* + 1. **DEFINITIONS AND CONSTRUCTION**

In the Facility Terms and Conditions, unless the context provides otherwise:

***Advance*** means an amount advanced to the Borrower pursuant to a Loan or a Note Issuance.

***Advance Funding Date*** means the date on which the proceeds of a Loan or a Subscription Amount is Advanced under the Facility.

***Advance Request*** means a request for an Advance in the form set out in Schedule 1 (*Form of Advance Request*).

***Agreement*** means the agreement consisting of these Facility Terms and Conditions and the Facility Letter which incorporates these Facility Terms and Conditions.

***Business Day*** means a day (other than a Saturday or Sunday or any Gazetted Public Holiday) on which banks are open for general business in [***INSERT***].

***Change of Control*** occurs if any person or group of persons acting in concert gains control of a party, “**acting in concert”** means acting together pursuant to an agreement or understanding (whether formal or informal) and “**control”** means (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to (1) cast, or control the casting of, more than 50% (fifty percent) of the maximum number of votes that might be cast at a general meeting of the party or (2) appoint or remove all, or the majority, of the members of the managing or supervisory board of the party; or (b) beneficially holding more than 50% (fifty percent) of the issued share capital of a party.

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

***Default*** means an event or condition that, with the passage of time or the giving of notice, or both, could constitute an Event of Default.

***E&S Policy*** means an environmental and social consumer protection policy which includes amongst other things, provisions regarding sustainable supply chains, procurement, recycling, waste management and workers’ safety (including electrical safety and fall protection);

***Environment*** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and air (including, without limitation, air within natural or man-made structures, whether above or below ground), water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers) and land (including, without limitation, land under water).

***Environmental Law*** means any applicable law or regulation which relates to the pollution or protection of the Environment, harm to or the protection of human health the conditions of the workplace or the generation, handling, storage, use, release, emission or spillage of any substance including, without limitation, any waste which, alone or in combination with any other, is capable of causing harm to the Environment.

***Event of Default*** *has* the meaning given in Clause 5 *(Events of Default)*.

***Excluded Taxes*** means Taxes imposed on or with respect to a Finance Party or required to be withheld or deducted from a payment to that Finance Party , that are imposed on or measured by net income (however denominated) or that are franchise Taxes, in each case, imposed as a result of Finance Party being organized under the laws of, or having its principal office located in, the jurisdiction imposing such Tax (or any political subdivision thereof); provided, however, Excluded Taxes shall not include any Taxes imposed on amounts payable by Borrower.

***Facility Letter*** means the facility letter which sets out the terms under which the Finance Party (as defined in the Facility Letter) will provide a facility comprising Loans and Notes to the Borrower (as defined in the Facility Letter).

***Finance Document*** means the Agreement, the Transaction Security Document and any other document which has been designated as a Finance Document by the Borrower and the Facility Agent.

***Financial*** ***Indebtedness***means, without duplication, (a) all indebtedness of the Borrower for borrowed money, (b) all obligations of the Borrower evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of the Borrower for the deferred purchase price of property or services, (d) all guarantee obligations by the Borrower of Financial Indebtedness of others, (e) all capital lease obligations of the Borrower, and (f) the principal component of all obligations, contingent or otherwise, of the Borrower (i) as an account party in respect of letters of credit and (ii) in respect of bankers’ acceptances; provided that Financial Indebtedness will not include (A) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, or (C) any Financial Indebtedness incurred with the prior written consent of the the Facility Agent.

***Facility Obligations*** means the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of an Advance and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Advances, and all other obligations and liabilities of Borrower to a Finance Party whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, in each case, which may arise under, out of, or in connection with, the Agreement, any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, fees, indemnities, costs, expenses (including, without limitation all fees, charges and disbursements of counsel to a Finance Party that are required to be paid by the Borrower pursuant hereto) or otherwise.

***Financial Sanctions Lists*** means the list of persons, groups or entities which are subject to financial sanctions published and updated from time to time by the African Union, the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the European Union or the United Nations.

***Indemnified Taxes*** means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under this Agreement.

***Interest Period*** means for each Advance, a period of 3 (three) months from and including the Advance Funding Date or (if already made) the date from and including the preceding Quarter Date and shall end on but exclude the next Quarter Date (for avoidance of doubt, no adjustment for Business Days shall be applicable in determining the Interest Period).

***Loan*** means any loan advanced under this Facility.

***Material Adverse Effect*** means any event, development, or circumstance in the opinion of the Facility Agent having a material adverse effect on (i) the business, operations, financial condition, prospects or property of Borrower or (if applicable the Downstream Subsidiary), (ii) the ability of Borrower to fully perform in a timely manner its payment obligations or other obligations under the Agreement, (iii) the validity or enforceability of any material provision of the Agreement, (if applicable) a Transaction Security Document or (iv) the rights and remedies of a Finance Party under the Agreement.

**Obligor** means the Borrower and (if applicable) any, Guarantor [or any Downstream Borrower] (as defined in the Facility Letter).

***Party*** means a party to the Agreement.

***Policy*** means:

* + - * 1. any client protection policy; and
        2. E&S Policy

***Project***means the project as described in the Facility Letter.

***Quarter Date*** means **[*INSERT*]**, **[*INSERT*]**, **[*INSERT*]**and **[*INSERT*]** of each calendar year.

***Relevant Currency*** has the meaning given in the Facility Letter.

***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.

***Subscription Amount*** means an amount advanced to the Borrower pursuant to Note Issuance under Facility B.

***Taxes*** means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any governmental authority in any jurisdiction, including any interest, additions to tax or penalties applicable thereto.

***Termination Date*** means the earlier of (a) the Maturity Date; or (b) the date on which the Facility is terminated pursuant to Clause [5.13] (Acceleration).

***Transaction Security*** means the Security granted by an Obligor pursuant to a Transaction Security Document.

***Transaction Security Document*** means any:

(a) document, pursuant to which an Obligor grants the Transaction Security; or

(b) guarantee which secures the Obligors’ obligations under the Agreement.

* + 1. **CONSTRUCTION**

In the Agreement:

* + - 1. the **Funder**, Finance Party, **Borrower** any **Obligor** or any **party** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
      2. **assets** includes present and future properties, revenues and rights of every description;
      3. a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
      4. 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);
      5. 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;
      6. a provision of law is a reference to that provision as amended or re-enacted;
      7. Section, Clause and Schedule headings are for ease of reference only;
      8. 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 the Agreement; and
      9. a Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been remedied or waived.
    1. **REPRESENTATIONS**

Each Obligor makes the following representations as of the date hereof and as of the date of each Advance Request and at the date of each Advance:

* + - * 1. it is duly organized, validly existing and, to the extent applicable, in good standing under the laws of the jurisdiction in which it is incorporated and has the power and authority to carry on its business as is now conducted or proposed to be conducted;
        2. it has the power and authority to execute and deliver the Agreement and consummate the transactions contemplated hereunder;
        3. the execution and performance of the Agreement will not violate or conflict with its organizational documents, any law or regulation applicable to it or its business, or any other agreement to which it is a party or is bound;
        4. it is not in breach of any applicable law or regulation;
        5. it is not a party to, or aware of any threatened, litigation against it, which, if adversely determined could reasonably be expected to have a Material Adverse Effect;
        6. it is not party to any bankruptcy or insolvency proceedings;
        7. no Default or Event of Default is imminent, has occurred or is continuing;
        8. no Material Adverse Effect is imminent, has occurred or is continuing;
        9. all information provided to a Finance Party concerning an Advance was at the time it was provided or at the date it was stated to be given (as the case may be) true and correct in all material respects, except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of an Obligor to the Finance Party;
        10. it has timely filed with the appropriate taxing authorities all tax returns, statements, forms and reports (including elections, declarations, disclosures, schedules, estimates and information tax returns) for Taxes that are required to be filed by it;
        11. it has paid, or made provision for the payment of, all Taxes which have or may have become due with respect to an Obligor, its respective income or profits, or any properties belonging to either of them;
        12. each Obligor has obtained all consents, licences and approvals required in connection with the Project or validity or enforceability of the Agreement, the Transaction Security Documents and any Advance and the execution, delivery or performance by an Obligor hereof and thereof;
        13. each security provider is the legal and beneficial owner of the Charged Property to the extent of its interest therein; and
        14. there exists no Security (other than Security as permitted or created under the Agreement) over the Charged Property.
    1. **COVENANTS**
       1. **Access**

The Borrower shall permit each Funder and/or accountants or other professional advisers and contractors of the Funder free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to (a) the premises, assets, books, accounts and records of any Obligor and (b) meet and discuss matters with senior management of an Obligor. Access permitted in accordance with this clause shall include without limitation access to such information in relation to the Charged Property required by the Funder to enforce or maintain the effectiveness of a Transaction Security Document.

* + - 1. **Existence**

The Borrower shall ensure that each Obligor will do all things necessary to preserve and keep in full force and effect its legal existence and its rights, licenses and franchises necessary for its business.

* + - 1. **Taxes**

The Borrower shall ensure that each Obligor will pay and discharge all Taxes imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis.

* + - 1. **Compliance with laws**

The Borrower shall ensure that each Obligor shall comply in all material respects with applicable laws or regulations in relation to the operation of its business or as may otherwise be applicable in connection with the Agreement, and will inform the Facility Agent of any such failure to do so that continues for 5 (five) days after the Borrower first becomes aware of such failure.

* + - 1. **Financial Indebtedness.**

Neither the Borrower **[**nor the Downstream Borrower**]** shall, without the prior written consent of Facility Agent incur or allow to remain outstanding any Financial Indebtedness other than Permitted Financial Indebtedness (as defined in the Facility Letter).[[1]](#footnote-0)

* + - 1. **Change of business**

The Borrower shall ensure that no Obligor shall make a substantial change to the general nature of its business from that carried on at the date of the Agreement without the consent of Facility Agent, which will not be unreasonably withheld.

* + - 1. **Constitutional documents.**

The Borrower shall ensure that no change shall be made to its constitutional documents where that change has or might reasonably be expected to have a Material Adverse Effect without the consent of the Facility Agent, which will not be unreasonably withheld.

* + - 1. **[Distribution of dividends.**

The Borrower shall not 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) repay or redeem, repurchase, defease, retire, repay or otherwise alter any of its share capital or resolve to do so ( “**Distribution**”) without the Facility Agent’s written consent.[[2]](#footnote-1)]

* + - 1. **Disposals**

The Borrower shall ensure that no Obligor shall 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 of its assets other than in the ordinary course of trading without the consent of the Facility Agent, which will not be unreasonably withheld.

* + - 1. **Environmental compliance and Environmental Health and Safety Compliance**

The Borrower shall ensure that each Obligor is in compliance with all Environmental Law or any other activity likely to have significant adverse impact on the environment (taking into account, among other factors, the sensitivity of the impacted ecosystem) or human health or safety.

* + - 1. **Worker Rights**

The Borrower shall not, directly or indirectly, (i) use the proceeds of an Advance for a project or investment that employs persons under the age of 15 (fifteen) for any form of labour or under the age of 18 (eighteen) for work involving hazardous labour activity; or (ii) violate applicable labour laws and regulations, including those related to the right of association, organization and collective bargaining, forced labour, child labour, wages, hours of work, and occupational health and safety.

* + - 1. **Pari passu ranking**

The Borrower shall ensure that all unsecured and unsubordinated claims of the Facility Agent against it or (if applicable, an Obligor) rank *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, and at all times senior to any shareholder loan, any other intercompany loan and any company director loan.

* + - 1. **Negative pledge**

No Obligor shall, without the written consent of the Facility Agent, create or permit to subsist any Security over its assets other than Permitted Security (as defined in the Facility Letter).[[3]](#footnote-2)

* + - 1. **Business Relationships and Embargo**

No Obligor shall enter into business relationships with persons or entities which appear on any of the Financial Sanctions Lists.

* + - 1. **Mandatory prepayment – illegality**

The Borrower shall repay the Loans and redeem the Notes on the last day of the Interest Period occurring after a Funder has notified the Borrower or, if earlier, the date specified by the Funder in the notice, if in any applicable jurisdiction, it becomes unlawful for the Funder to perform any of its obligations as contemplated by this Agreement or to fund or maintain any Loan or Note or it becomes unlawful for the Funder or any affiliate of the Funder to do so.

* + - 1. **Mandatory prepayment – change of control**

If a Change of Control occurs in relation to the Borrower or the Downstream Borrower and the Facility Agent has not provided its prior written consent to the Change of Control (such consent not to be unreasonably withheld), the Borrower shall repay the Loans and/or redeem the Notes on the last day of the Interest Period following the occurrence of the Change of Control.

* + - 1. **Set off**

All payments by the Borrower to a Funder will be made by wire transfer to an account to be designated by the Funder to the Borrower, in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding.

* + 1. **EVENTS OF DEFAULT.**

Each of the events or circumstances set out in Clause 5 (*Events of Default*)and any events or circumstance set out in the Facility Letter is an “**Event of Default**” (save for 5.14 (*Acceleration*)).

* + - 1. **Non-payment**

An Obligor fails to pay any amount due under the Agreement as and when the same is due, if such failure continues for 5 (five) Business Days.

* + - 1. **Use of Advance Proceeds.**

The Borrower fails to apply any proceeds of any Advance other than for the Project.

* + - 1. **Covenants and Other Requirements.**

The Borrower (or if applicable, an Obligor) fails to comply with any covenant or other requirement set forth in the Agreement in any material respect for a period of more than 15 (fifteen) Business Days after notice from the Facility Agent.

* + - 1. **Representations**

Any representation or warranty made or deemed made on behalf of an Obligor in the Agreement, or any document furnished in connection herewith is incorrect or misleading in any material respect.

* + - 1. **Fraud, Mismanagement and Corruption**

Any event or circumstance that occurs which in the opinion of the Facility Agent, indicates culpable mismanagement, fraud and/or corruption on the part of the Borrower (or if applicable, an Obligor).

* + - 1. **Judgments** **and defaults**
  1. Any Financial Indebtedness of the Borrower (or if applicable, an Obligor) 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).
  2. One or more judgments for the payment of money is made against an Obligor (which judgments are not, within 30 (thirty) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 30 (thirty) days after the expiration of such stay) in excess, individually or in the aggregate, of [USD 20,000] or the equivalent thereof in the Relevant Currency.
  3. Any attachment or execution effects any Charged Property of the Obligor and is not discharged within [14 (fourteen) days].
     + 1. **Insolvency and Dissolution**.
          1. An Obligor commences a voluntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar applicable law, or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or consents to the entry of a decree or order for relief in respect of the Obligor in an involuntary case or proceeding under similar applicable laws.
          2. The Obligor files a petition or answer or consent seeking reorganization or relief under any applicable law of any foreign or domestic jurisdiction or any political subdivision thereof, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of an Obligor or of any substantial part of its property.
          3. An Obligor makes a general assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due.
          4. Without its application, approval, or consent, a proceeding is instituted in any court of competent jurisdiction or by or before any government or governmental agency of competent jurisdiction, against the Obligor (or any successor in interest thereto) with respect to adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of Indebtedness, the appointment of a trustee, receiver, liquidator, or the like of the Obligor of all or any substantial part of their respective property or assets, or other like relief in respect of it under any bankruptcy, reorganization, or insolvency law; and, if such proceeding is being contested by it in good faith, the same continues undismissed for a period of [90 (ninety) days].
          5. The Borrower (or if applicable the Obligor) is dissolved, a resolution for its dissolution is passed or a request for its dissolution is filed.
       2. **Unlawfulness and invalidity**

Any Finance Document will at any time for any reason cease to be valid and binding or in full force and effect (other than upon expiration in accordance with its terms) or performance of any material obligation of an Obligor will have become unlawful, or the Obligor will so assert in writing or contest the validity or enforceability thereof.

* + - 1. **Cessation of business and licenses**

(a) An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business unless the Facility Agent has consented thereto within 20 (twenty) days thereof, which consent will not be unreasonably withheld.

(b) A material authorization, approval, license and/or consent, required to carry on the business of the Borrower or Downstream Borrower, is suspended, revoked or not been reissued.

* + - 1. **Audit qualification**

The auditors of an Obligor qualify the audited annual consolidated financial statements in a way that reflects a Material Adverse Change, event or effect on an Advance.

* + - 1. **Change of control**

A Change of Control occurs in respect of an Obligor, without the Obligor having first obtained the prior consent of the Facility Agent.

* + - 1. **Finance Documents**

### It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Security created or expressed to be created ceases to be effective.

### Any obligation or obligations of any Obligor under any Finance Documents are not or cease to be [(subject to an legal reservations)] legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Funders under the Finance Documents.

### Any Finance Document ceases to be in full force and effect.

(d) An Obligor repudiates or evidences an intention to repudiate a Finance Agreement.

* + - 1. **Acceleration**

On and at any time after the occurrence of an Event of Default the Facility Agent may, by notice to the Borrower:

* + - * 1. cancel all or any part of the Committed Facility whereupon it shall immediately be cancelled;
        2. declare that all of the Advances, together with accrued interest, and all other amounts accrued or outstanding be immediately due and payable, whereupon they shall become immediately due and payable;
        3. declare that all of the Loans be payable and all Notes redeemed on demand, whereupon they shall immediately become payable on demand by the Facility Agent; and/or
        4. take any action, including delivery of notices or enforcement action under any Finance Document.

1. **ROLE OF THE AGENT AND THE ARRANGER** 
   1. **Appointment of the Agent**
      1. Each Funder appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
      2. Each Funder authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
   2. **Instructions**
      1. The Facility Agent shall:
         1. unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with this Clause 6; and
         2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
      2. The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Funders as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
      3. Save in the case of decisions stipulated to be a matter for any Funder under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent in accordance with this Agreement shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
      4. The Facility Agent may refrain from acting in accordance with any instructions of any Funders 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.
      5. In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Funders.
      6. The Facility Agent is not authorised to act on behalf of a Funder (without first obtaining that Funders consent) in any legal or arbitration proceedings relating to any Finance Document.
   3. **Duties of the Facility Agent**
      1. The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
      2. Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
      3. Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
      4. If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
      5. If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
      6. The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
   4. **Role of the Arranger**
      1. 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.
      2. Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
      3. Neither the Facility Agent nor the Arranger shall be bound to account to any Funder for any sum or the profit element of any sum received by it for its own account.
   5. **Business with the Obligors**

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

* 1. **Rights and discretions**
     1. The Facility Agent may:
        1. rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
        2. assume that:
           1. any instructions received by it from any Funder are duly given in accordance with the terms of the Finance Documents; and
           2. unless it has received notice of revocation, that those instructions have not been revoked;

(iii) rely on a certificate from any person:

* + - * 1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
        2. 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.

* + 1. The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Funders) that:
       1. no Default has occurred;
       2. any right, power, authority or discretion vested in any Party or any group of Funders has not been exercised; and
       3. any notice or request made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.
    2. The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
    3. Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Funders) if the Facility Agent in its reasonable opinion deems this to be necessary.
    4. The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
    5. The Facility Agent may act in relation to the Finance Documents through its officers, employees and agents.
    6. Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
    7. Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility 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.
    8. Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
  1. **Responsibility for documentation**

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

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
    2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
    3. any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.
  1. **No duty to monitor**

The Facility Agent shall not be bound to enquire:

* + 1. whether or not any Default has occurred;
    2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
    3. whether any other event specified in any Finance Document has occurred.
  1. **Exclusion of liability**
     1. Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
        1. 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 gross negligence or wilful misconduct;
        2. exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, 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, other than by reason of its gross negligence or wilful misconduct; or
        3. without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of:
           1. any act, event or circumstance not reasonably within its control; or
           2. 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.

* + 1. No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Finance Document and any officer, employee or agent of the Facility Agent may rely on this paragraph.
    2. The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
    3. Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
       1. any “know your customer” or other checks in relation to any person; or
       2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Funder or for any Affiliate of any Funder,

on behalf of any Funder and each Funder confirms to the Facility 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 Facility Agent or the Arranger.

* + 1. Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent's liability, any liability of the Facility Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

6.10 **Funder’s indemnity to the Facility Agent**

Each Funder shall (in proportion to its share of the Committed Facility Amountor, if the Committed Facility Amountis then zero, to its share of the Committed Facility Amountimmediately prior to the reduction to zero) indemnify the Agent, within 3 (three) Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence wilful misconduct or fraud) in acting as Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).

6.11 **Resignation of the Facility Agent**

* + 1. The Facility Agent may resign and appoint one of its affiliates as successor by giving notice to the Funders and the Borrower.
    2. Alternatively the Facility Agent may resign by giving 30 (thirty) days' notice to the Funders and the Borrower, in which case the Funders (in accordance with [Schedule 2]) (after consultation with the Borrower) may appoint a successor Facility Agent.
    3. If the Funders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 (twenty) days after notice of resignation was given, the retiring Facility Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom).
    4. If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor agent to become a party to this Agreement as Facility Agent) agree with the proposed successor agent amendments to this Clause and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
    5. The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall, within 3 (three) Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
    6. The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
    7. Upon the appointment of a successor, the retiring Facility 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 6.10 (*Funder’s Indemnity to the Facility Agent*)] and this [Clause 6.11] (and any agency fees for the account of the retiring Facility 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.
    8. After consultation with the Borrower, the Funders (acting in accordance with Schedule 2) may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above.

6.12 **Confidentiality**

* + 1. In acting as agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
    2. If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.

6.13 **Credit appraisal by the Funders**

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

* + 1. the financial condition, status and nature of each Obligor;
    2. 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;
    3. whether that Funder 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 Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
    4. 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
    5. 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.

6.14 **Facility Agent's management time**

Any amount payable to the Facility Agent under this Agreement shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the Funders and is in addition to any fee paid or payable to the Facility Agent.

6.15 **Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**7.** **THE SECURITY AGENT**

7.1 **Security Agent as trustee**

* + 1. The Security Agent declares that it holds the Transaction Security on trust for the Funders on the terms contained in this Agreement.
    2. Each of the Facility Agent, the Arranger and each Funder 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.

7.2 **Enforcement through Security Agent only**

The Funders shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents except through the Security Agent.

7.3 **Funders' indemnity to the Security Agent**

(a) Each Funder shall (in the proportion to its share of the Committed Facility Amountor, if the Committed Facility Amountis then zero, to its share of the Committed Facility Amountimmediately prior to the reduction to zero), indemnify the Security Agent and every receiver and every delegate, within 3 (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 an Obligor pursuant to a Finance Document).

* + 1. Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Funder for any payment that Funder makes to the Security Agent pursuant to paragraph (a) above.
    2. Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Funder claims reimbursement relates to a liability of the Security Agent to an Obligor.
  1. **No fiduciary duties to Obligors**

Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

7.5 **No duty to account**

The Security Agent shall not be bound to account to any other Finance Party for any sum or the profit element of any sum received by it for its own account.

7.6 **Business with the Obligors**

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor.

7.7 **Rights and discretions**

* + 1. The Security Agent may:
       1. rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
       2. assume that:
          1. any instructions received by it from the Agent, the Funders are duly given in accordance with the terms of the Finance Documents;
          2. unless it has received notice of revocation, that those instructions have not been revoked; and
          3. 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:

* + - * 1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
        2. 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.

* + 1. The Security Agent shall be entitled to carry out all dealings with the Funders through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to the Funders.
    2. The Security Agent may assume (unless it has received notice to the contrary in its capacity as Security Agent for the Secured Parties) that:
       1. no Default has occurred;
       2. any right, power, authority or discretion vested in any Party or any group of Funders has not been exercised; and
       3. any notice made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.
    3. 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.
    4. Without prejudice to the generality of paragraph (d) above or paragraph (f) 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 the Funders and/or the Facility Agent) if the Security Agent in its reasonable opinion deems this to be necessary. The Security Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:

1. be liable for any error of judgment made by any such person; or
2. 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 Security Agent's gross negligence or wilful misconduct and/or fraud.

* + 1. 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.
    2. The Security Agent, any receiver and any delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and shall not:
       1. be liable for any error of judgment made by any such person; or
       2. 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 Security Agent's, receiver's or delegate's gross negligence or wilful misconduct.
    3. Unless a Finance Document 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.
    4. 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.
    5. 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.

7.8 **Responsibility for documentation**

None of the Security Agent, any receiver nor any delegate is responsible or liable for:

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, an Obligor 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; or
    2. the legality, validity, effectiveness, adequacy or enforceability of 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
    3. 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.

7.9 **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:

* + - 1. 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 gross negligence or wilful misconduct;
      2. 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, other than by reason of its gross negligence or wilful misconduct;
      3. any shortfall which arises on the enforcement or realisation of the Transaction Security; or
      4. without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Security Agent) arising as a result of:
         1. any act, event or circumstance not reasonably within its control; or
         2. 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 Transaction Security and any officer, employee or agent of the Security Agent, a receiver or a delegate may rely on this paragraph (b) subject to the provisions of the Third Parties Act.

(c) Nothing in this Agreement shall oblige the Security Agent to carry out:

* + - 1. any “know your customer” or other checks in relation to any person; or
      2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any other Secured Party,

on behalf of each other's Finance Party.

(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 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 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

(e) No duty to monitor

The Security Agent shall not be bound to enquire:

* + - 1. whether or not any Default has occurred;
      2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
      3. whether any other event specified in any Finance Document has occurred.
  1. **Resignation of the Security Agent**

(a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Funders and the Borrower.

* + 1. Alternatively the Security Agent may resign by giving 30 (thirty) days' notice to the Funders and the Borrower, in which case the Funders may appoint a successor Security Agent.
    2. If the Funders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 (twenty) days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
    3. If the Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as security agent and the Security Agent is entitled to appoint a successor under paragraph (c) above, the Security Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Security Agent to become a party to this Agreement as Security Agent) agree with the proposed successor Agent amendments to this Clause 7 and any other term of this Agreement dealing with the rights or obligations of the Security Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonably amendments to the security agency fee payable under this Agreement which are consistent with the successor Security Agent's normal fee rates and those amendments will bind the Parties.
    4. The retiring Security Agent shall, make available to the successor Security 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. The Borrower shall, within 3 (three) Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
    5. The Security Agent's resignation notice shall only take effect upon:
       1. the appointment of a successor;
       2. the transfer of all the Transaction Security to that successor; and
       3. the transfer of all documents and records required for the purposes of performing the functions of Security Agent to that successor at the time of succession.
    6. Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 7 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.
    7. The Funders 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 but the cost referred to in paragraph (d) above shall be for the account of the Borrower.

7.11 **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.

* + 1. 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.
    2. 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.
  1. **Information from the Funders**

Each Funder 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.

* 1. **Credit appraisal by the Secured Parties**

Without affecting the responsibility of any Obligor 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 Obligor;

* + 1. 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;
    2. 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 Transaction Security, the transactions contemplated by the Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
    3. 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
    4. 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.
  1. **Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Obligor'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).

* 1. **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 Obligor to any of the Charged Property;

* + 1. 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;
    2. 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;
    3. take, or to require any Obligor 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
    4. require any further assurance in relation to any Transaction Security Document.
  1. **Insurance by Security Agent**

(a) The Security Agent shall not be obliged:

* + - 1. to insure any of the Charged Property;
      2. to require any other person to maintain any insurance; or
      3. 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 Funders request it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

* 1. **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.

* 1. **Delegation by the Security Agent**

(a) Each of the Security Agent, any receiver and any dlegate 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.

* + 1. 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 Finance Parties.
    2. 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.
  1. **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:

* + - 1. for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
      2. for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Borrower and the Finance 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.

* + 1. The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any 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.
  1. **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 Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

* 1. **Releases**

Upon a disposal of any of the Charged Property pursuant to the enforcement of the Transaction Security by a receiver or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

* 1. **Winding up of trust**

If the Security Agent, with the approval of the Facility Agent, determines that:

(a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and

* + 1. no Finance Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

* + - 1. 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
      2. any Security Agent which has resigned pursuant to [Clause 17.10] (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.
  1. **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.

* 1. **[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.]

* 1. **Order of application**

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Documents or in connection with 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 at any time as the Security Agent (in its discretion) sees fit, 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) any receiver or any delegate;

* + 1. in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with the provisions of this Agreement;
    2. if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Obligor; and
    3. the balance, if any, in payment or distribution to the relevant Obligor.
  1. **Investment of proceeds**

Prior to the application of the proceeds of the Transaction Security in accordance with [Clause 7.21 (*Order of application*)] the Security Agent may, at its discretion, hold all or part of those proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security 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 [Clause 7.21 (*Order of application*)].

* 1. **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.

* + 1. The obligations of any Obligor 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.
  1. **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 Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

* 1. **Good discharge**

(a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Security Agent on behalf of the Funders and any distribution or payment made in that way shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.

* + 1. 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.
  1. **Amounts received by Obligors**

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor 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.

* 1. **Instructions**

(a) The Security Agent shall:

* + - 1. subject to paragraphs (d) and (e) 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 Facility Agent;
      2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if the relevant Finance Document stipulates the matter is a decision for any Funder in accordance with instructions given to it by that Funder).
    1. The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Facility Agent (or, if the relevant Finance Document stipulates the matter is a decision for any Funder, from that Funder) 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 that it has requested.
    2. Save in the case of decisions stipulated to be a matter for any other Funder under the relevant Finance Document and unless a contrary intention appears in the relevant Finance Document, any instructions given to the Security Agent by the Facility Agent shall override any conflicting instructions given by any other Parties and will be binding on all the Funders.
    3. Paragraph (b) shall not apply:
       1. where a contrary indication appears in this Agreement;
       2. where a Finance Document requires the Funders to act in a specified manner or to take a specified action; or
       3. 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.
    4. In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
       1. it has not received any instructions as to the exercise of that discretion; or
       2. the exercise of that discretion is subject to paragraph (d) above,

the Security Agent shall do so having regard to the interests of all the Funders.

* + 1. The Security Agent may refrain from acting in accordance with any instructions of any Funder until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
    2. Without prejudice to the provisions of the remainder of this Clause 7.27, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
    3. The Security Agent is entitled to rely on and comply with instruction given in accordance with this Clause 7.

7.32 **Duties of the Security Agent**

* + 1. The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
    2. The Security Agent shall promptly:
       1. forward to the Facility Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document; and
       2. 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.
    3. 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.
    4. If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Facility Agent.
    5. 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).
    6. **PAYMENT MECHANICS**
       1. **Payments to Finance Parties**

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with this Clause [8.1] and applies that amount to a payment due under a Finance Document then:

* + 1. the Recovering Finance Party must, within 3 (three) Business Days, notify the Facility Agent of the details of the receipt or recovery;
    2. the Facility Agent must determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have received had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with this Clause [8.1] without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
    3. the Recovering Finance Party must pay to the Facility Agent an amount (the **Sharing Payment**) equal to that receipt or recovery, less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with this Clause.
       1. **Redistribution among the Finance Parties**

The Facility Agent must treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (each a **Sharing Finance Party**) in accordance with [Clause 8.10 *(Partial payments)*] towards the obligations of that Obligor to the Sharing Finance Parties.

* + - 1. **Recovering Finance Party's rights**
    1. On a distribution by the Facility Agent under Clause 8.3 *(Redistribution among the Finance Parties)* the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in that redistribution.
    2. If and to the extent that the Recovering Finance Party is not able to rely on its rights under (a) above, the relevant Obligor will owe the Recovering Finance Party a debt equal to the Sharing Payment which is immediately due and payable.
       1. **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:

* + - * 1. each Sharing Finance Party must, on the request of the Facility Agent, pay to the Facility 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**);
        2. at the time of the request by the Facility Agent under paragraph (a) above the Sharing Finance Party will be subrogated to the rights of the Recovering Finance Party in respect of the relevant Redistributed Amount; and
        3. if and to the extent that the Sharing Finance Party is not able to rely on its rights under paragraph (b) above as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.
      1. **Exceptions**
         1. This Clause will not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
         2. A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

it notified that other Finance Party of the legal or arbitration proceedings; and

that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

* + - 1. **Payments to the Facility Agent**
         1. On each date on which a Party is required to make a payment to the Facility Agent under a Finance Document, that Party must make the payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent to the Party concerned as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
         2. Unless a Finance Document specifies that payments under it are to be made in another manner, all payments must be made to such account in the principal financial centre of the country of that currency or with such bank as the Facility Agent specifies.
      2. **Distributions to an Obligor**

The Facility Agent may (with the consent of an Obligor) apply any amount received by it for that Obligor in or towards payment (as soon as practicable after receipt) of any amount due from that Obligor under the Finance Documents. For this purpose the Facility Agent may apply the received sum in or towards the purchase of any amount of any currency to be paid.

* + - 1. **Distributions to the Facility Agent**

1. Each payment received by the Facility Agent under the Finance Documents for another Party must, except as provided in this Clause [8], be paid by the Facility Agent to the Party entitled to receive payment in accordance with this Agreement as soon as practicable after receipt with such bank as that Party may notify to the Facility Agent by not less than 5 (five) Business Days' notice.
   * + 1. **Clawback**
          1. Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
          2. If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent has not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent must on demand refund that amount to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds
       2. **Partial Payments**

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

[**Insert agreed payment waterfall]**

**9. INDEMNIFICATION AND LIABILITY**

The Borrower agrees to indemnify and hold harmless each Finance Party and its affiliates, the respective directors, officers, employees and agents of the Finance Party and its affiliates and each other person, if any, controlling Finance Party or any of its affiliates (collectively, the “***Indemnified Parties***”) from and against any losses, claims, damages or liabilities (or actions in respect thereof) related to or arising out of the Agreement or Finance Party’s role in connection therewith and will reimburse each Indemnified Party for all expenses (including reasonable legal fees) as they are incurred by any Indemnified Party in connection with investigating, preparing or defending any such action or claim, whether or not in connection with pending or threatened litigation in which Finance Party is a party; provided that such indemnity shall not, as to any of the Indemnified Parties, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of Finance Party.

10. **TERMINATION**

The Agreement will terminate on the Termination Date.

11. **GOVERNING LAW; DISPUTE RESOLUTION**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with [English law], without giving effect to principles of conflicts of law. Each of the parties consents to the exclusive jurisdiction and venue of the courts of [England and Wales].

12. **MISCELLANEOUS**

12.1 **Confidentiality**

Except as such information may be disclosed:

(a) to any party’s directors, officers, employees, shareholders and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential);

* + 1. To the extent requested by any regulatory authority;
    2. To the extent required by applicable law or regulations or by any subpoena or similar legal process;
    3. To any other party to the agreement;
    4. In connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the agreement or the enforcement of rights hereunder;
    5. To an insurer; or
    6. To the holders or potential holders of any notes issued or to be issued by the finance party or its affiliates in connection with the loans or the notes,

the parties will keep confidential and will not disclose without the prior written consent of the other party any documents (including the agreement), content, data, reports, interpretations, forecasts, records and other information exchanged for the purpose of the agreement that are not intended to be publicly disclosed or provided to potential investors or other funding sources of the finance party.

12.2 **Successors and assigns**

* + 1. The agreement may not be assigned by borrower without the prior written consent of the facility agent and any purported assignment in violation of the foregoing will be void *ab initio*.
    2. A funder may freely assign the agreement or any portion of its rights or obligations thereunder.
    3. If a funder assigns any of its rights or obligations hereunder to a permitted assignee, then such assignee is only entitled to receive the payments to the same extent that the funder would have been so entitled if the assignment had not occurred. The agreement will inure to the benefit of the successors and permitted assigns of the parties and will be binding upon the parties’ successors and permitted assigns.

12.3 **Currency**

The payment obligations of borrower to the the finance party under the agreement or any note or other instrument or agreement entered into in connection herewith or relating hereto shall only be discharged by an amount paid in another currency, whether pursuant to a judgment or otherwise, to the extent of the amount in the relevant currency received by the finance party (after any premium and costs of exchange) on the prompt conversion to the relevant currency of the amount so paid in another currency under normal banking procedures. In the event that any payment by borrower in another currency, whether pursuant to a judgment or otherwise, upon conversion and transfer, does not result in the payment of the amount of the relevant currency then due at the place such amount is due, the the finance party shall be entitled to demand immediate payment of and shall have a separate cause of action against borrower for the additional amount necessary to yield the amount of relevant currency then due.

12.4 **Waiver of Immunity**

The borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues and the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

12.5 **Amendment**

(a) The provisions of this agreement or any finance document may not be amended, waived, modified, in whole or in part other than in accordance with schedule 2 *(intercreditor principles).*

(b) Any amendments shall be in writing and signed by the facility agent and the borrower.][[4]](#footnote-3)

12.6 **Right of set-off and Usury Savings**

(a) If an event of default will have occurred and be continuing, each finance party is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set-off and apply any and all amounts at any time held, and other obligations at any time owing, by a finance party , to or for the credit or the account of borrower against any and all of the facility obligations of borrower now or hereafter existing under the agreement, irrespective of whether or not a finance party will have made any demand under the agreement and although such obligations of borrower may be contingent or unmatured. The rights of a finance party under this Clause are in addition to other rights and remedies (including other rights of setoff) that it may have. Each finance party agrees to notify borrower promptly after any such set-off and application; provided that the failure to give such notice will not affect the validity of such set-off and application.

(b) Nothing contained herein will be deemed to require the payment of interest or other charges by borrower in excess of the amount a finance party may lawfully charge under the applicable usury laws. In the event the finance party will collect monies which are deemed to constitute interest which would increase the effective interest rate hereunder to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the legal rate will, upon such determination, at the option of the finance party, be returned to borrower or credited against the principal balance of any outstanding loan or note made hereby.

12.7 **Severability**

If one or more provisions of the agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, (i) such provision will be excluded from the agreement, (ii) the balance of the agreement will be interpreted as if such provision were so excluded and (iii) the balance of the agreement will be enforceable in accordance with its terms so long as doing so will not materially affect the economic agreements of the parties thereunder.

12.8 **Transfer Fees and Taxes**

(a) The Borrower will pay all costs imposed by any bank, foreign exchange agent or other financial institution in connection with repayment of the Facility Obligations to a Finance Party. The Finance Party will pay all costs imposed on the Finance Party by any bank, foreign exchange agent or other financial institution to the extent attributable to a Finance Party’s disbursement of proceeds to the Borrower.

* + 1. The Borrower will be responsible for all Indemnified Taxes.
    2. If the Borrower is required to withhold or deduct Indemnified Taxes from any payment hereunder, the sum payable to a Finance Party by Borrower shall be increased as necessary so that after any required withholding or deductions (including withholding or deductions applicable to additional sums payable under this section), the Finance Party receives an amount equal to the sum it would have received had no such withholding or deduction been made. The Finance Party shall cooperate in good faith with the Borrower to deliver forms indicating that it is entitled to an exemption from or reduction of withholding Taxes, if such exemption or reduction is applicable to the Finance Party, with respect to payments made under the Agreement; *provided,* that such form delivery shall not be required if in the Finance Party’s reasonable judgment such delivery would subject the Finance Party to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position; *provided further*, that the foregoing shall not otherwise limit in any way Borrower’s obligations.

12.9 **Counterparts**

The Agreement may be executed by one or more of the Parties to the Agreement on any number of separate counterparts, and all of said counterparts taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page of the Agreement by facsimile transmission or other electronic means will be effective as delivery of a manually executed counterpart hereof.

12.10 **No Limitation on Remedies**

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

12.11 **English Language**

The Agreement and all documents to be furnished or communications made in connection herewith shall be in English or, if in another language, shall be accompanied by a certified translation into English, which translation shall govern between the Parties. In the event that the Agreement is translated into any language other than English, the English version of this Agreement will control in all instances.

12.12 **Complete Agreement**

The Agreement is intended by the parties to be a complete and final expression of their agreement.

12.13 **Third Party Rights**

The Agreement is made solely and specifically between the parties for the benefit of the parties. The Agreement is not intended to be for the benefit of and shall not be enforceable by any other person.

**Schedule 1**

**Form of Advance Request**

To: **[*INSERT*] the Facility Agent**

From: [ ]

Date: [          ]

[ ]  **Facility Agreement  
dated [**          **] 2021** (the **Agreement**)

1. We refer to the Agreement. Terms defined in the Agreement have the same meaning in this Advance Request unless given a different meaning in this Advance Request.
2. We wish to borrow a Advance on the following terms:
   * + 1. **Proposed Advance Funding Date:** [          ] (or, if that is not a Business Day, the next Business Day);
       2. **Amount:** [            ] or, if less, the Available Facility.
3. We confirm that each condition precedent under the Agreement which is required to be satisfied on the date of this Advance Request is satisfied.
4. The proceeds of this Advance should be credited to the Proceeds Account (as defined below)
5. This Advance Request is irrevocable.

**“Proceeds Account”** means

|  |  |
| --- | --- |
| **Name of Bank** |  |
| **Account Name** |  |
| **Account Number** |  |
| **Bank Address** |  |
| **Sort Code** |  |
| **SWIFT Code** |  |

**By:**

**For and behalf of** [ ]

**SCHEDULE 2**

**INTERCREDITOR PRINCIPLES[[5]](#footnote-4)**

1. **Amendments and waivers**
   1. Save as set out in this Clause, any term of the Finance Documents may be amended or waived only with the consent of the Borrower and the Commercial Lender and any such amendment or waiver will be binding on all the Parties.
   2. The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause. The Facility Agent must notify the other Parties promptly of any amendment or waiver affected by it under this paragraph.
   3. Each Obligor agrees to any amendment or waiver permitted by this Clause which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph, require the consent of any Guarantor if the guarantee under the Finance Documents is to remain in full force and effect.
2. **All Funder Approval**
   1. The following matters may only be amended or waived with the consent of all Funders:
      1. an extension to the date of payment of any amount under the Finance Documents;
      2. a change in currency of any payment of principal, interest, fees or commission payable;
      3. an increase in or an extension of any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
      4. a change to an Obligor
      5. any provision or matter which expressly requires the consent of all the Funders (whether or not the relevant matter would constitute a Default if not waived);
      6. the nature or scope or any term of the Security Interests provided in terms of the Security Documents or the assets which from time to time are expressed to be the subject of Security Interests or the manner in which the proceeds of enforcement of the Security Interests are distributed unless relating to a sale or disposal of an asset which is the subject of the Security Interests where such sale or disposal is expressly permitted under this Agreement or any other Finance Document;
      7. the release of any security forming the subject matter of a Security Document 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 Security Interest where such sale or disposal is expressly permitted under this Agreement or any other Finance Document;
      8. any priorities of payments or cash flow or definition affecting amounts that may be received by the Funders, the credit enhancement for the Funders or the pricing of an Advance which may have an adverse effect on the Funders;
      9. An amendment or waiver which relates to the rights or obligations of the Facility Agent or the Security Agent (an Administrative Party) may only be made with the consent of that Administrative Party.
      10. the Note Terms
      11. a decision to:
          1. cancel all or any part of the Committed Facility whereupon it shall immediately be cancelled;
          2. declare that all of the Advances, together with accrued interest, and all other amounts accrued or outstanding be immediately due and payable, whereupon they shall become immediately due and payable;
          3. declare that all of the Loans be payable and all Notes redeemed on demand, whereupon they shall immediately become payable on demand by the Facility Agent; and/or
          4. take any action, including delivery of notices or enforcement action under any Finance Document take any enforcement action with respect to the Transaction Security or

**[INSERT OTHERS]**

1. Note – list of financial indebtedness to be updated depending on the specifics of the particular transaction [↑](#footnote-ref-0)
2. Note – to be updated depending on the specifics of the particular transaction [↑](#footnote-ref-1)
3. Note – list of permitted security to be updated depending on the specifics of the particular transaction [↑](#footnote-ref-2)
4. Note – insert bespoke intercreditor provisions as required. [↑](#footnote-ref-3)
5. Note that this list represents a starting point for intercreditor discussions and assumes that the Commercial Lender will take the lead on standard waivers and amendments and will only require the consent of the CrowdFunder for fundamental changes. [↑](#footnote-ref-4)