“**Relevant Period**” means each period of 12 months ending on or about the last day of the Financial Year, each period of 12 months ending on or about the last day of each Financial Half-Year and each period of 12 months ending on or about the last day of each Financial Quarter.

“**Required Percentage**” means, in respect of any Relevant Period specified in column 1, the ratio (expressed as a percentage) set out in column 2 below opposite that Relevant Period

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Required Percentage</b>
Relevant Period expiring 31 December 2020	Equal to or greater than 50 per cent.
Relevant Periods expiring on 31 March 2021, 30 June 2021, 30 September 2021 and 31 December 2021	Equal to or greater than 50 per cent.
Relevant Periods expiring on 31 March 2022, 30 June 2022, 30 September 2022 and 31 December 2022	Equal to or greater than 50 per cent. or, if the Step-Down Criteria are satisfied, 40 per cent.
Relevant Periods expiring on 31 March 2023, 30 June 2023, 30 September 2023 and 31 December 2023	Equal to or greater than 50 per cent. or, if the Step-Down Criteria are satisfied, 45 per cent.
Relevant Period expiring on 31 March 2024 and each Relevant Period thereafter	Equal to or greater than 50 per cent.

“**Step-Down Criteria**” means, in respect of any Relevant Period, the following two parameters are both satisfied:

- (a) Total Obligor EBITDA is greater than USD 600,000,000; and
- (b) Total Obligor Production is greater than 190,000 tons.

“**Total Assets**” means, as at the last day of any Relevant Period, the total assets of the Adjusted Target Group.

“**Total Net Debt**” means, at any time, the aggregate amount of all obligations of members of the Adjusted Target Group for or in respect of Borrowings at that time but:

- (a) **excluding** any such obligations to any other member of the Adjusted Target Group (to the extent not already deducted from Borrowings);
- (b) **including**, in the case of Finance Leases only, the amount of their balance sheet liability; and

- (c) **deducting** the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Adjusted Target Group at that time, **provided that** the amount of Cash and Cash Equivalent Investments denominated in KGS shall not exceed five percent of the total aggregate amount of Cash and Cash Equivalent Investments so deducted,

and so that no amount shall be included or excluded more than once.

“**Total Obligor Assets**” means, as at the last day of any Relevant Period, the total assets of the Obligors.

“**Total Obligor EBITDA**” means, in respect of any Relevant Period, the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Obligors.

“**Total Obligor Production**” means, in respect of any Relevant Period, the aggregate total Copper Equivalent Production of the Obligors.

“**Total Obligor Reserves**” means, as at the last day of any Relevant Period, the aggregate total proven and probable reserves (in accordance with the JORC Code) of the Obligors.

“**Total Obligor Revenue**” means, in respect of any Relevant Period, the aggregate total revenue of the Obligors.

“**Total Production**” means, in respect of any Relevant Period, the aggregate total Copper Equivalent Production of the Adjusted Target Group.

“**Total Reserves**” means, as at the last day of any Relevant Period, the aggregate total proven and probable reserves (in accordance with the JORC Code) of the Adjusted Target Group.

“**Total Revenue**” means, in respect of any Relevant Period, the aggregate total revenue of the Adjusted Target Group.

## 22.2 Financial condition

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

- (a) *Obligor Coverage Ratio:*

In respect of each Relevant Period expiring after the Additional Security Long-Stop Date:

- (i) Total Obligor EBITDA shall not be less than the applicable Required Percentage of EBITDA;
- (ii) Total Obligor Revenue shall not be less than the applicable Required Percentage of Total Revenue;
- (iii) as at the last day of such Relevant Period, Total Obligor Assets shall not be less than 45 per cent of Total Assets;
- (iv) Total Obligor Production shall not be less than the applicable Required Percentage of Total Production; and
- (v) as at the last day of such Relevant Period, Total Obligor Reserves shall not be less than 45 per cent of Total Reserves.

- (b) *Leverage Ratio*: the Leverage Ratio in respect of any Relevant Period specified in column 1 below expiring after the Acquisition Completion Date shall be lower than the ratio set out in column 2 below opposite that Relevant Period:

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Required ratio</b>
Relevant Period expiring 31 December 2020	5.50:1.00
Relevant Periods expiring on 31 March 2021, 30 June 2021, 30 September 2021 and 31 December 2021	5.50:1.00
Relevant Periods expiring on 31 March 2022, 30 June 2022, 30 September 2022 and 31 December 2022	5.00:1.00
Relevant Periods expiring on 31 March 2023, 30 June 2023, 30 September 2023 and 31 December 2023	4.50:1.00
Relevant Period expiring 31 March 2024 and each Relevant Period thereafter	4.00:1.00

- (c) *Interest Cover*: Interest Cover in respect of any Relevant Period expiring after the Acquisition Completion Date shall be greater than 2.00:1.00.
- (d) *Capital Expenditure (Target Group (Non-Brighton))*: The aggregate Capital Expenditure of the Target Group (Non-Brighton) in any Financial Year ending after the Acquisition Completion Date shall not exceed the amount set out in column 2 below opposite that Financial Year.

<b>Column 1</b>	<b>Column 2</b>
<b>Financial Year Ending</b>	<b>Maximum Annual Expenditure</b>
31 December 2020	USD 800,000,000
31 December 2021	USD 600,000,000
31 December 2022 and any Financial Year thereafter	USD 300,000,000

- (e) *Capital Expenditure (Group (Brighton))*: The aggregate Capital Expenditure of the Group (Brighton) in any Financial Year ending after the Acquisition Completion Date shall not exceed the amount set out in column 2 below opposite that Financial Year.

<b>Column 1</b>	<b>Column 2</b>
<b>Financial Year Ending</b>	<b>Maximum Annual Expenditure</b>

31 December 2020	USD 225,000,000
31 December 2021	USD 100,000,000 (or such higher number as may be agreed to in writing by the Agent)
31 December 2022 and any Financial Year thereafter	The amount agreed in writing for this purpose between the Company and the Majority Lenders (each acting reasonably) by reference to the bankable feasibility study (if prepared) (or, if not so agreed, zero)

However, the relevant limits on Capital Expenditure under paragraphs (d) and (e) above shall be subject to adjustment as follows:

- (i) if the actual aggregate Capital Expenditure made by members of the Target Group (Non-Brighton) or, as the case may be, members of the Group (Brighton) in any Financial Year is less than the maximum amount specified in the relevant table above for that Financial Year (such unused amount, the “**Carry-Over Amount**”), the Carry-Over Amount may be carried over to the next Financial Year (but not to any subsequent Financial Year), provided that any such Carry-Over Amount shall only be used after the original limit specified for that subsequent Financial Year has been exhausted; and
- (ii) in the event any member of the Target Group (Non-Brighton) or, as the case may be, member of the Group (Brighton) disposes of assets for cash consideration in any twelve month period in an aggregate amount which exceeds five per cent. of the average Balance Sheet Asset Value of the Target Group (Non-Brighton) or, as the case may be, member of the Group (Brighton) for such period (calculated by reference to the four most recently delivered quarterly financial statements of the Company), the limit of Capital Expenditure for the remainder of the current Financial Year and each subsequent Financial Year shall be adjusted downwards by the same percentage.

### 22.3 Obligor Coverage Ratio

- (a) Failure by the Obligors to comply with any of the requirements in paragraph (a) of Clause 22.2 (*Financial condition*) above in respect of any Relevant Period shall not constitute an Event of Default if, within 20 Business Days after the end of such Relevant Period, the Obligors:
  - (i) procure that:
    - (A) additional members of the Group accede to this Agreement as Additional Guarantors in accordance with Clause 28.2 (*Additional Guarantors*) such that the Obligors would have complied with all requirements of paragraph (a) of Clause 22.2 (*Financial condition*) above in respect of that Relevant Period had those Additional Guarantors been Guarantors for the duration of that Relevant Period; and
    - (B) 100 per cent of the shares or other ownership interests of each such member of the Group which accedes to this Agreement pursuant to paragraph (i)(A) above which are owned by a member of the Group become subject to the first ranking Transaction Security pursuant to a Transaction Security Document in form and substance satisfactory to

the Security Agent (acting reasonably) provided that (other than in the case of the Target) such shares or other ownership interests represent at least 99% of the issued shares or ownership interests of that member of the Group; or

- (ii) remedy the relevant failure to the satisfaction of the Agent using another method agreed in writing between the Agent and the Company.
- (b) The contribution of any member of the Group that accedes to this Agreement as an Additional Guarantor shall only be counted towards remedying any breach of the Obligor Coverage Ratio if its guarantee:
  - (i) is in respect of the full amount of all of the Facilities; and
  - (ii) is not subordinated to any existing or future liabilities of the Group.

#### **22.4 Financial testing**

- (a) The Obligors shall be obliged to comply with the financial covenants in:
  - (i) paragraph (a) of Clause 22.2 (*Financial condition*) starting from the Additional Security Long-Stop Date; and
  - (ii) paragraphs (b) to (e) of Clause 22.2 (*Financial condition*) starting from the Acquisition Completion Date.
- (b) The financial covenants set out in Clause 22.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraph (d) of Clause 21.2 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 21.3 (*Provision and contents of Compliance Certificate*).
- (c) Calculation of each component of the Obligor Coverage Ratio shall be performed on an unconsolidated basis and shall exclude all intra-Group items and investments.

### **23. GENERAL UNDERTAKINGS**

The undertakings in this Clause 23 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### **23.1 Authorisations**

Each Obligor shall (and shall procure that each Relevant Person will) promptly obtain, comply with and do all that is necessary under applicable law to maintain in full force and effect, any Authorisation required under any law or regulation of a Relevant Jurisdiction:

- (a) to enable it to perform its obligations under the Finance Documents;
- (b) to ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document;
- (c) to carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect; and
- (d) for each member of the Group to carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **23.2 Compliance with laws**

Each Obligor shall (and the Company shall ensure that each member of the Group and Relevant Person will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **23.3 Environmental compliance**

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

- (a) comply with all Environmental Law; and
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **23.4 Environmental claims**

Each Obligor shall (through the Company), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current or pending; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

### **23.5 Anti-corruption law**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of any 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.
- (b) Each Obligor shall (and the Company shall ensure that each other member of the Group and Relevant Person will):
  - (i) conduct its businesses in compliance in all material respects with applicable anti-corruption laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

### **23.6 Taxation**

- (a) Each Obligor shall (and the Company shall ensure that each member of the Group and Relevant Person will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 21.2 (*Financial statements*); and

(iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) No member of the Group may change its residence for Tax purposes.

### **23.7 Merger**

(a) No Obligor shall (and the Company shall ensure that no other member of the Group or Relevant Person will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.

(b) Paragraph (a) above does not apply to any Permitted Disposal, Permitted Reorganisation or Permitted Transaction.

### **23.8 Change of business**

The Company shall procure that no substantial change is made to the general nature of the business of the Target Group taken as a whole from that carried on by the Target Group at the Signing Date.

### **23.9 Acquisitions**

(a) Except as permitted under paragraph (c) below, no Obligor shall (and the Company shall ensure that no other member of the Group will):

(i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or

(ii) incorporate a company.

(b) Except as permitted under paragraph (c) below, no Obligor shall (and the Company shall ensure that no member of the Target Group (Non-Brighton) will) acquire any shares, securities or other asset from any member of the Group (Brighton).

(c) Paragraphs (a) and (b) above do not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is a Permitted Acquisition.

### **23.10 Joint ventures**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

(b) Paragraph (a) above does not apply to:

(i) any Joint Venture existing as at the Signing Date; or

(ii) any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan

made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Guarantee or a Permitted Loan.

### **23.11 Holding Companies**

- (a) Neither the Company nor the Parent shall trade, carry on any business, own any assets or incur any liabilities except for any Permitted Holding Company Activity.
- (b) Each Obligor shall ensure that none of the SPVs shall trade, carry on any business, own any assets or incur any liabilities except for any Permitted Holding Company Activity.

### **23.12 Preservation of assets**

Each Obligor shall (and the Company shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business, if failure to do so has or could reasonably be expected to have a Material Adverse Effect.

### **23.13 Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Secured Hedge Counterparty against it or any Relevant Person 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 laws of general application to companies.

### **23.14 Negative pledge**

In this Clause 23.14, “**Quasi-Security**” means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (d) below:

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Company shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) In addition to (and without prejudice to) paragraphs (a) and (b) above, none of the Obligors shall (and each Obligor shall ensure that no other member of the Group or

Relevant Person will) create or permit to subsist any Security or Quasi-Security over any shares, bank accounts or custody accounts which constitute Charged Property other than:

- (i) any lien arising by operation of law;
  - (ii) in relation to any bank accounts, custody accounts or other clearing banking facilities, any Security or Quasi-Security or right of set-off arising under the standard terms and conditions of the relevant bank or financial institution with whom the relevant account or clearing facilities are held;
  - (iii) the Transaction Security; or
  - (iv) any Security or Quasi-Security in respect of which the prior written consent of the Agent has been obtained.
- (d) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security or a Permitted Transaction.

### **23.15 Disposals**

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

### **23.16 Arm's length basis**

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms or better and for full market value.
- (b) The following transactions shall not be a breach of this Clause 23.16:
  - (i) intra-Group loans permitted under Clause 23.17 (*Loans or credit*);
  - (ii) any Permitted Transaction under paragraphs (b) or (c) of that definition; or
  - (iii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent.

### **23.17 Loans or credit**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to a Permitted Loan or a Permitted Transaction.

### 23.18 No guarantees or indemnities

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to a guarantee which is a Permitted Guarantee or a Permitted Transaction.

### 23.19 Dividends and share redemption

- (a) Except as permitted under paragraph (b) below, the Company shall not (and the Company shall ensure that no other member of the Group will):
  - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of the Parent or any of the shareholders of the Parent;
  - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or
  - (v) make any payment of principal or interest in respect of Subordinated Debt.
- (b) Paragraph (a) above does not apply to a Permitted Payment or a Permitted Transaction.

### 23.20 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness or a Permitted Transaction.

### 23.21 Production

- (a) Each Obligor shall ensure (and shall procure that each member of the Group will ensure) that, subject to paragraph (c) below, the Copper Equivalent Production of the Group in respect of any Relevant Period falling after the Closing Date specified in column 1 below shall not be less than the volume specified in column 2 opposite that Relevant Period:

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Required volume</b>
Any Relevant Period expiring during 2021	300,000 tonnes
Any Relevant Period expiring during 2022, 2023 or 2024	325,000 tonnes
Any Relevant Period expiring in 2025 or thereafter	300,000 tonnes

- (b) The production undertakings set out in paragraph (a) above shall be tested by reference to each Quarterly Report delivered to the Agent pursuant to paragraph (a) of Clause 21.6 (*Periodic Reports*).
- (c) The volumes specified in column 2 of the table in paragraph (a) above have been calculated on the basis that Vostoksvetmet is a member of the Group. In the event that Vostoksvetmet ceases to be a member of the Group, then the Agent and the Company agree to negotiate in good faith the necessary revisions to column 2 in order to account for the loss of production of the Group due to the exclusion of Vostoksvetmet.
- (d) If the Agent and the Company fail to agree the necessary revisions within 30 Business Days, the volumes specified in column 2 of the table in paragraph (a) above shall be reduced by subtracting the contribution of Vostoksvetmet towards the Copper Equivalent Production of the Group during the immediately preceding 12 months, as determined by reference to the four most recent Quarterly Reports delivered to the Agent pursuant to paragraph (a) of Clause 21.6 (*Periodic Reports*).

### **23.22 Brighton**

- (a) On and from the Acquisition Completion Date, the Company shall ensure that the Target owns (directly or indirectly) not less than 75 per cent. of the issued share capital of Brighton.
- (b) On and from the Acquisition Completion Date, subject to paragraph (c) below:
  - (i) the Company shall ensure that all Financial Indebtedness of the Brighton Project is Brighton Non-Recourse Financing; and
  - (ii) no Obligor shall (and the Company shall ensure that no member of the Target Group (Non-Brighton) will) make any payment, enter into any transaction or dispose of any asset (including, for the avoidance of doubt, pursuant to any new or existing contract) with or to any member of the Group (Brighton).
- (c) Paragraph (b) shall not apply to a Permitted Brighton Transaction.
- (d) Upon the occurrence of the Brighton Pledge Release Date:
  - (i) if the Share Pledge (Brighton) has been executed, the Security Agent shall, at the request and cost of the Company, provided that no Default has occurred and is continuing, take all steps necessary to release the Security created in favour of the Secured Parties pursuant to the Share Pledge (Brighton); or
  - (ii) if the Share Pledge (Brighton) has not yet been executed, then, notwithstanding any other provision of this Agreement, Company shall not be required to procure its execution pursuant to paragraph (a) of Clause 23.33 (*Conditions subsequent*).

### **23.23 Share capital**

- (a) The Company shall not (and the Company shall ensure that no other member of the Group will) issue any shares.
- (b) Paragraph (a) above shall not apply to a Permitted Share Issue.
- (c) Following a Permitted Avon Share Issue:

- (i) in the case of the Scheme only, the Target shares issued pursuant to a Permitted Avon Share Issue shall be issued subject to the terms of the Scheme (and shall be Scheme Shares (as defined in the Scheme Documents) for the purposes thereof); and
- (ii) in the case of the Scheme or where there has been a Permitted Avon Share Issue following an Offer Conversion, the Company shall:
  - (A) use all reasonable endeavours to procure that Avon transfers its shares in the Target to the Company; or
  - (B) appoint any person as agent for Avon to execute a stock transfer form or other instrument or instruction of transfer on behalf of Avon in favour of the Company and do all such other things as may in the opinion of the agent be necessary to vest Avon's shares in the Target in the Company in accordance with the Target's articles of association,

in each case as soon as reasonably practicable and in any event by no later than the date falling 5 Business Days after such Permitted Avon Share Issue.

#### **23.24 Access**

If an Event of Default is continuing or the Agent reasonably believes an Event of Default is continuing, each Obligor shall, and the Company shall ensure that each member of the Group will, (not more than once in every Financial Year unless the Agent reasonably believes an Event of Default is continuing) permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of each Obligor to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with senior management of the Group.

#### **23.25 Amendments**

- (a) Save as set out in paragraphs (c) and (d) below, no Obligor shall (and the Company shall ensure that no other member of the Group or Relevant Person will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document (other than the Acquisition Documents) or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 28 (*Changes to the Relevant Persons*) or (other than the Parent) enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Group except in writing:
  - (i) in accordance with Clause 40 (*Amendments and waivers*);
  - (ii) prior to or on the Closing Date, with the prior written consent of the Majority Lenders; or
  - (iii) (other than in respect of the Finance Documents) after the Closing Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.
- (b) The Company shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.
- (c) No Obligor shall (and the Company shall ensure that no other Share Exchange Party will) amend any term of the Share Exchange Agreement or a Permitted SPV Share

Transfer Document in a way which is materially prejudicial to the interests of the Lenders. The Company shall procure that, no later than three Business Days prior to executing any amendment to the Share Exchange Agreement or a Permitted SPV Share Transfer Document, the proposed amendment is delivered to the Agent (provided that this shall not be required in respect of any amendment which is of a technical or administrative character or otherwise could not reasonably be expected to be material to the interests of the Lenders).

- (d) This Clause 23.25 shall not apply in respect of the form of articles of association to be adopted by the Target when it is re-registered as a private limited company delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) provided that such articles are delivered in accordance with paragraph (f) of Clause 24.1 (*Scheme Undertakings*) or, if an Offer Conversion occurs, paragraph (e) of Clause 24.2 (*Offer Undertakings*).

### **23.26 Financial assistance**

Each Obligor shall (and the Company shall procure each other member of the Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

### **23.27 Treasury Transactions**

- (a) No Obligor shall (and the Company shall procure that no other member of the Group will) enter into any Treasury Transaction, other than:
- (i) in the case of the Company, any hedging transaction under the Hedging Agreements (Acquisition);
  - (ii) in the case of any Borrower, any hedging transactions with the Hedge Counterparties for the purposes of hedging any liabilities and/or risks in relation to the Facilities;
  - (iii) spot and forward delivery foreign exchange contracts entered into by members of the Target Group in the ordinary course of business and not for speculative purposes;
  - (iv) any Treasury Transaction entered into for the hedging of actual or projected real exposures, arising in the ordinary course of trading activities of a member of the Group (including any hedging which is in accordance with the hedging strategy currently implemented by the Group) and not for speculative purposes; and
  - (v) any Treasury Transaction entered into in accordance with (or to give effect to) Clause 34.12 (*Alternative Currency*).
- (b) No Obligor shall (and the Company shall procure that no other member of the Group will) enter into any Third Party Treasury Transaction unless the Agent has received evidence (in form and substance satisfactory to it) that all payment obligations (of any nature whatsoever) of the relevant Obligor or member of the Group towards the relevant Third Party Hedge Counterparty are subordinated to the Financial Indebtedness owed to the Finance Parties under the Finance Documents pursuant to subordination arrangements in form and substance satisfactory to the Agent.

- (c) If, at any time, the aggregate of the notional amount of all interest rate hedging transactions entered in relation to the Facilities, which are, at that time, in effect under the Hedging Agreements exceeds or, as a result of a prepayment, will exceed 100 per cent. of the aggregate amount of the Loans at that time, the Company must promptly notify the Agent and may (or promptly shall, if requested by the Agent in writing) reduce (or procure the reduction of) the aggregate notional amount of those transactions by an amount so that it no longer exceeds or will not exceed 100 per cent of the aggregate amount of the Loans then or that will be outstanding.
- (d) Any reductions in the aggregate notional amount of the transactions in respect of the Hedging Agreements in accordance with paragraph (c) above will be apportioned between those transactions in the manner selected by the Company.
- (e) The Company shall notify the Agent of the aggregate notional amounts of all interest rate hedging transactions entered into by the Borrowers in relation to the Facilities promptly following any increase in the aggregate notional amounts of such transactions.

### **23.28 Credit Rating**

On and from the Additional Security Long-Stop Date, the Company shall procure that the Target Group at all times maintains a credit rating of either B or higher with Standard & Poor's Rating Services, B or higher with Fitch Ratings Ltd or B2 or higher with Moody's Investor Services Limited.

### **23.29 Sanctions**

- (a) Each Obligor shall (and shall ensure that each other member of the Group and Relevant Person will) comply with all Sanctions.
- (b) No Obligor shall (and each Obligor shall ensure that no member of the Group or Relevant Person will):
  - (i) use, lend, contribute or otherwise make available any part of the proceeds of any Utilisation directly or indirectly:
    - (A) for the purpose of any trade, business or other activity involving, or for the benefit of, any Restricted Party (excluding, if applicable, any Finance Party or its Affiliates) or Restricted Country; or
    - (B) in any other manner that would result in any person being in breach of Sanctions or becoming a Restricted Party; or
  - (ii) fund all or part of any payment in connection with a Transaction Document out of proceeds derived from business or transactions with a Restricted Party (excluding, if applicable, any Finance Party or its Affiliates) or involving business with a Restricted Country (unless any such business and any payments are in compliance with Sanctions applicable to dealing with that Restricted Country and any relevant license).
- (c) Each Obligor shall ensure that no person that is a Restricted Party (excluding, if applicable, any Finance Party or its Affiliates) will have any legal or beneficial interest in any funds repaid or remitted by a Relevant Person to a Lender in connection with any Facility if this would cause any Finance Party or its Affiliates to breach any Sanctions.

- (d) Each Obligor shall ensure (in relation to itself and to each member of its Group) that appropriate controls and safeguards are in place designed to prevent any action being taken that would be contrary to paragraphs (a), (b) and (c) above.
- (e) Each Obligor shall (and each Obligor shall procure that each member of the Group and each Relevant Person will), promptly upon becoming aware of the same, supply the Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.

### **23.30 Bank Accounts**

- (a) The Company shall, on or prior to the Signing Date, open the Settlement Accounts.
- (b) The Company shall, unless otherwise agreed in writing with the Agent, ensure that all of the following payments shall be made through the Settlement Accounts:
  - (i) all payments to be made by the Company to, or received by the Company from, a Hedge Counterparty in connection with any Hedging Agreement (Acquisition) (other than any payment by the Company of fees or premiums in relation thereto, which may be made through a Permitted Account); and
  - (ii) any payment required to be made directly by the Company to any person in connection with the Acquisition.
- (c) The Company shall at all times, unless otherwise agreed in writing with the Agent, ensure that all of the following payments shall be made through a Company Secured Account:
  - (i) any payment to discharge any of its obligations under the Finance Documents;
  - (ii) any repayments received by the Company under any Permitted Loan or pursuant to any Permitted Distribution; and
  - (iii) all proceeds received by the Company pursuant to a Relevant Disposal or a Relevant Share Issue.
- (d) The Company may not open any current, deposit or other account that is not a Permitted Account.

### **23.31 Group Structure**

#### *Share Exchange Agreement*

- (a) The Company shall, within one Business Day after issuing the 2.7 Announcement, deliver to the Agent a copy of the Share Exchange Agreement in the agreed form delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) duly executed by all parties thereto.
- (b) Each Obligor shall (and shall procure that each other Share Exchange Party will) comply with its obligations under the Share Exchange Agreement and promptly do all such acts or execute all such documents as may be required to ensure that, by no later than the Closing Date (in respect of SPV1, SPV2 and SPV3) or the date falling two Business Days after the Closing Date (in respect of SPV4), the Company is the direct legal and beneficial owner of the entire issued share capital of each SPV.
- (c) The Company shall, within five Business Days after the completion of all of the transactions contemplated by the Share Exchange Agreement, deliver to the Agent:

- (i) a copy of the relevant shareholder register of each SPV; or
  - (ii) scanned copies of the relevant share certificates,
- evidencing that each SPV is a direct Subsidiary of the Company.

*Permitted SPV Share Transfers*

- (d) The Company and each SPV shall ensure that, by no later than the date falling five Business Days after the date as of which:
  - (i) the relevant SPV has become a direct Subsidiary of the Company pursuant to the Share Exchange Agreement; and
  - (ii) all Authorisations required to be obtained by any member of the Group or Relevant Person in connection with the transfer of shares in the Target held by the relevant SPV to the Company have been obtained,

the relevant SPV and the Company execute the Declaration of Trust in respect of the shares in the Target held by that SPV and the Company issues a Letter of Direction thereunder.

- (e) The Company and each SPV shall ensure that, by no later than the date falling two Business Days after the later of:
  - (i) the date of receipt by an SPV (or any person whom it has nominated for this purpose on its behalf) from the Security Agent of all of the original share certificates previously delivered by that SPV to the Security Agent pursuant to the Share Charge (Target/SPV); and
  - (ii) the date on which that SPV and the Company have executed a Declaration of Trust and the Company has issued a Letter of Direction thereunder in accordance with paragraph (d) above,

the relevant SPV delivers such share certificates together with a duly executed stock transfer form in favour of the Company in respect of the shares held by it in the Target to the Target and requests the Target to register the transfer of those shares to the Company pursuant to a Permitted SPV Share Transfer.

**23.32 Further assurance**

- (a) Each Obligor shall (and the Company shall procure that each other member of the Group and each Relevant Person will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect (including by completion of all applicable Perfection Requirements) the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

- (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor or Relevant Person located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Company shall procure that each other member of the Group and each Relevant Person will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

### 23.33 Conditions subsequent

Each Obligor shall (and the Company and the Parent shall procure that each other Relevant Person and member of the Group will):

- (a) by no later than the Additional Security Long-Stop Date, ensure that:
  - (i) each of:
    - (A) the Target (but only if a Permitted Target Reorganisation has not occurred);
    - (B) Bozymchak;
    - (C) Bozshakol; and
    - (D) Vostoksvetmet,

accedes to this Agreement as an Additional Guarantor in respect of the full amount of the Facilities (and the Company shall, promptly following the date as of which all such persons have acceded as Additional Guarantors, deliver to the Agent a Compliance Certificate confirming that all components of the Obligor Coverage Ratio are satisfied as of the date of the Compliance Certificate based on the financial statements provided for the most recently completed Relevant Period which ended prior to the date on which the last person acceded as an Additional Guarantor (for the avoidance of doubt, such Compliance Certificate is only required to contain information concerning compliance with the Obligor Coverage Ratio));
  - (ii) first ranking Transaction Security is created over 100 per cent. of the shares or other ownership interests of each of the Additional Guarantors referred to in paragraphs (a)(i)(A) to (a)(i)(D) above which are owned by a member of the Group provided that, in relation to the Additional Guarantors referred to in paragraphs (a)(i)(B) to (a)(i)(D) above, such shares or other ownership interests represent at least 99% of the issued shares or ownership interests of that Additional Guarantor;
  - (iii) unless the Brighton Pledge Release Date has by that time occurred, the Brighton Parent executes the Share Pledge (Brighton);

- (iv) the Holding Company of the Brighton Parent executes the Share Pledge (Brighton Parent);
- (v) legal opinions (or, in relation to sub-paragraph (C) below, legal memoranda) of independent legal counsel acceptable to the Agent are delivered to the Agent and the Security Agent in respect of:
  - (A) the validity, enforceability and binding nature of each Finance Document or Transaction Security Document referred to in paragraphs (a)(i) to (b)(iv) above;
  - (B) the capacity of, and due execution by, each Relevant Person of such Finance Document or Transaction Security Document; and
  - (C) (if requested by the Security Agent (acting reasonably)) the title of the relevant security provider to the relevant asset(s) over which Transaction Security is expressed to be granted pursuant to such Transaction Security Document;
- (b) by no later than the applicable time specified in this Agreement or the relevant Finance Document (or if no time or time period is specified, as soon as reasonably practicable), ensure that all Perfection Requirements in relation to the Finance Documents and Transaction Security referred to in, or required to be executed under, paragraph (b) above are completed; and
- (c) deliver, or procure the delivery to the Agent of, all documents and other evidence, and take all other action, specified in Schedule 3 (*Conditions subsequent*) by the time or within the time period specified therein as being required for the delivery of such documents or evidence or taking of such action,

in each case in form and substance satisfactory to the Agent and, in respect of any document, evidence, legal opinion or action relating to the Transaction Security, the Security Agent (with such legal opinions being similar in form and substance to (and no narrower in scope than) the legal opinions delivered pursuant to Clause 4.1 (*Initial conditions precedent*) in respect of Charged Property of the same nature and in the same jurisdiction as that referred to in such legal opinions).

### **23.34 Indemnity letter**

In the event that ON and/or VK execute and deliver a copy of a signed but undated Indemnity Letter pursuant to the requirements of paragraph 9(b) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*), VTB Bank (PJSC) agrees not to countersign such Indemnity Letter if:

- (a) prior to the date by which the relevant spousal consent required to be delivered pursuant to paragraph 5 (in the case of ON) or paragraph 6 (in the case of VK) of Schedule 3 (*Conditions subsequent*), the Security Agent has received original share certificates in respect of an aggregate amount of 184,230,218 shares in the Target; and
- (b) as at the date on which such original share certificates have been received by the Security Agent, the Agent is satisfied that there are no Claims (as defined in the Indemnity Letter), any Security (other than the Transaction Security) and/or any attachments in relation to such share certificates,

provided that nothing in this Clause shall prevent VTB Bank (PJSC) from countersigning any Indemnity Letter immediately if any of the circumstances described in paragraph (b) apply prior to the date on which the requirements of both paragraphs (a) and (b) have been satisfied.

## **24. ACQUISITION RELATED UNDERTAKINGS**

### **24.1 Scheme Undertakings**

#### **(a) 2.7 Announcement**

The Parent and the Company will use all reasonable endeavours to procure the issue of the 2.7 Announcement within three Business Days of the Signing Date (and in any event shall make the 2.7 Announcement within five Business Days of the Signing Date).

#### **(b) Scheme Circular**

The Parent and the Company will use reasonable endeavours to:

- (i) procure that the Scheme Circular is dispatched as soon as practicable and in any event within 28 days of the date of issue of the 2.7 Announcement or such later date as may be approved by the Takeover Panel; and
- (ii) procure that the form and terms of the Scheme Circular do not vary in any respect which is materially adverse to the interests of the Lenders from the form and terms of the draft 2.7 Announcement delivered as a condition precedent to this Agreement unless the Agent has approved in writing such change in advance.

#### **(c) Progress of Scheme**

The Parent and the Company will keep the Agent reasonably informed as to any material developments in relation to the Scheme and promptly on request provide the Agent with information as to the progress of the Scheme and with any material information or advice received in relation to the Scheme and will notify the Agent promptly following it becoming aware that the Scheme Court Order has been issued.

#### **(d) Terms of the Scheme**

The Parent and the Company shall:

- (i) not increase, and ensure there is no increase in, the amount of cash payable by it in respect of the Target Shares pursuant to the Scheme or otherwise vary the cash consideration payable pursuant to the Scheme except to the extent that such increase is funded entirely (directly or indirectly) by the subscription for shares in, or loans to, the Parent by the Shareholders or their Affiliates and such monies are passed down to the Company by way of subscription for shares by or Subordinated Debt from the Parent;
- (ii) not take any action (and procure, so far as they are able to do so, that no person, acting in concert with it or otherwise, takes any action) which would compel it to make an offer to shareholders in the Target under Rule 9 of the Takeover Code;
- (iii) not waive or amend (and use reasonable endeavours to ensure there is no waiver or amendment to) any material condition of the Scheme where such waiver or

consent would be materially prejudicial to the interests of the Finance Parties unless either:

(A) the Agent has given its consent (not to be unreasonably withheld or delayed); or

(B) to the extent required by the Takeover Code, the Takeover Panel or the Court; and

(iv) if it becomes aware of a circumstance or event which is or could reasonably be construed to be covered by any condition of the Scheme which, if not waived, would entitle the Company (with the Takeover Panel's and/or the Court's consent, if needed) to lapse or withdraw the Scheme, promptly notify the Agent.

(e) **Certificate of registration of Scheme Court Order**

The Company shall, within five Business Days of receipt, deliver the Scheme Court Order to the Registrar of Companies and obtain evidence of the same.

(f) **Take Private Procedure**

The Company shall (and the Parent shall ensure that the Company will) ensure that, as soon as practicable after the Scheme Effective Date and in any event:

(i) not later than two days after the Scheme Effective Date, all shares in the Target are delisted from the London Stock Exchange; and

(ii) not later than 45 days after the Scheme Effective Date, the Target is re-registered as a private limited company, with articles of association in substantially the same form (subject to the form of the Scheme Documents) as those delivered to the Agent in satisfaction of the condition precedent referred to in item 9(g) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*),

and, in each case, that all procedures necessary to effect the above have been completed in accordance with all applicable laws and regulations.

## 24.2 Offer Undertakings

The undertakings in this Clause 24.2 shall only apply if an Offer Conversion occurs.

(a) **Issue of Offer Document**

(i) The Company shall despatch the Offer Document as soon as reasonably practicable and in any event within 28 days of the date of issuing the Offer Press Release or such later date as may be approved by the Takeover Panel.

(ii) The Company shall procure that the terms and conditions of the Offer Document are consistent as regards all terms in any way material to the interests of the Finance Parties with those terms recorded in the 2.7 Announcement or Scheme Circular (as applicable) except for the inclusion of the Acceptance Condition (which shall be in the usual form for an Offer), any necessary technical amendments or as otherwise required by the Takeover Code or the Takeover Panel, unless the Agent has approved such change in advance.

- (iii) The Company shall not, and shall not permit any member of the Group to, amend, waive or modify the minimum number of Target Shares required to accept an Offer below the Acceptance Condition.

(b) **Progress of Offer**

The Obligors shall:

- (i) keep the Agent informed of all matters which arise in connection with the Acquisition which affect or are likely to adversely affect the interests of the Lenders (or any of them) or in respect of which it is required to notify the Target Shareholders; and
- (ii) keep the Agent informed as to the status and progress of the Offer and any market purchases of Target Shares made.

(c) **Terms of the Offer**

Other than with the written consent of the Agent, the Parent and the Company shall:

- (i) not increase, and ensure there is no increase in, the amount of cash payable by it in respect of the Target Shares to which the Offer relates as specified in the Offer Press Release except to the extent that such increase is funded entirely (directly or indirectly) by the subscription for shares in, or loans to, the Parent and such monies are passed down to the Company by way of subscription for shares or intercompany loan which is subordinated under the terms of a Subordination Agreement;
- (ii) not declare the Offer unconditional as to acceptances unless the Acceptance Condition has been satisfied;
- (iii) not take any action (and procure, so far as it is able to do so, that no person, whether acting in concert with it or otherwise, takes any action) which would compel it to revise the Offer under Rule 9 of the Takeover Code;
- (iv) after the Unconditional Date has occurred, not extend the time period available to Target Shareholders to accept the Offer other than as permitted by law or the Takeover Panel;
- (v) not declare, accept or treat as satisfied any condition of the Offer, where it is not actually satisfied or has not been complied with where such action would be prejudicial to the interests of the Finance Parties unless either:
  - (A) the Agent has given its consent (not to be unreasonably withheld or delayed); or
  - (B) to the extent required by the Takeover Code, the Takeover Panel or a court of competent jurisdiction;
- (vi) not waive or amend (and use reasonable endeavours to ensure there is no waiver or amendment to) any material condition of the Offer where such waiver or consent would be prejudicial to the interests of the Finance Parties unless either:
  - (A) the Agent has given its consent (not to be unreasonably withheld or delayed); or

- (B) to the extent required by the Takeover Code, the Takeover Panel or a court of competent jurisdiction; and
- (vii) if it becomes aware of a circumstance or event which is or could reasonably be construed to be covered by any condition of the Offer which, if not waived, would entitle the Company (with or without the Takeover Panel's consent) to lapse or withdraw the Offer, promptly notify the Agent.

(d) **Squeeze-Out**

From the Acquisition Closing Date the Company shall, to the extent the Company owns or controls not less than 90% of the voting rights of the shares in the Target the subject of the Offer, (A) as soon as reasonably practicable (and in any event within ten Business Days) after becoming entitled to do so, give notice to all other shareholders of the Target under section 979 of the Companies Act and (B) use reasonable efforts to, as soon as reasonably practicable, purchase their shares in the Target on or before the Squeeze-Out Date under section 979 of the Companies Act.

(e) **Take Private Procedure**

The Company shall (and the Parent shall ensure that the Company will) ensure that, as soon as practicable after the Unconditional Date and in any event:

- (i) not later than 30 days after the Unconditional Date, all shares in the Target are delisted from the London Stock Exchange; and
- (ii) not later than 60 days after the Unconditional Date, the Target is re-registered as a private limited company, with articles of association in substantially the same form as those delivered to the Agent in satisfaction of the condition precedent referred to in item 9(g) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*) subject to any necessary amendments required in order to reflect the implementation of the Acquisition by way of an Offer rather than a Scheme and transfer the Target Shares to the Company,

and, in each case, that all procedures necessary to effect the above have been completed in accordance with all applicable laws and regulations.

### 24.3 General Acquisition Undertakings

(a) **Announcements**

- (i) The Obligors agree that where such material refers to any Finance Party, it must be approved in writing by such party prior to its publication. No such approval shall be necessary where such announcement is required in order to comply with any relevant Authorisation, law or regulation or the requirements, rules and regulations of any court, applicable regulatory authority (including, without limitation, the Takeover Panel) or body relating to the Acquisition; and
- (ii) the Scheme Document or Offer Document (as applicable) shall include reference to the Facilities and to the Finance Parties.

(b) **Authorisations**

Each Obligor shall comply in all material respects with all relevant Authorisations, laws and regulations and the requirements, rules and regulations of all applicable regulatory authorities and bodies relating to the Acquisition.

(c) **Settlement Account**

Until the expiry of the Certain Funds Period:

- (i) no Obligor shall (and the Parent shall ensure that no other member of the Group or any Relevant Person will) deliver any directions, instructions, notices or acknowledgements relating to a Settlement Account to the Account Bank or any other person, except in relation to settlement of amounts due under the Acquisition or as expressly required by the Finance Documents or with the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed where the relevant Obligor is obliged to do so under applicable law or the Takeover Code); and
- (ii) no Obligor shall (and the Parent shall ensure that no other member of the Group or any Relevant Person will) amend, revoke or rescind any directions, instructions, notices or acknowledgements delivered by it which relate to a Settlement Account without the prior written consent of the Agent.

(d) **Receiving Agent**

- (i) No Obligor shall (and the Parent shall ensure that no other member of the Group will) deliver any directions, instructions, notices or acknowledgements to the Receiving Agent under the Receiving Agent Agreement, except in relation to settlement of amounts due under the Acquisition or as expressly required by the Receiving Agent Agreement or this Agreement or with the prior written consent of the Agent.
- (ii) No Obligor shall (and the Parent shall ensure that no other member of the Group will) amend, revoke or rescind any directions, instructions, notices or acknowledgements delivered by it to the Receiving Agent under the Receiving Agent Agreement without the prior written consent of the Agent.

(e) **Hedging Agreements (Acquisition)**

The Company shall ensure that all exchange rate hedging arrangements required in connection with the Acquisition are implemented in accordance with the terms of the Hedging Agreements (Acquisition) and that such arrangements are not terminated, varied or cancelled where that would result in the Company having insufficient GBP available to it to complete the Acquisition.

#### 24.4 Acquisition indemnity

- (a) In this Clause 24.4, “**relevant proceedings**” means any litigation or arbitral proceeding, arising, pending or threatened against a Finance Party in connection with or arising out of any Finance Document or (in each case whether or not launched) the Acquisition.
- (b) To the extent not already indemnified pursuant to Clause 16.2 (*Other indemnities*), or expressly elsewhere in this Agreement each Obligor must (on a joint and several basis) indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of any relevant proceeding, unless it is caused by the gross negligence or wilful misconduct of that Finance Party.

- (c) A Finance Party must notify the Company as soon as reasonably practicable upon becoming aware, and in reasonable detail, of any relevant proceeding and must keep the Company informed of its progress.
- (d) A Finance Party must conduct any relevant proceeding in good faith and will give careful consideration to the views of the Company in relation to the appointment of professional advisers and the conduct of the litigation taking into account (to the extent practicable) both its interests and the interests of the Company.
- (e) Notwithstanding paragraphs (c) and (d) above, a Finance Party is not required to disclose to the Company any matter in respect of which it is under a duty of non-disclosure or which is subject to any attorney/client privilege.
- (f) The Company must keep confidential any information disclosed by a Finance Party to it under this Clause 24.4 (*Acquisition indemnity*) save as may be required to be disclosed pursuant to applicable law or regulation or in connection with any judicial proceedings.

## **25. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 25 is an Event of Default (save for Clause 25.22 (*Acceleration*)).

### **25.1 Non-payment**

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

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

### **25.2 Financial covenants and other obligations**

- (a) Any requirement of Clause 22 (*Financial covenants*) is not satisfied (other than paragraph (a) of Clause 22.2 (*Financial condition*)).
- (b) Any breach of paragraph (a) of Clause 22.2 (*Financial condition*) is not cured in the manner and within the time required under Clause 22.3 (*Obligor Coverage Ratio*).

### **25.3 Other obligations**

- (a) Any Relevant Person does not comply with any provision of the Finance Documents (other than those referred to in Clause 25.1 (*Non-payment*), Clause 25.2 (*Financial covenants and other obligations*) or Clause 23.29 (*Sanctions*) (in respect of which Clause 8.3 (*Sanctions Event*) shall apply)).
- (b) During the Certain Funds Period, no Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the failure to comply.

- (c) Following the expiry of the Certain Funds Period, no Event of Default under paragraph (a) above will occur in respect of a Remediable Default if the failure to comply is capable of remedy and is remedied within:
- (i) 10 Business Days (in the case of a breach of Clause 21.8 (*Information: miscellaneous*) (due to late delivery only) or paragraph (a) of Clause 21.11 (*"Know your customer" checks*));
  - (ii) five Business Days (in the case of a breach of Clause 21.9 (*Notification of Default*)); or
  - (iii) 20 Business Days (in the case of any other Remediable Default),
- of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the failure to comply.

#### **25.4 Misrepresentation**

- (a) Any representation or statement made or deemed to be made by any Relevant Person in the Finance Documents (other than any representation or statement in Clause 20.26 (*Sanctions*), in respect of which Clause 8.3 (*Sanctions Event*) shall apply) or any other document delivered by or on behalf of any Relevant Person under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.
- (b) During the Certain Funds Period, no Event of Default under paragraph (a) above will occur if the acts or circumstances underlying the misrepresentation are capable of remedy and are remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the misrepresentation.
- (c) Following the expiry of the Certain Funds Period, no Event of Default under paragraph (a) above in respect of a Remediable Misrepresentation will occur if the acts or circumstances underlying the misrepresentation are capable of remedy and are remedied within:
- (i) 10 Business Days (in relation to a misrepresentation under Clause 20.6 (*Validity and admissibility in evidence*)); or
  - (ii) 20 Business Days (in the case of any other Remediable Misrepresentation),
- of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the misrepresentation.

#### **25.5 Cross default**

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

- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) Any member of the Group does not pay any amount under a commercial or sales contract (and not, for the avoidance of doubt, under any loan or other financing arrangement in respect of which the paragraphs above apply), provided that no Event of Default will occur under this paragraph (e) if, subject to paragraph (g) below, the relevant unpaid amounts do not exceed USD 150,000,000 (or its equivalent in any other currency or currencies) in aggregate.
- (f) Subject to paragraph (g) below, no Event of Default will occur under this Clause 25.5 if:
  - (i) in respect of any Financial Indebtedness owed by the Company, the aggregate amount of such Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 5,000,000 (or its equivalent in any other currency or currencies); and
  - (ii) in respect of any Financial Indebtedness owed by any member of the Group (other than the Company), the aggregate amount of such Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 50,000,000 (or its equivalent in any other currency or currencies).
- (g) The monetary thresholds in paragraph (e) and (f) above shall not apply in respect of any Financial Indebtedness or commitment for Financial Indebtedness (or, in the case of paragraph (e), amount) that is owed to the Original Lender or any of its Affiliates, however the relevant member of the Group shall have five Business Days to remedy the relevant circumstances before an Event of Default occurs under this Clause 25.5.
- (h) For the purposes of this Clause 25.5, Financial Indebtedness shall be construed so as to exclude any intra-Group loans and Subordinated Debt.

## **25.6 Insolvency**

- (a) Any Relevant Person or, following the Closing Date, the Target:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
  - (iii) suspends or threatens to suspend making payments on any of its debts; or
  - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with any class of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its Financial Indebtedness.
- (b) The value of the assets of any Relevant Person or, following the Closing Date, the Target is less than its liabilities (taking into account contingent and prospective liabilities other than contingent or prospective liabilities arising pursuant to any guarantee or indemnity granted under the Finance Documents).

## **25.7 Insolvency proceedings**

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

- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Relevant Person or, following the Closing Date, the Target;
- (ii) a composition, compromise, assignment or arrangement with any creditor of any Relevant Person or, following the Closing Date, the Target;
- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Relevant Person or the Target or any of their respective assets; or
- (iv) enforcement of any Security over any assets of any Relevant Person or, following the Closing Date, the Target,

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

- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

## **25.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Relevant Person or the Target having an aggregate value of USD 50,000,000 (or its equivalent in any other currency or currencies) and is not discharged within 30 days of commencement.

## **25.9 Unlawfulness and invalidity**

Subject to the Legal Reservations and Perfection Requirements:

- (a) it is or becomes unlawful for a Relevant Person, Shareholder or any member of the Group that is a party to any Subordination Agreement and/or the Receiving Agent Agreement to perform any of its obligations under the Finance Documents or any Hedging Agreement (Acquisition), or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under any Subordination Agreement is or becomes unlawful or any of the arrangements contemplated by the Receiving Agent Agreement is or becomes unlawful;
- (b) any obligation or obligations of any Relevant Person under any Finance Documents or any Hedging Agreement (Acquisition) or any Shareholder or member of the Group that is party to any Subordination Agreement and/or the Receiving Agent Agreement under any Subordination Agreement and/or the Receiving Agent Agreement are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents;
- (c) any Finance Document, any subordination created under any Subordination Agreement, any arrangement contemplated by the Receiving Agent Agreement and/or any Hedging Agreement (Acquisition) (other than by virtue of any act or omission of a Finance Party, VTB Bank (Europe) SE in its capacity as a Hedge Counterparty or VTB Bank (PJSC) in its capacity as a Hedge Counterparty) ceases to be in full force and effect; or

- (d) any Transaction Security ceases to be legal, valid, binding or enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

#### **25.10 Subordination Agreement and Receiving Agent Agreement**

- (a) Any party to any Subordination Agreement and/or the Receiving Agent Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, any Subordination Agreement or the Receiving Agent Agreement, as applicable; and
- (b) any representation or warranty given by that party in any Subordination Agreement or the Receiving Agent Agreement, as applicable, is incorrect in any material respect,

and, in each case, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 20 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

#### **25.11 Cessation of business**

- (a) Any Obligor (other than the Parent) or the Group (taken as a whole) suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal, Permitted Reorganisation or a Permitted Transaction.
- (b) No Event of Default under paragraph (a) above will occur if the acts or circumstances underlying the suspension or cessation (or threat of suspension or cessation) are capable of remedy and are remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the suspension or cessation (or threat of suspension or cessation).

#### **25.12 Audit qualification**

The Auditors qualify the audited annual consolidated financial statements of the Company in any material respect.

#### **25.13 Expropriation**

- (a) The authority or ability of any Material Company to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action (including without limitation the displacement of all or part of the management of any member of the Material Company) by or on behalf of any governmental, regulatory or other authority in relation to any Material Company or any of its assets or the shares in that Material Company.
- (b) No Event of Default under paragraph (a) above will occur if the acts or circumstances underlying the seizure, expropriation, nationalisation, intervention, restriction or other action are capable of remedy and are remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the seizure, expropriation, nationalisation, intervention, restriction or other action.

#### **25.14 Repudiation and rescission of agreements**

- (a) Any Relevant Person (or any other relevant party (other than a Finance Party, VTB Bank (Europe) SE in its capacity as a Hedge Counterparty or VTB Bank (PJSC) in its capacity as a Hedge Counterparty)) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document, a Hedging Agreement (Acquisition) or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document, a Hedging Agreement (Acquisition) or any Transaction Security.
- (b) Any party to any Subordination Agreement (other than a Finance Party) and/or the Receiving Agent Agreement rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

#### **25.15 Litigation**

- (a) Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or any member of the Target Group (Non-Brighton) or its assets which, in each case, have been or are reasonably likely to be adversely determined and which, if so determined, would:
  - (i) result in a liability of any Obligor or any member of the Target Group (Non-Brighton) exceeding an aggregate of USD 200,000,000 (or its equivalent in any other currency or currencies) at any one time; and
  - (ii) be reasonably likely to have a material adverse effect on any Obligor's ability to meet its payment obligations under the Finance Documents.
- (b) For the purposes of any determination of materiality under paragraph (a) above, the amount of any liability or potential liability which is demonstrated by the Parent to the satisfaction of the Majority Lenders (acting reasonably) as being covered by an insurance policy held by the relevant Obligor or member of the Target Group (Non-Brighton) shall be excluded.

#### **25.16 Moratorium**

- (a) A moratorium or similar arrangement is established by the government or any governmental agency of the jurisdiction of incorporation of the Target or any Relevant Person (or any other member of the Group, where this could reasonably be expected to have a material adverse effect on any Obligor's ability to meet its payment obligations under the Finance Documents) on payments under guarantees or indemnities, or payment of dividends, generally or a class thereof.
- (b) No Event of Default under paragraph (a) above will occur if the acts or circumstances underlying the moratorium or similar arrangement are capable of remedy and are remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Company or the relevant Obligor and (ii) the date on which any Relevant Person becomes aware of the moratorium or similar arrangement.

## 25.17 Final judgment

- (a) Any Final Judgment becomes binding on any Obligor or member of the Target Group (Non-Brighton) and/or their respective assets which:
  - (i) when aggregated with all other Final Judgments made against any Obligor or member of the Target Group (Non-Brighton) and/or their respective assets in the immediately preceding 12 Months, exceeds USD 50,000,000 (or its equivalent in any other currency or currencies); and
  - (ii) would, when paid by the relevant Obligor or member of the Target Group (Non-Brighton), result in any requirement of Clause 22 (*Financial covenants*) not being satisfied (calculated on a pro forma basis by reference to the most recent consolidated financial statements of the Adjusted Target Group delivered to the Agent under this Agreement as if the relevant Final Judgment was paid on the last date of the Relevant Period to which those financial statements relate).
- (b) For the purpose of paragraph (a) above, a “**Final Judgment**” means any final judgment or final award of a court or arbitral tribunal of competent jurisdiction in respect of which the relevant Obligor or member of the Adjusted Target Group has no further right of appeal (including to any higher or senior court or body).

## 25.18 Material license

Any Material License expires or is revoked or is suspended or otherwise ceases to be in full force and effect unless:

- (a) such Material License is re-issued, extended or renewed within 90 days of the date of expiry, revocation or suspension; and
- (b) the expiry, revocation or suspension of such Material License does not result in the decrease of the total Copper Equivalent Production of the Group.

## 25.19 Share Exchange Agreement

- (a) Any Share Exchange Party rescinds or purports to rescind or repudiates or purports to repudiate the Share Exchange Agreement or evidences an intention to rescind or repudiate the Share Exchange Agreement.
- (b) Subject to the Legal Reservations:
  - (i) it is or becomes unlawful for a Share Exchange Party to perform any of its obligations under the Share Exchange Agreement;
  - (ii) any obligation or obligations of any Share Exchange Party under the Share Exchange Agreement are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents; or
  - (iii) the Share Exchange Agreement (other than by virtue of any act or omission of a Finance Party) ceases to be in full force and effect.
- (c) Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to the Share Exchange Agreement or the transactions contemplated in the Share Exchange Agreement or against any Share Exchange Party in relation to its participation in the Share Exchange Agreement which,

in each case, have been or are reasonably likely to be adversely determined and which, if so determined, would have a Material Adverse Effect.

#### **25.20 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

#### **25.21 Conditions subsequent**

Any requirement of Clause 23.33 (*Conditions subsequent*) is not satisfied in the manner and timeframe stipulated therein.

#### **25.22 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

#### **25.23 Clean-Up Period**

Notwithstanding any other provision of any Finance Document:

- (a) any breach of a representation or warranty under Clause 20 (*Representations*) or an undertaking under Clause 23 (*General Undertakings*); or
- (b) any Event of Default,

which occurs during the Clean-Up Period will be deemed not to be a breach of representation or warranty, a breach of covenant or an Event of Default (as the case may be) if:

- (i) it would have been (if it were not for this Clause 25.23) a breach of representation or warranty, a breach of covenant or an Event of Default which results exclusively from any action of any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);
- (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
- (iii) the circumstances giving rise to it have not been procured by or approved by the Parent or any Original Obligor; and
- (iv) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the end of the Clean-Up Period, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the

case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

## **26. CHANGES TO THE LENDERS AND SECURED HEDGE COUNTERPARTIES**

### **26.1 Assignments and transfers by the Lenders**

Subject to this Clause 26 and Clause 27 (*Restriction on Debt Purchase Transactions*), a Lender (the “**Existing Lender**”) may:

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

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

### **26.2 Conditions of assignment or transfer**

- (a) The consent of the Company is required for an assignment or transfer in accordance with Clause 26.1 (*Assignments and transfers by the Lenders*) unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) to RCB Bank Ltd or CQUR Bank LLC;
  - (iii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
  - (iv) made at a time when an Event of Default is continuing.
- (b) The Original Lender is not permitted to assign or transfer any of its Available Commitment until the end of the Certain Funds Period and, following an Offer Conversion, the date on which all consideration payable under the Squeeze-Out Procedures using the proceeds of Facility A has been paid.
- (c) The consent of the Company to an assignment or transfer (if required) must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent ten Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (d) An assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender; and
  - (ii) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

- (e) A transfer will only be effective if the procedure set out in Clause 26.4 (*Procedure for transfer*) is complied with.
- (f) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 15 (*Increased Costs*),

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

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

### **26.3 Limitation of responsibility of Existing Lenders**

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

and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Relevant Person and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of each Relevant Person and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Relevant Person of its obligations under the Transaction Documents or otherwise.

#### 26.4 Procedure for transfer

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Relevant Persons and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (ii) each Relevant Person and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Relevant Person or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Relevant Person and the Existing Lender;
  - (iii) the Agent, the Arranger, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security 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, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a “Lender”.

## 26.5 Procedure for assignment

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released by each Relevant Person and the other Finance Parties from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 26.5 to assign their rights under the Finance Documents (but not, without the consent of the Relevant Person concerned or unless in accordance with Clause 26.4 (*Procedure for transfer*), to obtain a release by that Relevant Person from the obligations owed to that Relevant Person by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*).

## 26.6 Copy of Transfer Certificate or Assignment Agreement to Company

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

## 26.7 Security over Lenders’ rights

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Relevant Person, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by a Relevant Person 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.

## **26.8 Additional Secured Hedge Counterparties**

- (a) A Lender or an Affiliate of a Lender may become an Additional Secured Hedge Counterparty, with the prior approval of the Agent and the Company, by delivering to the Agent a duly executed Secured Hedge Counterparty Accession Letter.
- (b) The relevant Lender or Affiliate will become an Additional Secured Hedge Counterparty when the Agent enters into the relevant Secured Hedge Counterparty Accession Letter.

## **26.9 Pro rata interest settlement**

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a “pro rata basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 26.4 (*Procedure for transfer*) or any assignment pursuant to Clause 26.5 (*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):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (Accrued Amounts) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (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
  - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of 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 26.8, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 26.8 references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 26.8 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of

Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

## **27. RESTRICTION ON DEBT PURCHASE TRANSACTIONS**

### **27.1 Prohibition on Debt Purchase Transactions**

No Obligor shall, and each Obligor shall procure that each other Relevant Person and member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of “Debt Purchase Transaction”.

### **27.2 Disenfranchisement of Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate:
- (i) beneficially owns a Commitment; or
  - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

- (A) the Majority Lenders; or
- (B) whether
  - (I) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
  - (II) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a Notifiable Debt Purchase Transaction), such notification to be substantially in the form set out in Part 1 of Schedule 12 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
- (i) is terminated; or
  - (ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part 2 of Schedule 12 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (d) Each Sponsor Affiliate that is a Lender agrees that:
  - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

### **27.3 Sponsor Affiliates' notification to other Lenders of Debt Purchase Transactions**

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 p.m. on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.

## **28. CHANGES TO THE RELEVANT PERSONS**

### **28.1 Assignment and transfers by Obligors**

- (a) No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### **28.2 Additional Borrowers**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.11 ("*Know your customer*" checks), the Company may, following the Acquisition Completion Date, request that any of its Subsidiaries becomes an Additional Borrower. The Subsidiary shall become an Additional Borrower if:
  - (i) all of the Lenders approve the addition of that Subsidiary;
  - (ii) the Company and the Subsidiary deliver to the Agent a duly completed and executed Accession Deed;
  - (iii) the Subsidiary is (or becomes) an Additional Guarantor prior to becoming an Additional Borrower;
  - (iv) the Company confirms that no Default is continuing or would occur as a result of the Subsidiary becoming an Additional Borrower; and
  - (v) the Agent has received all of the documents and other evidence listed in Part 4 of Schedule 2 (*Conditions precedent*) in relation to the Subsidiary, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 4 of Schedule 2 (*Conditions precedent*).
- (c) Other than to the extent that the Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 28.3 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.11 (“*Know your customer*” checks), the Company may request that any of its or the Parent’s Subsidiaries become a Guarantor.
- (b) A member of the Group or a Subsidiary of the Parent shall become an Additional Guarantor if:
  - (i) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part 4 of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (c) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 4 of Schedule 2 (*Conditions precedent*).
- (d) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (ii) 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.

### 28.4 Resignation of Guarantors

- (a) In this Clause 28.4 “**Third Party Disposal**” means the disposal of a Guarantor (other than the Parent or an SPV) to a person which is not a member of the Group or a Relevant Person where that disposal is permitted under Clause 23.15 (*Disposals*) or made with the approval of the Majority Lenders (and the Company has confirmed this is the case).
- (b) The Company may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter.
- (c) The Agent shall accept a Resignation Letter and notify the Company and the Lenders in writing of its acceptance if:
  - (i) if all the Lenders have consented to the resignation of the relevant Guarantor, provided that such consent shall not be required in the case of:
    - (A) a Guarantor (other than the Parent or an SPV) which is being disposed of by way of a Third Party Disposal (and the Company has confirmed this is the case);
    - (B) the Target in relation to the Permitted Target Reorganisation; or
    - (C) any SPV following the date as of which:
      - (I) the SPV has no legal or beneficial interest in any shares in the Target, having transferred all such shares to the Company pursuant to a Permitted SPV Share Transfer; and
      - (II) no liabilities or obligations exist between the SPV and any member of the Group;

- (ii) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter; and
  - (iii) no payment is due from the Guarantor under Clause 19 (*Guarantee and indemnity*).
- (d) The resignation of that Guarantor shall be effective:
- (i) in the case of paragraphs (c)(i)(A) or (B), on the date of the relevant Third Party Disposal or Permitted Target Reorganisation; and
  - (ii) in any other case, on the date on which the Agent notifies the Company in writing as contemplated in paragraph (c) above,

at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

## **28.5 Repetition of representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause 20.30 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

## **29. ROLE OF THE AGENT, THE ARRANGER AND OTHERS**

### **29.1 Appointment of the Agent**

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

### **29.2 Instructions**

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

acting unless and until it receives any such instructions or clarification that it has requested.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### **29.3 Duties of the Agent**

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 26.6 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **29.4 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.

#### **29.5 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) 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.

#### **29.6 Business with the Group**

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 member of the Group or any Relevant Person.

#### **29.7 Rights and discretions**

- (a) The Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 25.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
  - (iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of each Relevant Person; and

- (iv) no Notifiable Debt Purchase Transaction:
  - (A) has been entered into;
  - (B) has been terminated; or
  - (C) has ceased to be with a Sponsor Affiliate.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose,the identity of a Defaulting Lender to the Company and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, 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.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## **29.8 Responsibility for documentation**

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, any Relevant Person or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed under or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **29.9 No duty to monitor**

The Agent shall not be bound to enquire:

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

## **29.10 Exclusion of liability**

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

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

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

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.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent’s liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the 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.

#### **29.11 Lenders’ indemnity to the Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent’s gross negligence, wilful misconduct or fraud) (or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*), notwithstanding the Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in

acting as Agent under the Finance Documents (unless the Agent has been reimbursed by a Relevant Person pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, each Obligor shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to a Relevant Person or to the extent that the Company has already reimbursed the Agent in respect of the relevant cost, loss or liability under Clause 16.3 above.

#### **29.12 Resignation of the Agent**

- (a) 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 Company.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the United Kingdom).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 29 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 29 (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.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest

FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (i) the Agent fails to respond to a request under Clause 14.8 (*FATCA information*) and the Company or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Agent pursuant to Clause 14.8 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

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

### **29.13 Replacement of the Agent**

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 29 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### **29.14 Confidentiality**

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

- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **29.15 Relationship with the Lenders**

- (a) Subject to Clause 26.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender or Secured Hedge Counterparty 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 or, as the case may be, Secured Hedge Counterparty:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

- (b) Any Lender or Secured Hedge Counterparty 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 or Secured Hedge Counterparty under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.6 (*Use of websites*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and paragraph (a)(ii) of Clause 36.6 (*Use of websites*) 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 or Secured Hedge Counterparty.

#### **29.16 Credit appraisal by the Lenders and Secured Hedge Counterparties**

Without affecting the responsibility of any Relevant Person for information supplied by it or on its behalf in connection with any Finance Document, each Lender and Secured Hedge Counterparty 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:

- (a) the financial condition, status and nature of each member of the Group and each Relevant Person;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, 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 or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

### **29.17 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.

### **29.18 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

## **30. THE SECURITY AGENT**

### **30.1 Security Agent as holder of security**

- (a) Unless expressly provided to the contrary in any Finance Document, the Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **30.2 Parallel debt (covenant to pay the Security Agent)**

- (a) Notwithstanding any other provision of this Agreement, each Relevant Person hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by such Relevant Person or any other Relevant

Person to each of the Secured Parties under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Relevant Person or, as the case may be, any other Relevant Person, to preserve its entitlement to be paid that amount.

- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Relevant Person under this Clause 30.2 irrespective of any discharge of the Relevant Person's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Relevant Person, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by any Relevant Person to the Security Agent under this Clause 30.2 shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents and any amount due and payable by the Relevant Person or any other Relevant Person to the other Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 30.2.

### 30.3 Instructions

- (a) For the purposes of this Agreement:

“**Liabilities**” means all present and future liabilities and obligations at any time of any member of the Group to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (i) any refinancing, novation, deferral or extension;
- (ii) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (iii) any claim for damages or restitution; and
- (iv) any claim as a result of any recovery by any Relevant Person of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

“**Payment**” means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

“**Secured Obligations**” means all the Liabilities and all other present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Relevant Person to any Secured

Party under each Finance Document (including, without limitation, the obligations set out in Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*))

- (b) The Security Agent shall:
  - (i) subject to paragraphs (e) and (f) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Majority Lenders;
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Secured Party or group of Secured Parties, in accordance with instructions given to it by that Secured Party or group of Secured Parties).
- (c) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if this Agreement stipulates the matter is a decision for any other Secured Party or group of Secured Parties, from that Secured Party or group of Secured Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (d) Save in the case of decisions stipulated to be a matter for any other Secured Party or group of Secured Parties under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (e) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action; and
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 30.6 (*No duty to account*) to Clause 30.12 (*Exclusion of liability*), Clause 29.14 (*Confidentiality*) to Clause 30.21 (*Custodians and nominees*) and Clause 30.24 (*Acceptance of title*) to Clause 30.27 (*Disapplication of Trustee Acts*).
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion, the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Secured Party or group of Secured Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable amount in respect of irrecoverable VAT) which it may incur in complying with those instructions.

- (h) Without prejudice to the remainder of this Clause 30.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### **30.4 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
  - (i) forward to the Agent a copy of any document received by the Security Agent from any Relevant Person under any Finance Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) The Security 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).

#### **30.5 No fiduciary duties to Relevant Persons**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Relevant Person.

#### **30.6 No duty to account**

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

#### **30.7 Business with the Group**

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

#### **30.8 Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Secured Party or any group of Secured Parties are duly given in accordance with the terms of the Finance Documents;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Secured Parties has not been exercised; and
  - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of each Relevant Person.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Secured Party) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security 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 Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Charged Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
  - (iii) unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

- (h) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not 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.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Security 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.

### **30.9 Release of Security**

- (a) If a disposal of any asset owned by any Relevant Person which is subject to any Transaction Security or any other transaction, reorganisation or liquidation of a Relevant Person whose assets or shares are subject to Transaction Security occurs in the following circumstances:
  - (i) the disposal or other transaction, reorganisation or liquidation is expressly permitted by the terms of this Agreement and will not result or could not reasonably be expected to result in any breach of any term of this Agreement;
  - (ii) the disposal is being made at the request of the Security Agent in circumstances where any Transaction Security has become enforceable; or
  - (iii) the disposal is being effected by enforcement of Transaction Security,that asset or shares will be released from any Transaction Security affecting it and created by any Transaction Security Document.
- (b) The proceeds of any such disposal or other transaction (or an amount corresponding to it) must be applied in accordance with the requirements of this Agreement (if applicable).
- (c) The Security Agent is authorised by each Secured Party to execute any document which is reasonably required to achieve a release allowed under this Clause 30.9 above (*Release of Security*).
- (d) The Security Agent must enter into any such document at the expense of the Relevant Person concerned promptly upon (and only upon) it being satisfied that the release is allowed under paragraph (a) above.

### **30.10 Responsibility for documentation**

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, any Relevant Person or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Charged Property or any other agreement, arrangement or document

entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Charged Property; or

- (c) any determination as to whether any information provided or to be provided to any Secured 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.

### **30.11 No duty to monitor**

The Security Agent shall not be bound to enquire:

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

### **30.12 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Charged Property unless directly caused by its fraud, gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Charged Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Charged Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Charged Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Charged Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Party,
- on behalf of any Secured Party and each Secured Party confirms to the Security Agent 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 Security Agent.
- (d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Charged Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) 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 Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate 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 Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

### **30.13 Secured Parties’ indemnity to the Security Agent**

- (a) Each Secured Party shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Secured Parties for the time being (or, if the Liabilities due to the Secured Parties are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Relevant Person pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Secured Party for any payment that Secured Party makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Secured Party claims reimbursement relates to a liability of the Security Agent to a Relevant Person.

### **30.14 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Secured Parties and the Company.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Secured Parties and the Company, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Charged Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 30.14 and Clause 30.13 (*Secured Parties' indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security 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 that successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

### **30.15 Confidentiality**

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **30.16 Information from the Secured Parties**

Each Secured Party shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

### **30.17 Credit appraisal by the Secured Parties**

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

- (a) the financial condition, status and nature of each member of the Group and each Relevant Person;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Charged Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Charged Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Charged Property, 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 or the Charged Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security 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; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

### **30.18 Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Relevant Person's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

### **30.19 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Relevant Person to any of the Charged Property;

- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Relevant Person to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

### **30.20 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

### **30.21 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

### **30.22 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such, provided that any delegation by the Security Agent shall be subject to the consent of the Majority Lenders.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

### **30.23 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,
  - (iv) and the Security Agent shall give prior notice to the Company and the Secured Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any amounts in respect of irrecoverable applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

### **30.24 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Relevant Person may have to any of the Charged Property and shall not be liable for, or bound to require any Relevant Person to remedy, any defect in its right or title.

### **30.25 Winding up of trust**

If the Security Agent, with the approval of the Agent, determines (acting reasonably) that:

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Relevant Person pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and

- (ii) any Security Agent which has resigned pursuant to Clause 30.14 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

### **30.26 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

### **30.27 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### **30.28 Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 30.28 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

### **30.29 Third party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 30.28 (*Role of Reference Banks*), paragraph (a) of Clause 40.3 (*Other exceptions*) and Clause 42 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

## **31. APPLICATION OF PROCEEDS**

### **31.1 Order of application**

All amounts from time to time received or recovered by the Security Agent in connection with pursuant to Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*) or the realisation or enforcement of all or any part of the Transaction Security shall be held by the Security Agent on trust to apply them, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) (other than pursuant to Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*)), any Receiver or any Delegate;
- (b) in payment to the Agent, on behalf of the Secured Parties, for application towards the discharge of all sums due and payable by any Relevant Person under any of the Finance Documents in accordance with Clause 34.6 (*Partial Payments*) and to the Secured Hedge Counterparties, for application towards any sum then due and payable by any Relevant Person under the Secured Hedging Agreements pro rata;
- (c) if no Relevant Person is under any further actual or contingent liability under any Finance Document or Secured Hedging Agreement, in payment to any person to whom the Security Agent is obliged to pay in priority to any Relevant Person; and
- (d) the balance, if any, in payment to the Relevant Person concerned.

### **31.2 Investment of proceeds**

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 31.1 (*Order of application*), the Security Agent may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent or Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 31.

### **31.3 Currency conversion**

- (a) For the purpose of or pending the discharge of any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.
- (b) The obligations of any Relevant Person to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **31.4 Permitted Deductions**

The Security Agent shall be entitled (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Tax or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Tax which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (except in connection with its remuneration for performing its duties under this Agreement).

### **31.5 Discharge of Secured Obligations**

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Agent on behalf of the Lenders and that payment shall be a good discharge to the extent of that payment, to the Security Agent.
- (b) The Security Agent is under no obligation to make payment to the Agent in the same currency as that in which any Unpaid Sum is denominated.

### 31.6 Amounts received by Relevant Persons

If any Relevant Person receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Relevant Person shall (and each Relevant Person shall ensure that each Relevant Person not party to this Agreement will) hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

### 31.7 Application and consideration

In consideration for the covenants given to the Security Agent by each Relevant Person in relation to Clause 30.2 (*Parallel debt (covenant to pay the Security Agent)*), the Security Agent agrees with each Relevant Person to apply all moneys from time to time paid by such Relevant Person to the Security Agent in accordance with the foregoing provisions of this Clause 31.

## 32. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will, save to the extent expressly provided otherwise in the Agreement:

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

## 33. SHARING AMONG THE FINANCE PARTIES

### 33.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Relevant Person other than in accordance with Clause 34 (*Payment mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 34 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.6 (*Partial payments*).

### 33.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Relevant Person concerned and distribute it between the Finance Parties (other than the Recovering Finance

Party) (the “**Sharing Finance Parties**”) in accordance with Clause 34.6 (*Partial payments*) towards the obligations of that Relevant Person to the Sharing Finance Parties.

### **33.3 Recovering Finance Party’s rights**

On a distribution by the Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Relevant Person, as between the Relevant Person concerned and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Relevant Person.

### **33.4 Reversal of redistribution**

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

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the Relevant Person concerned and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Relevant Person.

### **33.5 Exceptions**

- (a) This Clause 33 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Relevant Person concerned.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **34. PAYMENT MECHANICS**

### **34.1 Payments to the Agent**

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

Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

### **34.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to a Relevant Person*) and Clause 34.4 (*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 (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

### **34.3 Distributions to a Relevant Person**

The Agent may (with the consent of the Relevant Person concerned or in accordance with Clause 35 (*Set-off*)) apply any amount received by it for that Relevant Person in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Relevant Person under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **34.4 Clawback and pre-funding**

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

### **34.5 Impaired Agent**

- (a) If, at any time, the Agent becomes an Impaired Agent, a Relevant Person or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 34.1 (*Payments to the Agent*) may instead either:

- (i) pay that amount direct to the required recipient(s); or
- (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of “Acceptable Bank” and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Relevant Person or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 34.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 29.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 34.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

### **34.6 Partial payments**

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by a Relevant Person under those Finance Documents, the Agent shall apply that payment towards the obligations of that Relevant Person under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent or the Security Agent under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;

- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under those Finance Documents; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
  - (c) Paragraphs (a) and (b) above will override any appropriation made by any Relevant Person.

#### **34.7 No set-off by Relevant Person**

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

#### **34.8 Business Days**

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

#### **34.9 Currency of account**

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

#### **34.10 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

### 34.11 Disruption to Payment Systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 40 (*Amendments and waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, 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 34.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### 34.12 Alternative currency

- (a) In this Clause:

“**Alternative Currency**” means:

- (i) any of EUR, RUB or HKD as may be selected by the Agent (acting on the instructions of all of the Lenders); or
- (ii) any other currency that is agreed in writing by all of the Lenders and the Company (each acting reasonably).

“**Alternative Currency Exchange Rate**” means the spot rate of exchange for the conversion of USD into the relevant currency fixed at 1:00 p.m. (London time) on the day falling two Business Days prior to the scheduled date of such payment as published by Bloomberg on BFix webpage (<https://www.bloomberg.com/markets/currencies/fx->

fixings), provided that if such exchange rate is not published on that conversion date or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Agent and the Company acting in good faith and in a commercially reasonable manner.

“**Converted Amount**” means the amount of any payment under the Finance Documents in an Alternative Currency as determined by the Agent in accordance with paragraph (c) below.

- (b) At any time on or following the expiry of the Certain Funds Period, if the Agent forms the reasonable opinion that it is impossible for any Relevant Person to make (or the relevant recipient to receive) any payment at the time and in the currency in which such payment is expressed to be payable, but it is lawful and possible for such Relevant Person to make (and the relevant recipient to receive) such payment in an Alternative Currency, the Agent may notify the Company on not less than five Business Days’ notice (or such longer notice period as the Agent may agree) that all payments to the Lenders (or affected Lenders only) under the Finance Documents shall thereafter be made in the Alternative Currency specified in such notice (an “**Alternative Currency Notice**”).
- (c) Upon the Company receiving an Alternative Currency Notice from the Agent, each Relevant Person shall following the expiry of the notice period set out in paragraph (b) above make all payments under the Finance Documents to the relevant Lender in the specified Alternative Currency at the Alternative Currency Exchange Rate. The Agent shall, in respect of each payment due under this Agreement, determine the Converted Amount and notify the same to the Company.
- (d) A Relevant Person shall pay each Converted Amount into the relevant account specified by the Agent. Nothing in this Clause shall extend the due date of any amount under the Finance Documents.
- (e) The provisions of this Clause shall be without prejudice to any other right, remedy or protection available to any Finance Party under the Finance Documents. In the event that the Agent does not, or is not able to, give any notification under paragraph (b) above, this shall not operate to relieve or release any Relevant Person from any of its obligations under the Finance Documents, or affect the rights of the Finance Parties under this Agreement.

### 35. SET-OFF

Following an Event of Default which is continuing, a Finance Party may set off any matured obligation due from a Relevant Person under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Relevant Person, regardless of the place of payment, booking branch or currency of either obligation (and, for the avoidance of doubt, no Relevant Person shall have any right to set off any matured obligations due from a Finance Party under the Finance Documents against any matured obligations owed by that Relevant Person to that Finance Party). 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.

## **36. NOTICES**

### **36.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter, electronic mail or other electronic means (including, without limitation, by way of posting to a secure website).

### **36.2 Addresses**

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

- (a) in the case of the Parent or the Company, that identified with its name below;
- (b) in the case of each Lender, each Secured Hedge Counterparty or any Relevant Person (other than the Parent or the Company), that notified in writing to the Agent on or prior to the date on which it becomes a Party or, as the case may be, a party to the relevant Transaction Security Document;
- (c) in the case of the Agent or the Security Agent, that identified with its name below,

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

### **36.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of electronic communication, when actually received (or made available) in readable form; or
  - (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being sent via a reputable courier service to it at that address,

and, (in the case of communication by fax or letter) if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to a Relevant Person shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 36.3 will be deemed to have been made or delivered to each Relevant Person.

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

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

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

#### **36.5 Communication when Agent is Impaired Agent**

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

#### **36.6 Use of websites**

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the “**Designated Website**”) if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Company and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the Company and the Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form.

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

- (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

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

### **36.7 English language**

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

## **37. CALCULATIONS AND CERTIFICATES**

### **37.1 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.

### **37.2 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.

### **37.3 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 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

## **38. 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.

### **39. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured 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 Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured 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.

### **40. AMENDMENTS AND WAIVERS**

#### **40.1 Required consents**

- (a) Subject to Clause 40.2 (*All Lender matters*) and Clause 40.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 40.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 29.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Relevant Person agrees to any such amendment or waiver permitted by this Clause 40 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of the Relevant Person concerned.
- (e) Paragraph (c) of Clause 26.9 (*Pro rata interest settlement*) shall apply to this Clause 40.

#### **40.2 All Lender matters**

Subject to Clause 40.8 (*Replacement of Screen Rate*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin (other than as contemplated in the definition of Margin in Clause 1.1 (*Definitions*)) or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in any Commitment or the Total Commitments or an extension of any Availability Period (in each case other than pursuant to Clause 4.3 (*Utilisation of Facility B and Facility C*)) or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (e) a change to the Borrowers or Guarantors other than in accordance with Clause 28 (*Changes to the Relevant Persons*);

- (f) any provision which expressly requires the consent of all the Lenders;
  - (g) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 8 (*Mandatory Prepayment and cancellation*), Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*), this Clause 40, Clause 46 (*Governing law*) or Clause 47 (*Enforcement*);
  - (h) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
    - (i) the guarantee and indemnity granted under Clause 19 (*Guarantee and indemnity*);
    - (ii) the Charged Property; or
    - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
  - (i) the release of any guarantee and indemnity granted under Clause 19 (*Guarantee and indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or
  - (j) any amendment to the subordination under any Subordination Agreement,
- shall not be made, or given, without the prior consent of all the Lenders.

#### **40.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Security Agent, a Secured Hedge Counterparty or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, the Security Agent, that Secured Hedge Counterparty or that Reference Bank, as the case may be.
- (b) Any amendment or waiver which:
  - (i) relates only to the rights or obligations applicable to a particular Utilisation or a class of Lender; and
  - (ii) does not materially and adversely affect the rights or interests of Lenders in respect of any other Utilisation or another class of Lender,

may be made in accordance with this Clause 40 but as if references in this Clause 40 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (b), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or forming part of that particular class.

#### 40.4 Excluded Commitments

- (a) Subject to paragraph (b) below, if any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 20 Business Days of that request being made (unless, the Company and the Agent agree to a longer time period in relation to any request):
  - (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (b) Paragraph (a) above shall only apply if, at the time of the relevant request for a consent, waiver, amendment, there is at least one Lender under the Finance Documents which is not:
  - (i) the Original Lender or any of its Affiliates;
  - (ii) RCB Bank Ltd; or
  - (iii) CQUR Bank LLC.

#### 40.5 Replacement of Lender

- (a) If an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (*Illegality*) or to pay additional amounts pursuant to Clause 15.1 (*Increased costs*), Clause 14.2 (*Tax gross-up*) or Clause 14.3 (*Tax indemnity*) to any Lender then:
  - (i) the Company may give notice to such Lender requesting that such Lender transfer pursuant to Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the relevant Lender; and
  - (ii) if such Lender has not so transferred its rights and obligations under this Agreement within 30 Business Days of receipt of the notice referred to in subparagraph (i) above, on 15 Business Days' prior written notice to the Agent and such Lender the Company may replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a Replacement Lender) selected by the Company and which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*) for a purchase price in cash payable at the time of transfer 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 26.9 (*Pro rata interest settlement*)) and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 40.5 shall be subject to the following conditions:
  - (i) the Company shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
  - (iii) in no event shall the Lender replaced under this Clause 40.5 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### **40.6 Disenfranchisement of Defaulting Lenders**

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

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender’s Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender’s Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.
- (b) For the purposes of this Clause 40.6, the Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and
  - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), or (c) of the definition of Defaulting Lender has occurred,

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

#### 40.7 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 20 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders and Secured Hedge Counterparties*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a Replacement Lender) selected by the Company 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 26 (*Changes to the Lenders and Secured Hedge Counterparties*) 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 26.9 (*Pro rata interest settlement*)) 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 Company and which does not exceed the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 40.7 shall be subject to the following conditions:
- (i) the Company shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
  - (iii) the transfer must take place no later than 5 Business Days after the notice referred to in paragraph (a) above;
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
  - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### 40.8 Replacement of Screen Rate

Subject to paragraph (a) of Clause 40.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for dollars:

- (a) if the Screen Rate Replacement Event is permanent or indefinite, the Company and the Lenders shall negotiate in good faith for the purposes of selecting a Replacement

Benchmark which, to the extent reasonably possible, has the same economic effect as the original Screen Rate; and

- (b) any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Benchmark in relation to dollars in place of that Screen Rate; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
    - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Benchmark;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; 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 Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

For the purposes of this Clause 40.8:

**“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 Benchmark”** means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen 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 Benchmark” will be the replacement under paragraph (ii) above;

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

**“Screen Rate Replacement Event”** means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Company materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen 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 that Screen Rate is insolvent,
 

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen 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 Company) temporary; or
  - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than one month; or
- (d) in the opinion of the Majority Lenders and the Company, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

## **41. CONFIDENTIAL INFORMATION**

### **41.1 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 41.2 (*Disclosure of Confidential Information*) and Clause 41.3 (*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.

### **41.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents in accordance with the terms of the Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Relevant Persons and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 29.15 (*Relationship with the Lenders*));
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.7 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Company,

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

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

### 41.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Relevant Persons the following information:
- (i) names of Relevant Persons;
  - (ii) country of domicile of Relevant Persons;
  - (iii) place of incorporation of Relevant Persons;
  - (iv) Signing Date;
  - (v) Clause 46 (*Governing law*);
  - (vi) the names of the Agent and the Arranger;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of each Facility;
  - (ix) amount of Total Commitments;
  - (x) currency of the Facilities;
  - (xi) type of Facility;
  - (xii) ranking of the Facilities;
  - (xiii) Termination Date;
  - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
  - (xv) such other information agreed between such Finance Party and the Company,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, any Facility and/or one or more Relevant Persons by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, any Facility and/or one or more Relevant Persons; and

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

#### **41.4 Entire agreement**

This Clause 41 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.

#### **41.5 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.

#### **41.6 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 41.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 41.

#### **41.7 Continuing obligations**

The obligations in this Clause 41 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

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

### **42. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

#### **42.1 Confidentiality and disclosure**

- (a) The Agent and each Relevant Person agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 10.4 (*Notification of rates of interest*); and

- (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation 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 Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Agent's obligations in this Clause 42 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 10.4 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

## 42.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including

securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.

- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 42.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 42.

### **42.3 No Event of Default**

No Event of Default will occur under Clause 25.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 42.

## **43. DISCLOSURE OF LENDER DETAILS BY AGENT**

### **43.1 Supply of Lender details to Company**

The Agent shall provide to the Company within 5 Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

### **43.2 Supply of Lender details at Company's direction**

- (a) The Agent shall, at the request of the Company, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
  - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
  - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Company shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such

person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

#### 44. CONTRACTUAL RECOGNITION OF BAIL-IN

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

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

#### 45. 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.

#### 46. GOVERNING LAW

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

#### 47. ENFORCEMENT

##### 47.1 Arbitration

- (a) Any dispute, difference or claim arising out of or in connection with any Finance Document or the Process Agent Letter or their subject matter, existence, negotiation, validity, interpretation, breach, performance, termination or enforceability (including any non-contractual dispute, difference or claim) (a “**Dispute**”) shall (unless the relevant Finance Document (i) is not governed by English law and (ii) expressly provides for different dispute resolution mechanism) be referred to and finally resolved by arbitration on the following terms:
  - (i) the arbitration shall be administered by the Singapore International Arbitration Centre (“**SIAC**”) and conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (the “**SIAC Rules**”) for the time being in force, which are deemed to be incorporated by reference in this Clause 47.1;
  - (ii) the seat (legal place) of the arbitration shall be Singapore, and all hearings shall take place in Singapore;

- (iii) the language of the arbitration shall be English;
- (iv) the number of arbitrators shall be three. Notwithstanding anything to the contrary in the SIAC Rules, in agreeing the third arbitrator the two arbitrators may communicate directly with each other and with their respective appointing parties;
- (v) the claimant (or the multiple claimants together) and the respondent (or the multiple respondents together) shall each nominate one arbitrator, and the two party-nominated arbitrators shall nominate the third and presiding arbitrator of the arbitral tribunal. If the two party-nominated arbitrators fail to nominate the third and presiding arbitrator within 21 days from the date on which the second party-nominated arbitrator is appointed, he or she shall be selected and appointed expeditiously by the President of the SIAC;
- (vi) in the event the claimant (or the multiple claimants together) or the respondent (or the multiple respondents together) fails to nominate an arbitrator in accordance with the SIAC Rules, such arbitrator shall be appointed by the President of the SIAC in accordance with the SIAC Rules;
- (vii) if all the parties to an arbitration so agree in writing, a sole arbitrator shall be appointed by the President of the SIAC within 15 days of such agreement. The period for reaching such an agreement shall start on the date of the commencement of the arbitration proceedings under the SIAC Rules and shall expire 14 days after that date;
- (viii) the appointed presiding arbitrator or any sole arbitrator shall be an English law qualified lawyer with more than ten years' experience practicing English law. Any provision of the SIAC Rules to the contrary shall to that extent not apply;
- (ix) this arbitration agreement, including its validity and scope, shall be governed by English law; and
- (x) the SIAC Expedited Procedure under Rule 5.2 of the SIAC Rules shall not apply except by agreement of the parties.

#### **47.2 Consolidation of arbitrations**

- (a) Any party to this Agreement or any Linked Agreement may, in accordance with the SIAC Rules, be joined to any arbitration commenced under this Agreement or any Linked Agreement. Each party to this Agreement hereby consents, for the purposes of the SIAC Rules, to such joinder.
- (b) Pursuant to Rules 6 and 8 of the SIAC Rules:
  - (i) Disputes may be resolved in a single arbitration together with Disputes (as defined in any Linked Agreement) arising out of any such Linked Agreement; and
  - (ii) the parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Clause 47 and/or the arbitration agreement contained in any Linked Agreement into a single arbitration, as provided for in the SIAC Rules.
- (c) Each party waives any objection, on the basis that a Dispute has been resolved in a manner contemplated in paragraphs of this Clause 47.2, to the validity and/or

enforcement of any arbitral award made by an arbitral tribunal following the Dispute being resolved in that manner.

- (d) In this Clause 47.2, “**Linked Agreement**” means each Finance Document other than this Agreement, provided such Finance Document is governed by English law and does not expressly provide for a dispute resolution mechanism other than the one contained in this Clause 47.
- (e) The requirement in the SIAC Rules that the Court or a tribunal considering whether to consolidate disputes should consider the views of all parties or give the parties an opportunity to be heard shall extend to all parties to each of the arbitrations in respect of which consolidation is sought

#### **47.3 Appointment of arbitrators**

- (a) If there are multiple claimants or multiple respondents, each Party agrees that, in the absence of a joint nomination of an arbitrator by one side, any existing nomination or confirmation of the arbitrator chosen by the party or parties on the other side of the proposed arbitration shall be unaffected.
- (b) Each Party expressly agrees and consents to the process in this Clause 47 for nominating and appointing the Arbitral Tribunal and, if this Clause 47 operates to exclude a Party’s right to choose its own arbitrator, irrevocably and unconditionally waives any right it may have to do so.

#### **47.4 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Singapore):
  - (i) irrevocably appoints [REDACTED] as its agent for service of process in relation to any proceedings in Singapore in connection with any Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Obligor expressly agrees and consents to the provisions of this Clause 47 and Clause 46 (*Governing law*).

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

**SCHEDULE 1  
THE ORIGINAL PARTIES**

**PART I. THE ORIGINAL GUARANTORS**

<b>Name of Original Guarantor</b>	<b>Original Jurisdiction</b>	<b>Registration / company number</b>
Nova Resources B.V.	The Netherlands	67335845
Vostok Cooper B.V.	The Netherlands	73773123
Kinton Trade Ltd.	British Virgin Islands	561683
Harper Finance Limited	British Virgin Islands	410873
Perry Partners S.A.	British Virgin Islands	606416
Cuprum Holding Limited	Malta	C 28661

**PART II. THE ORIGINAL LENDER**

<b>Name of Original Lender</b>	<b>Facility A Commitment</b>
<b>VTB BANK (PJSC)</b>	USD 2,990,000,000

**PART III. THE ORIGINAL SECURED HEDGE COUNTERPARTY**

**Name of Original Secured Hedge Counterparty**

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**VTB BANK (PJSC)**

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part 1**

**CONDITIONS PRECEDENT TO BE SATISFIED BEFORE THE ISSUE OF THE 2.7  
ANNOUNCEMENT**

**1. PARENT**

- (a) A copy of the constitutional documents of the Parent.
- (b) A copy of a certified extract from the trade register of the Netherlands Chamber of Commerce (*Kamer van Koophandel Nederland*) in respect of the Parent.
- (c) A copy of a resolution of the board of directors of the Parent:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (iv) authorising the Company to act as its agent in connection with the Finance Documents.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above in relation to the Finance Documents and related documents.
- (e) A copy of a resolution signed by all the holders of the issued shares in the Parent, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Parent is a party.
- (f) A certificate of the Parent (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any guarantee, security or similar limit binding on the Parent to be exceeded.
- (g) A certificate of an authorised signatory of the Parent certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Signing Date.

**2. COMPANY**

- (a) A copy of the constitutional documents of the Company.
- (b) A copy of a certified extract from the trade register of the Netherlands Chamber of Commerce (*Kamer van Koophandel Nederland*) in respect of the Company.
- (c) A copy of a resolution of the board of directors of the Company:

- (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above in relation to the Finance Documents and related documents.
  - (e) A copy of a resolution signed by all the holders of the issued shares in the Company, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Company is a party.
  - (f) A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the Company to be exceeded.
  - (g) A certificate of an authorised signatory of the Company certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Signing Date.

### **3. SPV 1, SPV 2, SPV 3**

- (a) A copy of the constitutional documents of each relevant SPV (including its certificate of incorporation, certificate of incorporation on change of name (if any) and memorandum and articles of association).
- (b) A copy of the current register of directors, register of members and register of charges of each relevant SPV.
- (c) A copy of duly executed and dated resolutions of the board of directors of each relevant SPV:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (iv) authorising the Company to act as its agent in connection with the Finance Documents.
- (d) A copy of duly executed and dated resolutions of members of each relevant SPV approving the terms of, and the transactions contemplated by, the Finance Documents

to which it is a party and resolving that the directors be authorised to execute, deliver and perform the Finance Documents to which it is a party.

- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above in relation to the Finance Documents and related documents.
- (f) A certificate of each relevant SPV (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any guarantee, security or similar limit binding on that SPV to be exceeded.
- (g) A certificate of an authorised signatory of each SPV certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Signing Date.

#### **4. SPV 4**

- (a) A certified true copy of the certificate of incorporation and up-to-date constitutional documents of SPV 4.
- (b) A copy of a resolution of the board of directors of SPV 4:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (iv) authorising the Company to act as its agent in connection with the Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (d) A certificate of SPV 4 (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any guarantee, security or similar limit binding on SPV 4 to be exceeded.
- (e) A certificate of an authorised signatory of SPV 4 certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Signing Date.
- (f) A certificate of good standing in relation to SPV 4 issued by the Malta Business Registry no earlier than ten Business Days before the Signing Date.
- (g) A certificate of incumbency in relation to SPV 4 issued by the Malta Business Registry no earlier than ten Business Days before the Signing Date showing that the said registry has not received any filings for insolvency.

#### **5. FINANCE DOCUMENTS**

- (a) This Agreement duly executed by each party thereto.
- (b) The Fee Letter duly executed by the Company.
- (c) The Subordination Agreement (Group) duly executed by each party thereto.
- (d) The Subordination Agreement (Shareholders) duly executed by each party thereto.
- (e) Each Transaction Security Document (CP) duly executed by the parties thereto.

**6. ACQUISITION**

- (a) A copy of the agreed form 2.7 Announcement.
- (b) Each Hedging Agreement (Acquisition) duly executed by the parties thereto.

**7. LEGAL OPINIONS**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lender:

- (a) A legal opinion of Latham & Watkins LLP, legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lender prior to signing this Agreement.
- (b) A legal opinion of Latham & Watkins LLP, legal advisers to the Agent and the Arranger as to German law substantially in the form distributed to the Original Lender prior to signing this Agreement.
- (c) A legal opinion of Van Doorne, legal advisers to the Agent and the Arranger as to Dutch law substantially in the form distributed to the Original Lender prior to signing this Agreement.
- (d) A legal opinion of Walkers, legal advisers to the Agent and the Arranger as to the law of the British Virgin Islands substantially in the form distributed to the Original Lender prior to signing this Agreement.
- (e) A legal opinion of Camilleri Preziosi, legal advisers to the Agent and the Arranger as to Maltese law substantially in the form distributed to the Original Lender prior to signing this Agreement.

**8. GROUP STRUCTURE**

- (a) A copy of the final Steps Plan in agreed form.
- (b) A copy of the agreed form Share Exchange Agreement.
- (c) The Group Structure Chart which shows the Group (including the Target Group) assuming the Acquisition Completion Date and all transactions contemplated in the Share Exchange Agreement and Permitted SPV Share Transfer Documents have occurred.

**9. OTHER DOCUMENTS AND EVIDENCE**

- (a) Scanned copies of the following share certificates in respect of shares in the Target of which that SPV is the legal and beneficial owner:

- (i) 5,216,522 ordinary shares in the Target held by SPV 1;
  - (ii) 7,500,052 ordinary shares in the Target held by SPV 2;
  - (iii) 2,845,000 ordinary shares in the Target held by SPV 2;
  - (iv) 7,000,000 ordinary shares in the Target held by SPV 2;
  - (v) 12,361,849 ordinary shares in the Target held by SPV 2;
  - (vi) 8,962,000 ordinary shares in the Target held by SPV 3;
  - (vii) 4,400,470 ordinary shares in the Target held by SPV 3;
  - (viii) 1,330,857 ordinary shares in the Target held by SPV 4; and
  - (ix) 55,208,875 ordinary shares in the Target held by SPV 4.
- (b) In the event that the SPVs have not collectively, prior to the issuance of the 2.7 Announcement, delivered to the Agent scanned copies of share certificates representing an aggregate amount of 184,230,218 shares in the Target, an undated copy of each Indemnity Letter duly executed by ON and VK.
- (c) Evidence that the Settlement Accounts have been opened.
- (d) Evidence that any process agent referred to in Clause 47.4 (*Service of process*) and any other clause providing for the appointment of a process agent in any other Finance Document, if not an Obligor, has accepted its appointment.
- (e) A copy, certified by an authorised signatory of the relevant Obligor to be a true copy, of the Original Financial Statements of the Parent and the Company.
- (f) A copy, certified by an authorised signatory of the relevant SPV to be a true copy, of the balance sheet of each SPV.
- (g) A copy of the form of the articles of association to be adopted by the Target when it is re-registered as a private limited company, in form and substance satisfactory to the Agent.

**Part 2**  
**CONDITIONS PRECEDENT TO BE SATISFIED BEFORE THE ISSUE OF THE OFFER**  
**PRESS RELEASE**

Any conditions precedent listed this Part 2 of Schedule 2 (*Conditions precedent to be satisfied before the issue of the Offer Press Release*) marked with an asterisk are not required to be in form and substance satisfactory to the Agent.

**1. OBLIGORS**

- (a) A copy of a resolution of the board of directors of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by:
    - (A) the Offer Press Release;
    - (B) the Receiving Agent Agreement updated to reflect the Offer Conversion (to the extent it is party to them); and
    - (C) each Transaction Security Document (Offer) to which it is a party,and resolving that it execute, deliver and perform each of those documents to which it is a party; and
  - (ii) approving the release of the Offer Press Release.
- (b) A certificate of an authorised signatory of each Original Obligor certifying that:
  - (i) each copy document relating to it specified in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded; and
  - (ii) its constitutional documents delivered to the Agent under Part 1 of Schedule 2 remain in full force and effect and have not subsequently been amended or superseded.

**2. FINANCE DOCUMENTS**

- (a) Each Transaction Security Document (Offer) duly executed by the parties thereto.
- (b) Evidence that the custody account in relation to the Target Shares to be acquired by the Company pursuant to the Offer has been opened by the Company with the Custodian Bank.

**3. OFFER-RELATED DOCUMENTS**

\* The issued Offer Press Release.

### **Part 3**

#### **CONDITIONS PRECEDENT TO BE SATISFIED BEFORE FIRST UTILISATION**

Any conditions precedent listed this Part 3 of Schedule 2 (*Conditions precedent to be satisfied before first Utilisation*) marked with an asterisk are not required to be in form and substance satisfactory to the Agent.

#### **1. THE ACQUISITION AND RELATED MATTERS**

- (a) \* Scheme Documents and other Transaction Documents: A letter from the Company (signed by a director) addressed to the Agent attaching copies (certified by the Company as true and correct copies) of the following documents:
- (i) the issued 2.7 Announcement (including an intention to recommend the Acquisition by the independent directors of the Target);
  - (ii) the Scheme Circular;
  - (iii) the Scheme Court Order; and
  - (iv) the prints of the resolutions passed at the Court Meeting and the General Meeting of the Target.
- (b) \* If an Offer Conversion has occurred, a letter from the Company (signed by a director) addressed to the Agent in the agreed form:
- (i) attaching a copy of the issued Offer Press Release (certified by the Company as a true and correct copy);
  - (ii) confirming that the Offer has been declared unconditional in all respects without any breach of Clause 24.2(c) (*Terms of the Offer*) (other than Clause 24.2(c) (iv)); and
  - (iii) attaching copies of Receiving Agent Agreement in relation to the Offer (certified by the Company as true and correct copies).

#### **2. TRANSACTION SECURITY**

Evidence that the following Perfection Requirements have been completed:

- (i) in relation to the Share Charge (Target/SPV), delivery to the Security Agent of (1) all original share certificates and (2) stock transfer forms or equivalent duly executed by the relevant SPV in blank, in each case in relation to the Original Shares (as defined in the Share Charge (Target/SPV)); and
- (ii) (if the Offer Conversion has occurred), delivery by the Company to the Receiving Agent of a Notice of Assignment (as defined in the Security Assignment) in relation to the assignment of the Receiving Agent Agreement pursuant to the Security Assignment and relevant Designation Schedule.

#### **3. OTHER DOCUMENTS AND EVIDENCE**

- (a) Evidence that the fees then due from the Company pursuant to Clause 13 (*Fees*), have been paid or will be paid by the Closing Date which shall be satisfied (in the discretion of the Company) by an instruction in the Utilisation Request referred to in paragraph (c) below to pay the fees due at the Closing Date under the terms of the relevant Fee Letter to the extent included in the Funds Flow Statement).

- (b) \*The Funds Flow Statement (which shall not be required to be in form and substance satisfactory to the Agent).
- (c) A Utilisation Request in relation to the Utilisation to be made of Facility A on the Closing Date.

**Part 4**  
**CONDITIONS PRECEDENT REQUIRED TO BE**  
**DELIVERED BY AN ADDITIONAL OBLIGOR**

1. An Accession Deed executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board of directors or other authorised corporate body, as the case may be, of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Company to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. If applicable under local law:
  - (a) a copy of a resolution signed by all the holders of the issued shares of the Additional Obligor; or
  - (b) in respect of an Additional Obligor incorporated in Kazakhstan or Kyrgyzstan, a copy of a resolution of a general meeting of participants or resolution of the sole participant of the Additional Obligor,  
  
in each case approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
6. A certificate of the Additional Obligor (signed by a director (or equivalent)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 4 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
8. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
9. If available, the latest audited financial statements of the Additional Obligor.

10. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
  - (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
  - (b) If the Additional Obligor is incorporated in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, “centre of main interest” or “establishment” (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the “**Applicable Jurisdiction**”) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
11. Any security documents which are required by the Agent to be executed by the proposed Additional Obligor and/or its immediate parent company provided that, unless otherwise expressly specified in this Agreement, the Security required to be granted in respect of any Additional Obligor shall be limited to Transaction Security over the shares or other ownership interests of that Additional Obligor which are owned by a member of the Group provided further that (other than in the case of the Target) such shares or other ownership interests represent at least 99% of the issued shares or ownership interests of that Additional Obligor.
12. Any notices or documents required to be given or executed under the terms of those security documents.
13. In respect of any Additional Obligor incorporated in Kazakhstan, evidence that this Agreement and the relevant Accession Deed has been filed with the National Bank of Kazakhstan.
14. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
15. If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
16. If the proposed Additional Obligor is incorporated in a jurisdiction other than Singapore, evidence that the process agent specified in Clause 47.4 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

**SCHEDULE 3**  
**CONDITIONS SUBSEQUENT**

1. In the event that Facility B is utilised, by no later than the later of:
  - (a) the date falling 180 days after the first Utilisation Date under this Agreement; and
  - (b) 45 Business Days after the first Utilisation Date of Facility B,

the relevant members of the Group shall grant Security in favour of the Secured Parties that is the same in all material respects as that which was granted in connection with Existing PXF Facility (subject to any restrictions under applicable law).
  
2. In the event that Facility C is utilised, by no later than the later of:
  - (a) the date falling 180 days after the first Utilisation Date under this Agreement; and
  - (b) 45 Business Days after the first Utilisation Date of Facility C,

the relevant members of the Group shall grant Security in favour of the Secured Parties that is the same in all material respects as that which was granted in connection with Existing CDB Facilities (subject to any restrictions under applicable law).
  
3. By no later than the date falling 15 Business Days after the Signing Date (or such later date as may be agreed by the Agent in writing), the following evidence confirming that the SPV Target Share Materialization Date has occurred:
  - (a) (to the extent not already delivered pursuant to paragraph (a) of section 9 (*Other documents and evidence*) of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions precedent*)), scanned copies of share certificates in respect of all of the Original Shares (as defined in the Share Charge (Target/SPV)); and
  - (b) an extract from the register of shareholders of the Target evidencing that the SPVs collectively hold 184,230,218 shares in the Target.
  
4. By no later than the date falling 16 Business Days after the Signing Date (or such later date as may be agreed by the Agent in writing) (to the extent not already delivered to the Security Agent pursuant to the Share Charge (Target/SPV)), delivery to the Security Agent of original share certificates and stock transfer forms in respect of all of the Original Shares (as defined in the Share Charge (Target/SPV)).
  
5. By no later than the date falling 35 Business Days after the Signing Date (or such later date as may be agreed by the Agent in writing), an original copy of the spousal consent for ON in relation to the entry into, performance and delivery of:
  - (a) the Subordination Agreement (Shareholders);
  - (b) the Share Charge (Target/ON); and
  - (c) (if applicable) the Indemnity Letter to which he is or is required pursuant to the terms of this Agreement to be a party,

in the form agreed with the Agent on or prior to the date of the 2.7 Announcement or otherwise with such amendments as may be required by the notary or the Agent may reasonably agree to and executed in the presence of a Russian notary (with scanned copies of the same being provided to the Agent as soon as reasonably practicable after being obtained).

6. By no later than the date falling 20 Business Days after the Signing Date (or such later date as may be agreed by the Agent in writing), an original copy of the spousal consent for VK in relation to the entry into, performance and delivery of:
- (a) the Subordination Agreement (Shareholders); and
  - (b) (if applicable) the Indemnity Letter to which he is or is required pursuant to the terms of this Agreement to be a party,

in the form agreed with the Agent on or prior to the date of the 2.7 Announcement or otherwise with such amendments as may be required by the notary or the Agent may reasonably agree to and executed in the presence of a Kazakh notary (with scanned copies of the same being provided to the Agent as soon as reasonably practicable after being obtained).

7. By no later than the date falling 15 Business Days after the Signing Date (or such later date as may be agreed by the Agent in writing), the Share Charge (Target/ON) duly executed by all parties thereto.
8. By no later than the date falling 60 Business Days after the Signing Date, originals or certified hard copies of each legal document provided as a condition precedent pursuant to paragraphs 1 to 4 of Part 1 (*Conditions precedent to be satisfied before the issue of the 2.7 Announcement*) of Schedule 2 (*Conditions Precedent*) with apostil and notarised translation into Russian, provided that the requirements in relation to obtaining an apostil for such documents shall be limited to the following:

Obligor	Apostil requirements
<b>Parent / Company</b>	
Copy of the constitutional documents	Dutch legal counsel to the Company to arrange for its notaries to apostille <b>true copies</b> of each of the documents listed.  For the avoidance of doubt, an original copy of the director's certificate (without an apostille) shall also be provided.
Copy of certified extract from the trade register of the Netherlands Chamber of Commerce	
Copy of a resolution of the board of directors	
Copy of a resolution signed by all the holders of the issued shares	
Specimen signatures	
Director's certificate	
<b>SPV1 / SPV2 / SPV3</b>	
Copy of the constitutional documents	Registered agents to coordinate notarisation and apostille of <b>true copies</b> of each of the documents listed.  For the avoidance of doubt, an original copy of the director's certificate (without an apostille) shall also be provided.
Copy of the current register of directors, register of members and register of charges	
Copy of duly executed and dated resolutions of the board of directors	
Copy of duly executed and dated resolutions of members of each relevant SPV	
Specimen signatures	
Director's certificate	
<b>SPV4</b>	
Certified true copy of the certificate of incorporation and up-to-date constitutional documents	Maltese legal counsel to the Company to arrange for (i) <b>originals</b> of the board resolutions, specimen signature and

Copy of a resolution of the board of directors	<p>director's certificate and (ii) <b><u>certified copies</u></b> of the good standing/incumbency certificates and M&amp;A to be apostilled.</p> <p>The certificate of incorporation will be downloaded from the Malta Business Registry and <b><u>certified as a downloaded copy</u></b> and apostilled as such.</p>
Specimen signatures	
Director's certificate	
Certificate of good standing issued by the Malta Business Registry	
Certificate of incumbency issued by the Malta Business Registry	

**SCHEDULE 4  
UTILISATION REQUEST**

From: [NOVA RESOURCES B.V.] / [Borrower]

To: [Agent]

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October  
2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Borrower: [ ]
  - (b) Facility: Facility A / Facility B / Facility C
  - (c) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (d) Amount: USD [●]
3. We confirm that each condition specified in Clause 4.3 (*Utilisation of Facility B and Facility C*) [or, to the extent applicable, Clause 4.2 (*Utilisations during the Certain Funds Period*)] is satisfied (to the extent not waived) on the date of this Utilisation Request or will be satisfied (to the extent not waived) on the Utilisation Date.
4. The proceeds of this Loan should be credited to the Settlement Account (USD).
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[insert name of Company / Borrower]

**SCHEDULE 5**  
**FORM OF TRANSFER CERTIFICATE**

To: [ ] as Agent, [ ] as Security Agent and the Company, on behalf of each of the Obligors

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

Dated:

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This agreement (the “**Agreement**”) shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.4 (*Procedure for transfer*) of the Facilities Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 26.4 (*Procedure for transfer*) all of the Existing Lender’s rights and obligations under the Facilities Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 26.3 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms, for the benefit of the Agent and without any liability to any Obligor, that it is:
  - (a) [not a Qualifying Lender;]
  - (b) [a Qualifying Lender (other than a Dutch Treaty Lender); or]
  - (c) [a Dutch Treaty Lender.]
5. The New Lender confirms that it [is]/[is not] a Sponsor Affiliate.
6. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
7. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
8. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s**

**Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [ ].

[Agent]

By:

**SCHEDULE 6**  
**FORM OF ASSIGNMENT AGREEMENT**

To: [ ] as Agent and [ ], [ ] as Security Agent, [ ] as Parent, for and on behalf of each Obligor

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

Dated:

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is an Assignment Agreement. This agreement (the Agreement) shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.5 (*Procedure for assignment*) of the Facilities Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitment(s) and participations in Utilisations under the Facilities Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
2. The proposed Transfer Date is [ ].
3. On the Transfer Date the New Lender becomes Party to the relevant Finance Documents as a Lender.
4. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
5. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 26.3 (*Limitation of responsibility of Existing Lenders*).
6. The New Lender confirms, for the benefit of the Agent and without any liability to any Obligor, that it is:
  - (a) [not a Qualifying Lender;]
  - (b) [a Qualifying Lender (other than a Dutch Treaty Lender); or]
  - (c) [a Dutch Treaty Lender.]
7. The New Lender confirms that it [is]/[is not] a Sponsor Affiliate.
8. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 26.6 (*Copy of Transfer Certificate or Assignment Agreement to*

*Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.

9. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
11. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by assignment and release**

*[insert relevant details]*

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [ ].

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

[Agent]

By:

[Security Agent]

By:

**SCHEDULE 7  
FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Agent

From: **NOVA RESOURCES B.V.**

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2. We confirm that, in respect of the Relevant Period that ended on [date]:

- (a) the Leverage Ratio was [●];
- (b) Interest Cover was [●];
- (c) the components of the Obligor Coverage Ratio were as follows:
  - (i) Total Obligor EBITDA was [●] per cent. of EBITDA;
  - (ii) Total Obligor Revenue was [●] per cent. of Total Revenue;
  - (iii) as at the last day of the Relevant Period, Total Obligor Assets were [●] per cent. of Total Assets;
  - (iv) Total Obligor Production was [●] per cent. of Total Production; and
  - (v) as at the last day of the Relevant Period, Total Obligor Reserves were [●] per cent. of Total Reserves;
- (d) the aggregate Capital Expenditure of the Target Group (Non-Brighton) was USD [●] (or its equivalent in another currency);
- (e) the aggregate Capital Expenditure of the Group (Brighton) was USD [●] (or its equivalent in another currency);
- (f) Copper Equivalent Production of the Group was as follows:

Metal	Production (tonnes)	Prices used to convert into copper equivalent (USD)
[●]	[●]	[●]

- (g) as at the last day of the Relevant Period, Borrowings was [●];
- (h) as at the last day of the Relevant Period, the aggregate amount of Cash and Cash Equivalent Investments was [●];
- (i) as at the last day of the Relevant Period, Net Debt was [●];

- (j) EBITDA was [●];
- (k) earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of each Obligor was [●];
- (l) Finance Charges were [●]; and
- (m) the IFRS Test [was] / [was not] satisfied, as shown by the following calculation: [□];
- (n) rental expenses were [●];
- (o) EBITDA (calculated on the basis of IFRS in force prior to IFRS 16) was [●]; and
- (p) *[any other additional items as may be agreed by the Company and the Agent, each acting reasonably].*

3. [We confirm that no Default is continuing.]\*

Signed

.....

Director  
of  
[Company]

*[insert applicable certification language]*

.....  
for and on behalf of  
[name of Auditors]\*\*

NOTES:

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

\*\* Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors. To be agreed with the Auditors prior to the Signing Date.

**SCHEDULE 8  
FORM OF COMMITMENT NOTICE**

To: [ ] as Agent

From: **NOVA RESOURCES B.V.** as Company

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Commitment Notice. Terms defined in the Facilities Agreement have the same meaning when used in this Commitment Notice unless given a different meaning in this Commitment Notice.
2. We are writing to confirm the agreement reached with you in relation to the commitment of [Facility B] / [Facility C]:

Facility: Facility B / Facility C

Proposed Additional Commitments: USD [●]

Proposed Borrower: [ ]

Availability Period: The period starting on the date on which you countersign this Commitment Notice and ending on the date falling [ ] days thereafter

Commitment Fee: [ ] per annum. on the [Facility B Commitments/Facility C Commitments]

Additional CPs: *[Include here (or in a schedule) any other documents and other evidence required by the Agent (acting on the instructions of the Lenders providing the proposed Additional Commitments) pursuant to paragraph (b)(v) of clause 4.3 (Utilisation of Facility B and Facility C) of the Facilities Agreement]*

3. We request that you confirm the above matters by countersigning this Commitment Notice and agree that, from the date of your countersignature below, the Additional Commitments shall become committed as [Facility B Commitments/Facility C Commitments] for the purposes of the Facilities Agreement.

Yours faithfully

[Yours faithfully

.....  
authorised signatory for  
[insert name of Company]

.....  
authorised signatory for  
[insert name of Borrower]]

This Agreement is accepted as a Commitment Notice for the purposes of the Facilities Agreement by the Agent.

[Agent]

By:

Date signed:

**SCHEDULE 9**  
**FORM OF SECURED HEDGE COUNTERPARTY ACCESSION LETTER**

To: [ ] as Agent

From: **NOVA RESOURCES B.V.** as Company

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Secured Hedge Counterparty Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Secured Hedge Counterparty Accession Letter.
2. We refer to Clause 26.8 (*Additional Secured Hedge Counterparties*). The Additional Secured Hedge Counterparty agrees to become an Additional Secured Hedge Counterparty and to be bound by the terms of the Agreement as an Additional Secured Hedge Counterparty.
3. This Secured Hedge Counterparty Accession Letter and any non–contractual obligations arising out of or in connection with it are governed by English law.

[Additional Secured Hedge Counterparty]

By:

[Agent]

By:

**SCHEDULE 10  
FORM OF RESIGNATION LETTER**

To: [ ] as Agent

From: **NOVA RESOURCES B.V.** as Company

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter.
2. Pursuant to Clause 28.4 (*Resignation of Guarantors*) of the Facilities Agreement, we request that [*resigning Guarantor*] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) no payment is due from the Guarantor under Clause 19 (*Guarantee and indemnity*) of the Facilities Agreement.
4. We hereby request that you, after obtaining the consent of all of the Lenders, agree to the resignation of the Guarantor as requested above by countersigning this Resignation Letter where indicated below.
5. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....  
authorised signatory for  
**NOVA RESOURCES B.V.**

This Resignation Letter is accepted for the purposes of the Facilities Agreement by the Agent.

[Agent]

By:

Date signed:

**SCHEDULE 11  
TIMETABLES**

**Part 1  
LOANS**

**Loans in USD**

Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> ))	U-3 9.30 a.m.
Agent determines (in relation to a Utilisation) the amount of the Loan, if required under Clause 5.4 ( <i>Lenders' participation</i> ) and notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-3 noon
LIBOR is fixed	Quotation Day 11:00 a.m.
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 12.2 ( <i>Calculation of Reference Bank Rate</i> )	Noon on the Quotation Day
“U” = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan.	
“U - X” = X Business Days prior to date of utilisation	

**SCHEDULE 12**  
**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**Part 1**  
**FORM OF NOTICE ON ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION**

To: [ ] as Agent

From: [*The Lender*]

Dated:

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to Clause 27.2 (*Disenfranchisement of Sponsor Affiliates*) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

[ ● ]

[*Lender*]

By:

**Part 2**  
**FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE TRANSACTION/NOTIFIABLE DEBT PURCHASE TRANSACTION CEASING TO BE WITH SPONSOR AFFILIATE**

To: [ ] as Agent

From: [The Lender]

Dated:

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October 2020 (the “Facilities Agreement”)**

1. We refer to paragraph Clause 27.2 (*Disenfranchisement of Sponsor Affiliates*) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ● ] has [terminated]/[ceased to be with a Sponsor Affiliate].]
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

[ ● ]

[Lender]

By:

**SCHEDULE 13  
FORM OF ACCESSION DEED**

To: [ ] as Agent

Copy to: [ ] as Security Agent

From: [*Subsidiary*] and **NOVA RESOURCES B.V.** as Company

Dated:

Dear Sirs

**NOVA RESOURCES B.V. – Up to USD 4,990,000,000 Facilities Agreement dated [●] October  
2020 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This deed (the “**Accession Deed**”) shall take effect as an Accession Deed for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in paragraphs 1-4 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Subsidiary*] agrees to become an Additional [Borrower] / [Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower] / [Guarantor] pursuant to [Clause 28.2 (*Additional Borrowers*)] / [Clause 28.2 (*Additional Guarantors*)] of the Facilities Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company with registered number [ ].
3. [The Company confirms that no Default is continuing or would occur as a result of the Target becoming an Additional Borrower].\*
4. [*Subsidiary’s*] administrative details for the purposes of the Facilities Agreement are as follows:  
Address:  
Fax No.:  
Attention:
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS ACCESSION DEED** has been signed on behalf of the Agent, signed on behalf of the Company and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

**EXECUTED AS A DEED**

By: [*Subsidiary*]

[Place of execution: [ ]]\*\*

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness

**The Company**

[*Company*]

By:

**The Agent**

[*Full Name of Agent*]

By:

Date:

\* include in the case of an Additional Borrower

\*\* include in the case of an Additional Obligor incorporated in Kazakhstan or Kyrgyzstan. Local law advice should be taken in respect of execution.

## SCHEDULE 14

### DISCLOSED EXISTING OBLIGATIONS

#### PART I (DISCLOSED EXISTING FINANCING AGREEMENTS)

Name of document	Parties	Governing law	Outstanding Principal Amount as at the Signing Date
USD 1,000,000,000 pre-export finance facility agreement originally dated 20 December 2012 (as amended and restated from time to time) (the " <b>PXF Facility</b> ")	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Company and Guarantor Kaz Minerals Sales Limited as Trader and Guarantor The Lenders listed therein Deutsche Bank AG, Amsterdam Branch as Agent ING Bank N.V. as Trustee And others	English	USD 1,000,000,000
RMB 1,000,000,000 facility agreement originally dated 16 December 2011 (as amended from time to time) relating to the Aktogay Project (the " <b>CDB RMB Aktogay Facility</b> ")	Kaz Minerals Aktogay Finance Limited (formerly Kazakhmys Aktogay Finance Limited) as Borrower Kaz Minerals Plc (formerly Kazakhmys Plc) as Guarantor China Development Bank as Lender	PRC	USD 89,686,099
USD 1,340,000,000 facility agreement originally dated 16 December 2011 (as amended from time to time) relating to the Aktogay Project (the " <b>CDB USD Aktogay Facility</b> ")	Kaz Minerals Aktogay Finance Limited (formerly Kazakhmys Aktogay Finance Limited) as Borrower Kaz Minerals Plc (formerly Kazakhmys Plc) as Guarantor China Development Bank as Lender	PRC	USD 1,018,400,000
USD 1,844,000,000 facility agreement dated 29 December 2014 relating to the Bozshakol Project (the " <b>CDB Bozshakol Facility</b> ")	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor China Development Bank as Lender	PRC	USD 924,000,000

USD 148,500,000 facility agreement dated 29 December 2014 relating to the Bozymchak Project (the " <b>CDB Bozymchak Facility</b> ")	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor China Development Bank as Lender	PRC	USD 66,825,000
USD 900,000,000 non-revolving line of credit dated 14 December 2016 (as amended from time to time) (the " <b>DBK Aktogay Facility</b> ")	Kaz Minerals Aktogay LLC as Borrower Development Bank of Kazakhstan JSC as the Bank	Republic of Kazakhstan	USD 714,285,714
Up to USD 100,000,000 facility agreement dated 15 November 2019 (the " <b>CAT Facility</b> ")	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor Caterpillar Financial Services (UK) Limited as Original Lender, Facility Agent and Security Agent	English	USD 73,500,000

**PART II (DISCLOSED EXISTING GUARANTEES)**

<b>Name of document</b>	<b>Parties</b>	<b>Governing law</b>
Guarantees under the PXF Facility from Kaz Minerals PLC and Kaz Minerals Sales Limited	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Company and Guarantor Kaz Minerals Sales Limited as Trader and Guarantor The Lenders listed therein Deutsche Bank AG, Amsterdam Branch as Agent ING Bank N.V. as Trustee And others	English
VCM Guarantee (deed of guarantee dated 29 October 2014 and confirmed on 28 January 2020) in connection with the PXF Facility	"Vostoksvetmet" LLC as Guarantor Deutsche Bank AG, Amsterdam Branch as Agent ING Bank N.V. as Trustee	English
Guarantee under the CDB RMB Aktogay Facility from Kaz Minerals Plc	Kaz Minerals Aktogay Finance Limited (formerly Kazakhmys Aktogay Finance Limited) as Borrower Kaz Minerals Plc (formerly Kazakhmys Plc) as Guarantor China Development Bank as Lender	PRC
Guarantee under the CDB USD Aktogay Facility from Kaz Minerals Plc	Kaz Minerals Aktogay Finance Limited (formerly Kazakhmys Aktogay Finance Limited) as Borrower Kaz Minerals Plc (formerly Kazakhmys Plc) as Guarantor China Development Bank as Lender	PRC
Guarantee under the CDB Bozshakol Facility from Kaz Minerals Plc	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor China Development Bank as Lender	PRC
Guarantee under the CDB Bozymchak Facility from Kaz Minerals Plc	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor	PRC

	China Development Bank as Lender	
Corporate guarantee dated 21 December 2016 as amended on 14 June 2019 in connection with the DBK Aktogay Facility	Kaz Minerals Plc as Guarantor Development Bank of Kazakhstan JSC as Lender	English
Guarantee under the CAT Facility from Kaz Minerals Plc	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Guarantor Caterpillar Financial Services (UK) Limited as Original Lender, Facility Agent and Security Agent	English

**PART III (DISCLOSED EXISTING LOANS)**

<b>Name of document</b>	<b>Parties</b>	<b>Governing law</b>	<b>Amount</b>
Loan agreement dated 25 February 2009 (as amended from time to time)	Kaz Minerals Investments Limited as Borrower Kaz Minerals Finance Plc as Lender	English	USD 5,000,000,000
Loan agreement dated 23 December 2009 (as amended from time to time)	Kaz Minerals Finance Plc as Borrower Kaz Minerals Plc as Lender	English	USD 1,000,000,000
Loan agreement dated 26 November 2010 (as amended from time to time)	Kaz Minerals Bozshakol LLC as Borrower Kaz Minerals Projects Finance Limited as Lender	English	KZT 350,000,000,000
Loan agreement dated 9 July 2013 (as amended from time to time)	Kaz Minerals Aktogay LLC as Borrower Kaz Minerals Aktogay Project Finance Limited as Lender	English	KZT 320,000,000,000
Loan agreement dated 30 April 2015 (as amended from time to time)	Kaz Minerals Bozymchak LLC as Borrower Kaz Minerals Finance Plc as Lender	English	USD 300,000,000
Loan agreement dated 21 December 2015 (as amended from time to time)	Kaz Minerals Investments Limited as Borrower Kaz Minerals Finance Plc as Lender	English	USD 1,844,000,000
Loan agreement dated 30 August 2018 (as amended from time to time)	GDK Baimskaya LLC as Borrower Kaz Minerals Investments Limited as Lender	English	USD 500,000,000
Loan agreement dated 6 December 2018	Kaz Minerals Aktogay LLC as Borrower Kaz Minerals Aktogay Project Finance Limited as Lender	English	KZT 200,000,000,000
Loan agreement dated 29 May 2020	Kaz Minerals Finance Plc as Borrower Kaz Minerals Sales Limited as Lender	English	USD 300,000,000

**PART IV (DISCLOSED EXISTING SECURITY)**

<b>Name of document</b>	<b>Parties</b>	<b>Governing law</b>	<b>Charged Property</b>
Account Charge dated 4 September 2019 (as confirmed on 18 September 2020) pursuant to the CDB RMB Aktogay Facility, the CDB USD Aktogay Facility, the CDB Bozshakol Facility and the CDB Bozymchak Facility	Kaz Minerals Sales Limited as Chargor, The Guarantor The Lender	English	The "Collection Account" being the account identified with account number [REDACTED] (and any substitute accounts in the name of the Chargor in the future opened with the Account Bank) held with Citibank, N.A., London Branch (as Account Bank).
Account Charge dated 30 December 2016 pursuant to the CDB Bozshakol Facility and the CDB Bozymchak Facility	Kaz Minerals Sales Limited as Chargor, The Guarantor The Lender	English	The "Collection Account" being the account identified with account number [REDACTED] (and any substitute accounts in the name of the Chargor in the future opened with the Account Bank) held with Citibank, N.A., London Branch (as Account Bank).
First Ranking Account Pledge dated 11 January 2013 pursuant to the PXF Facility	Kaz Minerals Sales Limited as Pledgor ING Bank N.V. as Pledgee Deutsche Bank AG, Amsterdam Branch as Account Bank	Dutch	The "Collection Account" being the Dollar denominated account identified with IBAN [REDACTED] (and any renewal or redesignation thereof) held with Deutsche Bank AG, Amsterdam Branch for the purpose of collecting payments from, inter alia, the Offtakers to the Trader under the Designated Sales Contracts.
Second Ranking Account Pledge dated 21 June 2017 pursuant to the PXF Facility	Kaz Minerals Sales Limited as Pledgor ING Bank N.V. as Pledgee Deutsche Bank AG, Amsterdam Branch as Account Bank	Dutch	The "Collection Account" being the Dollar denominated account identified with IBAN [REDACTED] (and any renewal or redesignation thereof) held with Deutsche Bank AG, Amsterdam Branch for the purpose of collecting payments from, inter alia, the Offtakers to the Trader under the Designated Sales Contracts.
Third Ranking Account Pledge dated 28 January 2020 pursuant to the PXF Facility	Kaz Minerals Sales Limited as Pledgor ING Bank N.V. as Pledgee Deutsche Bank AG, Amsterdam Branch as Account Bank	Dutch	The "Collection Account" being the Dollar denominated account identified with IBAN [REDACTED] (and any renewal or redesignation thereof) held with Deutsche Bank AG, Amsterdam Branch for the purpose of collecting payments from, inter alia, the Offtakers to the Trader under the Designated Sales Contracts.

VCM Assignment dated 28 January 2020 pursuant to the PXF Facility	"Vostoksvetmet" LLC as Assignor ING Bank N.V. as Trustee	English	Rights under the sale and purchase contract No. D2035-191005-010627 dated on or about 28 January 2020 entered into with Kaz Minerals Sales Limited for the supply of copper (the "VCM Export Contract").
Trader Assignment dated 28 January 2020 pursuant to the PXF Facility	Kaz Minerals Sales Limited as Assignor ING Bank N.V. as Trustee	English	Rights under each Designated Sales Contract (being as at the date of the Assignment the contract KAZ-AET-CA-20-LT01 dated 6 January 2020 and made between the Trader and Advaita East Trade DMCC and the contract KAZ-EB-CA-19/20-LT01 dated 1 June 2018 and made between the Trader and Er Bakir Elektrolitik Bakir Mamulleri AS), the Aktogay Export Contract (being the sale and purchase contract No. AOS19085 entered into by the Trader and KAZ Minerals Aktogay on or about 28 January 2020 for the supply of Copper), the VCM Export Contract and the benefit of the proceeds of each claim under a Letter of Credit issued pursuant to a Designated Sales Contract.
Equipment Pledge dated 22 November 2019 pursuant to the CAT Facility	KAZ Minerals Aktogay LLC as Pledgor Caterpillar Financial Services (UK) Limited as Pledgeholder	Republic of Kazakhstan	Collateral, being the specialised equipment of the Pledgor listed in Schedules 1 and 2 of the Equipment Pledge.
Equipment Pledge dated 22 November 2019 pursuant to the CAT Facility	KAZ Minerals Bozshakol LLC as Pledgor Caterpillar Financial Services (UK) Limited as Pledgeholder	Republic of Kazakhstan	Collateral, being the specialised equipment of the Pledgor listed in Schedules 1 and 2 of the Equipment Pledge.

**SCHEDULE 15**  
**MATERIAL LICENSES**

No.	Type of use license / contracts	No. and date of use license	Term of license	Boundaries of subsoil area	Issuing authority	License holder
1.	License for solid mineral resource exploration	No. 3503MP dated 20 March, 2014 until 20 March, 2022	8 years from the date of issue	34.60 ha	The State Committee for Industry, Energy and Subsoil-Use of the Kyrgyz Republic (or any of its predecessors or successors from time to time)	OOO «KAZ Minerals Bozymchak» City of Bishkek, Umetaliev st., 41 (0312694270, 0312694271, Prатов E.M. (by proxy), Sharshenbieva D.N. (by proxy)
2.	License for solid mineral resource exploration	No. 710-AE dated January 23, 2008 till December 31, 2028	6 years from the date of issue	50 ha	The State Committee for Industry, Energy and Subsoil-Use of the Kyrgyz Republic (or any of its predecessors or successors from time to time)	OOO «KAZ Minerals Bozymchak» City of Bishkek, Umetaliev st., 41 (0312694270, 0312694271, Prатов E.M. (by proxy), Sharshenbieva D.N. (by proxy)
3.	License for mining and chemical exploration	No. 15009378 dated May 20, 2015	Perpetual	-	Industrial Development and Industrial Safety Committee of the Ministry for Investment and Development of the Republic of Kazakhstan.	OOO «KAZ Minerals Aktogay» Kazakhstan, City of Almaty, Zhamal Omarova st., Building 8, BIN 090840006023 050020, Baitov K. K.
4.	Contract for the extraction of copper ores at the Aktogay deposit	No. 637 dated February 19, 2001	January 19, 2023	-	The Ministry of Industry and Infrastructure Development of Kazakhstan	OOO «KAZ Minerals Aktogay» Kazakhstan, City of Almaty, Zhamal Omarova st., Building 8, BIN 090840006023 050020, Baitov K. K.

5.	Contract for exploration and production of common minerals at the Aerodrome and Stone quarry sites	No. 213 dated April 24, 2006 till April 24, 2031	25 years from the date of issue	-	Akimat of East Kazakhstan region	OOO «KAZ Minerals Aktogay» Kazakhstan, City of Almaty, Zhamal Omarova st., Building 8, BIN 090840006023 050020, Baitov K. K.
6.	Contract for production of polymetallic ore at Irtyshtsky deposit	No. 531 dated September 9, 2000	December 8, 2022	8.14 sq. km.	The Ministry of Industry and Infrastructure Development of Kazakhstan	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
7.	Contract for further development and production of Artemyevsky deposit's polymetallic ore	No. 113 dated May 28, 1997	December 31, 2033	10.56 sq.km	The Ministry of Industry and Infrastructure Development of Kazakhstan	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
8.	Contract for development of Orlovsky deposit's copper and polymetallic ore	No. 62 dated October 7, 1996 till October 7, 2025	29 years from the date of issue	2.38 sq.km.	The Ministry of Industry and Infrastructure Development of Kazakhstan	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
9.	Contract for production of loams suitable for tailings storage facility dam raise at Remki deposit	No. 89 dated December 22, 2003	December 21, 2025	56.0 ha	East Kazakhstan Region Akimat	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
10.	License for production of	No. 58 dated July 15, 2020 till July 15, 2030	10 years from the date of issue	4.8 ha	East Kazakhstan Region Akimat	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829

	commonly occurring mineral resources					
11.	License for subsoil use	No. 3-IPN dated November 1, 2019	December 31, 2031	1.74 sq.km.	Geology Committee of the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
12.	License for design (technological) and (or) operation of mining (exploration, mineral production), petrochemical, chemical production, design (technological) of oil and gas processing industries, operation of main gas pipelines, oil pipelines, oil product pipelines	No. 14011459 dated August 7, 2014	General license	Kazakhstan	Industrial Development and Industrial Safety Committee Ministry of Investment and Development of the Republic of Kazakhstan	TOO «Vostoksvetmet», City of Ust-Kamenogorsk, A. Protozanov st., Building 121, BIN 140740012829
13.	License for the extraction of common minerals	No. 20/20 dated July 29, 2020 till July 29, 2025	5 years from the date of issue	-	Department of subsoil use, environment and water resources of Pavlodar region	KAZ Minerals Bozshakol LLC
14.	License for operation of mining and chemical industries	No. 15011279 dated June 15, 2015	Perpetual	-	Industrial Development and Industrial Safety Committee of the Ministry for Investment	KAZ Minerals Bozshakol LLC

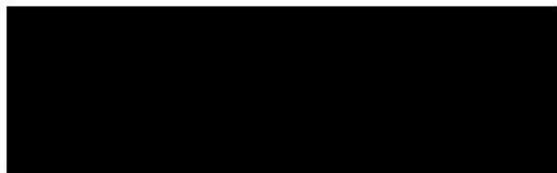
					and Development of the Republic of Kazakhstan	
15.	Contract for copper mining at the Bozshakol field	No. 2494 dated November 26, 2007 till November 26, 2032	25 years	Field Bozshakol	The Ministry of Industry and Infrastructure Development of Kazakhstan	KAZ Minerals Bozshakol LLC
16.	Contract for the extraction of andesidic porphyrites related to igneous rocks at the Bozshakol Tas field	No. 238 dated December 30, 2014 till December 30, 2032	18 years	Field Bozshakol Tas	Department of subsoil use, environment and water resources of Pavlodar region	KAZ Minerals Bozshakol LLC

**SIGNATORIES**

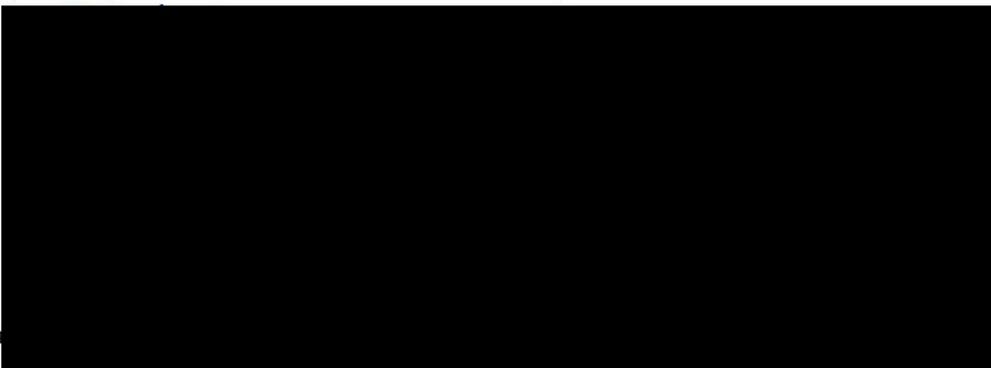
**THE PARENT**

**VOSTOK COOPER B.V.**

By:



Name:



Title:

Address:

E-mail:

Attention:

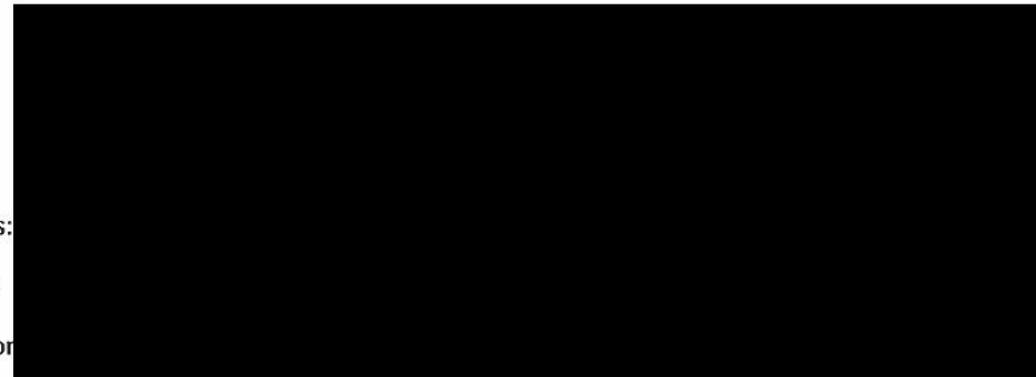
**THE COMPANY**

**NOVA RESOURCES B.V.**

By:



Name:



Title:

Address:

E-mail:

Attention:

**THE ORIGINAL GUARANTOR**

**VOSTOK COOPER B.V.**

By:



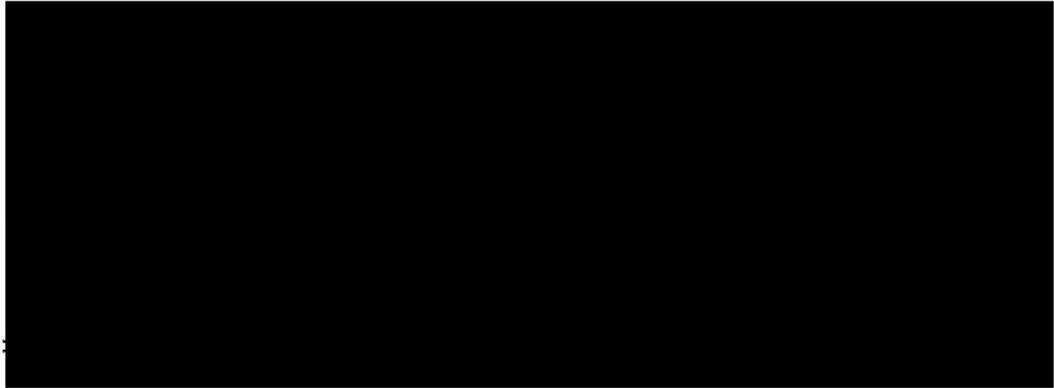
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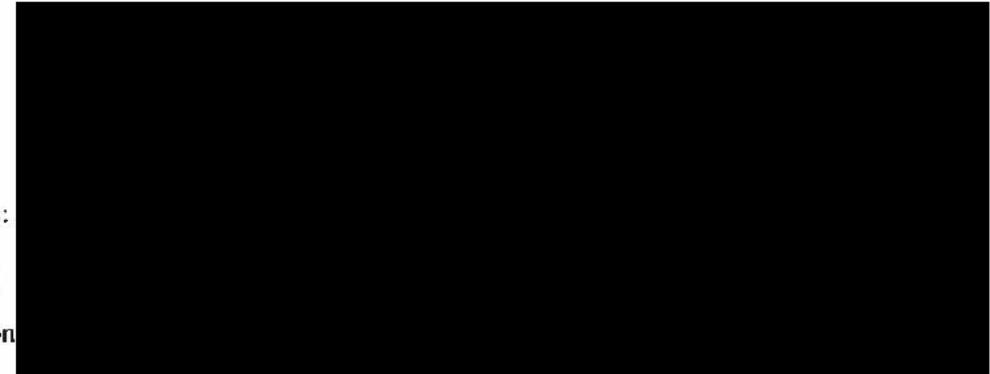
**THE ORIGINAL GUARANTOR**

**NOVA RESOURCES B.V.**

By:



Name:



Title:

Address:

E-mail:

Attention:

**THE ORIGINAL GUARANTOR**

**KINTON TRADE LTD.**

By:



Name:



Title:

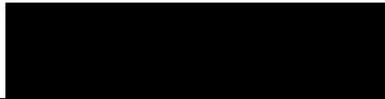
Address:

E-mail:

Attention:

**THE ORIGINAL GUARANTOR  
HARPER FINANCE LIMITED**

By:



Name:



Title:

Address:

E-mail:

Attention:

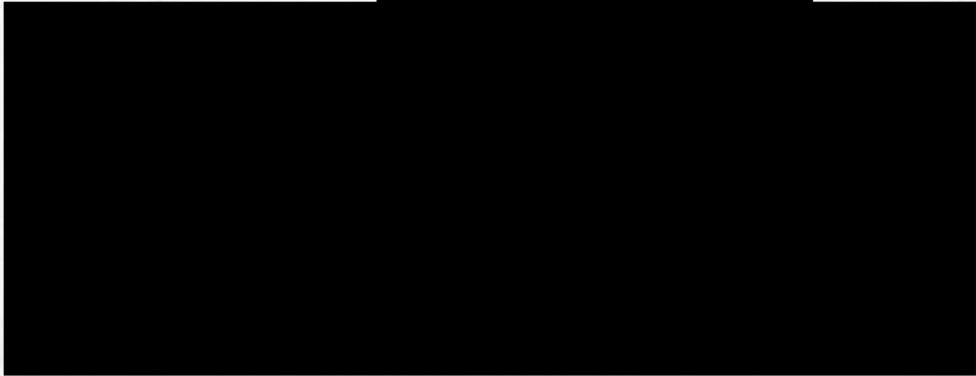
**THE ORIGINAL GUARANTOR**

**PERRY PARTNERS S.A.**

By:



Name:



Title:

Address:

E-mail:

Attention:

THE ORIGINAL GUARANTOR  
CUPRUM HOLDING LIMITED

By: \_\_\_\_\_

Name:

Title:

Address:

E-mail:

Attention:

**THE ARRANGER**  
**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title:

Address:

Fax number:

E-mail:

Attention:

**THE ORIGINAL LENDER**

**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title:

Address:

Fax number:

E-mail:

Attention:

**THE ORIGINAL SECURED HEDGE COUNTERPARTY**

**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title:

Address:

Fax number:

E-mail:

Attention:

**THE AGENT**

**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title:

Address:

Fax number:

E-mail:

Attention:

**THE SECURITY AGENT**

**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title:

Address:

Fax number:

E-mail:

Attention: