

EXECUTION VERSION

FACILITIES AGREEMENT AMENDMENT AND RESTATEMENT AGREEMENT

dated 23 November 2017

relating to a facilities agreement originally dated 3 March 2016

for

Sutton Harbour Holdings Plc

made available by

The Royal Bank of Scotland plc

Osborne Clarke LLP

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This Deed is dated

23 November 2017

Between:

- (1) **Sutton Harbour Holdings Plc** (registration number: 02425189, incorporated in England and Wales) (the "**Parent**");
- (2) **Sutton Harbour Company** (registration number: ZC000187, incorporated in England and Wales) (together with the Parent, the "**Original Borrowers**");
- (3) **The Entities** listed in Schedule 1 (*The Parties*) as original guarantors (the "**Original Guarantors**"); and
- (4) **The Royal Bank of Scotland plc** as agent for **National Westminster Bank plc** as the Lender (the "**Lender**").

Background:

- (A) This Deed is supplemental to a facilities agreement (the "**Facilities Agreement**") between the parties to this Deed dated 3 March 2016, on the terms and conditions of which the Lender agreed to make available to the Original Borrowers loan facilities in the maximum aggregate principal amount of £25,000,000 on the terms set out therein.
- (B) The Parent has requested that the Facilities Agreement be amended and restated and the Lender has agreed to do so on and in consideration of the terms and conditions of this Deed.

It is agreed as follows:

1. Definitions and interpretation

1.1 Definitions

In this Deed the following definition shall apply:

"Acquisition" means the proposed acquisition of up to 70% (but not less than 50% plus one share) of the entire issued share capital of the Parent by the Purchaser pursuant to a public offer document to be published by the Purchaser in accordance with the City Code on Takeovers and Mergers.

"Acquisition Condition" means the Acquisition being declared or otherwise becoming wholly unconditional (provided that the Purchaser shall not waive the acceptance condition where to do so would result in it acquiring less than 50% plus one share of the entire issued share capital of the Parent) in accordance with the terms of the public offer document to be published by the Purchaser in accordance with the City Code on Takeovers and Mergers and such other terms as may be required by the City Code on Takeovers and Mergers.

"Effective Date" means the date on which the latest of the following occurs:

- (a) the Lender is provided with a copy of the public offer document published by the Purchaser in connection with the Acquisition in accordance with the City Code on Takeovers and Mergers;
- (b) the Lender is provided with evidence of satisfaction of the Acquisition Condition;
- (c) the Lender is provided with evidence of completion of the Acquisition; and
- (d) the Lender or its solicitors, Osborne Clarke LLP, gives notice to the Parent that it has received evidence that each of the conditions listed at Schedule 2 (*Conditions Precedent*) have been satisfied.

"Purchaser" means FB Investors LLP (registration number: OC419889), a limited liability partnership incorporated in England and Wales and whose registered office is at c/o Lopian Gross Barnett & Co, 6th Floor, Cardinal House, 20 St. Mary's Parsonage, Manchester, M6 2LG.

1.2 **Construction**

- (a) Unless a contrary indication appears, a term defined in the Facilities Agreement (in the form set out in Schedule 3 (*Form of Restated Agreement*)) has the same meaning in this Deed.
- (b) Unless a contrary indication appears, references in the Facilities Agreement to **"this Deed"** shall be to the Facilities Agreement as amended by this Deed and otherwise from time to time.
- (c) Unless a contrary intention appears, sub-clause 1.2 (*Construction*), sub-clause 1.4 (*Third party rights*), clause 32 (*Partial Invalidity*), clause 37 (*Counterparts*) and clause 39 (*Enforcement*) of the Facilities Agreement apply to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any reference to **"this Deed"** or the **"Finance Documents"** being deemed to be a reference to this Deed.
- (d) Unless a contrary indication appears, references to clauses and schedules are to clauses and schedules in this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.
- (e) Subject to the provisions of this Deed:
 - (i) the Facilities Agreement shall remain in full force and effect and shall be read and construed as one document with this Deed; and
 - (ii) nothing in this Deed shall constitute a waiver or release of any right or remedy of the Lender under the Finance Documents, nor otherwise prejudice any right or remedy of the Lender under the Facilities Agreement or any other Finance Document.

1.3 **Finance Document**

This Deed is a Finance Document.

2. **Representations and Warranties**

Each of the Obligors makes the representations and warranties set out in this clause to the Lender.

2.1 **Repeating Representations**

All of the Repeating Representations are true and accurate:

- (a) as if repeated on the date of this Deed with reference to the facts and circumstances subsisting on that date; and
- (b) as at the Effective Date with reference to the facts and circumstances subsisting on that date.

2.2 **No Default**

No Event of Default or event which, with the giving of notice, lapse of time or other condition may constitute an Event of Default has occurred or is continuing or would result from the execution of this Deed or the performance of the Facilities Agreement as amended hereby.

2.3 **Financial assistance**

The entering into of this Deed and the fulfilment of any obligations under it will not constitute unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 by any Obligor.

3. **Conditions Precedent**

3.1 Subject to sub-clause 3.2 below, the Facilities Agreement shall be amended and restated as provided in clause 4 upon the Effective Date.

3.2 The Effective Date shall be a Business Day on or before 28 February 2018. If the Effective Date shall not have occurred by close of business in London on that day (or such later date as the Lender and the Parent may agree in writing), the Facilities Agreement will not be amended in the manner contemplated by this Deed.

3.3 The conditions precedent referred to in Schedule 2 (*Conditions Precedent*) and within the definition of Effective Date are for the benefit of the Lender and the Lender may accordingly waive all or any of them, unconditionally or on such conditions as it may in its sole discretion think fit. That waiver shall not limit or restrict any other rights of the Lender in respect of the Facilities Agreement.

4. **Amendment and Restatement of Facilities Agreement**

With effect from the Effective Date the Facilities Agreement shall be amended and restated so as to take effect as set out in Schedule 3 to this Deed.

5. **Consent to Change of Control**

The Lender confirms that completion of the Acquisition shall not constitute a Change of Control for the purposes of Clause 8.1 (*Exit*) of the Facilities Agreement.

6. **Confirmation**

6.1 Each of the Obligors confirms its knowledge and acceptance of the Facilities Agreement as amended and restated by this Deed.

6.2 Each Obligor confirms that the Security Documents to which it is a party remain in full force and effect and continue to secure its obligations under the Finance Documents (as amended and restated by this Deed) notwithstanding the amendments effected by this Deed.

6.3 Each Obligor joins into this Deed in order to acknowledge and approve the terms of this Deed and confirms that all guarantees granted in favour of the Lender (under the Facilities Agreement or otherwise) shall remain in full force and effect following the Effective Date, in particular in relation to the variation of the obligations guaranteed, and continues to guarantee the obligations of each Obligor under the Facilities Agreement (as amended and restated by this Deed) and the other Finance Documents notwithstanding the amendments effected by this Deed.

7. **Amendment Fee and Expenses**

7.1 The Parent shall pay to the Lender an arrangement fee of £135,000 in connection with the amendment and restatement of the Facilities Agreement pursuant to the terms of this Deed. It is acknowledged that as at the date of this Deed £20,250 has already been paid and that the balance of £114,750 shall be payable within three Business Days of the Effective Date.

7.2 The Parent shall pay within three Business Days of written demand and on a full indemnity basis:

- (a) all costs and expenses (including pre-agreed legal expenses, out of pocket expenses and any value added tax thereon) reasonably incurred by the Lender in connection with the negotiation, preparation and execution of this Deed and each of the documents referred to in it and all matters leading up to it; and
- (b) all stamp, documentary, registration and other similar duties or taxes (including any payable by the Lender) on or in connection with this Deed and/or any other document referred to in it,

provided that such amounts may be demanded in writing on the earlier of:

- (i) the Effective Date;
- (ii) the date that the Acquisition lapses or is withdrawn pursuant to the terms of the public offer document to be published by the Purchaser in accordance with the City Code on Takeovers and Mergers or such other terms as may be required by the City Code on Takeovers and Mergers; and
- (iii) 28 February 2018 (or such later date as the Lender and the Parent may agree in writing).

The Lender shall be entitled to effect payment of all costs, expenses and other sums due and payable by the Parent under this clause by deduction from any Utilisation or by debiting any account of the Parent or any other Obligor held with the Lender. The obligation to pay such amounts is not conditional on the Effective Date occurring.

8. **Governing Law**

This Deed and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it will be governed by and construed in accordance with English law.

This Deed has been executed and is delivered as a deed on the date appearing at the head of page 1.

Schedule 1

The Parties

Name of Original Guarantor	Registration number (or equivalent, if any) Original Jurisdiction
Sutton Harbour Holdings Plc	02425189
Sutton Harbour Projects (No.2) Limited	06547580
Plymouth City Airport Limited	01213405
Sutton Harbour Services Limited	02421958
Sutton Harbour Projects Limited	06299193
Sutton Harbour Property and Regeneration Limited	05692318
Sutton Harbour Car Parks Limited	06030965

Schedule 2
Conditions Precedent

1. **Obligors**
 - 1.1 A copy of the constitutional documents of each Obligor or alternatively, in respect of any Obligor whose constitutional documents have not been amended since 3 March 2016 a certificate from a director of that Obligor addressed to the Lender confirming that there have been no such changes.
 - 1.2 A copy of a resolution of the board, or, if applicable, a committee of the board of directors of each Obligor:
 - (a) approving the terms of, and the transactions contemplated by, this Deed and any other Finance Documents to which it is a party (together the "**Relevant Documents**" and each a "**Relevant Document**") and resolving that it execute the Relevant Documents;
 - (b) authorising a specified person or persons to execute the Relevant Documents on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Relevant Documents.
 - 1.3 If applicable, a copy of a resolution of the board of directors of the relevant Obligors, establishing any committee referred to in paragraph 1.2 above.
 - 1.4 A specimen of the signature of each specified person authorised by the resolution referred to in paragraph 1.2 above in relation to the Relevant Documents.
 - 1.5 A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor (other than the Parent), approving the terms of, and the transactions contemplated by, the Finance Documents to which that Original Guarantor is a party.
 - 1.6 A certificate or certificates signed by a director of each Obligor in the form required by the Lender's solicitors:
 - (a) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on that Obligor to be exceeded; and
 - (b) certifying that each copy document relating to that Obligor specified in this Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Deed.
 - 1.7 A structure chart setting out the ultimate beneficial ownership of each Obligor assuming the Effective Date has occurred, and showing the ownership of each Property.
2. **Legal opinion**
 - 2.1 A legal opinion from Osborne Clarke LLP, legal advisers to the Lender in England, addressed to the Lender, substantially in the form distributed to and agreed by the Lender prior to signing this Deed.

3. **Finance Documents**

3.1 This Deed duly executed by each of the Obligors.

4. **Other documents and evidence**

4.1 A copy of the final form Rule 2.7 offer announcement to be published by the Purchaser in connection with the Acquisition in accordance with the City Code on Takeovers and Mergers.

4.2 A letter from the insurance broker to the Group dated no earlier than the date of this Deed addressed to the Lender listing the insurance policies of the Group and confirming that they are on risk, that the interest of the Lender is (or will be) noted on the policies and that the insurance for the Group at the date of this Deed is at an appropriate level and covering appropriate risks for the business carried out by the Group.

4.3 In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "Charged Company"), either:

(a) a certificate of an authorised signatory of the Parent certifying that:

(i) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and

(ii) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the date of this Deed; or

(b) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

4.4 A copy of any other Authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration or other document, opinion or assurance which the Lender considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document and which the Lender has notified the Parent of before the date of this Deed.

4.5 All documentation and information required by the Lender in relation to each Original Obligor and the Purchaser to enable it to comply with all necessary "know your customer" or similar identification procedures with which it is required to comply under applicable laws and regulations in connection with the transactions contemplated by the Finance Documents

4.6 A copy of the Annual Financial Statements, Semi-Annual Financial Statements and Quarterly Financial Statements most recently delivered pursuant to Clause 21.1 (*Financial statements*) of the Facilities Agreement.

4.7 A certificate signed by two directors of the Parent:

(a) confirming, and setting out (in reasonable detail) computations as to, compliance with Clause 22 (*Financial covenants*) of the Facilities Agreement as at the date of this Deed;

- (b) confirming that, in the reasonable opinion of the Parent, no Default is continuing or will occur during the period of 12 consecutive months immediately following the date of this Deed; and
- (c) attaching the projections for the Parent in respect of the period of 12 consecutive months immediately following the date of this Deed which demonstrate compliance with the financial covenants set out in Clause 22 (*Financial covenants*) of the Facilities Agreement during such period

Schedule 3
Form of Restated Agreement

EXECUTION VERSION

FACILITIES AGREEMENT

originally dated 3 March 2016

as amended and restated pursuant to an amendment and restatement agreement dated
23 November 2017

for

SUTTON HARBOUR HOLDINGS PLC

and

SUTTON HARBOUR COMPANY

made available by

THE ROYAL BANK OF SCOTLAND PLC acting as agent for NATIONAL WESTMINSTER BANK PLC

Osborne Clarke LLP

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This Agreement is originally made on 3 March 2016 as amended and restated from time to time

Between:

- (1) **SUTTON HARBOUR HOLDINGS PLC** (registered in England and Wales with company number 02425189) whose registered office is at Tin Quay House, Sutton Harbour, Plymouth, Devon, PL4 0RA (the "**Parent**");
- (2) **THE SUBSIDIARIES OF THE PARENT** listed in Schedule 1 (*The Original Obligors*) as original borrowers (together with the Parent, the "**Original Borrowers**");
- (3) **THE SUBSIDIARIES OF THE PARENT** listed in Schedule 1 (*The Original Obligors*) as original guarantors (together with the Parent, the "**Original Guarantors**"); and
- (4) **THE ROYAL BANK OF SCOTLAND PLC** as agent for **NATIONAL WESTMINSTER BANK PLC** as lender (the "**Original Lender**").

It is agreed as follows:

SECTION 1

INTERPRETATION

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

"Acceptable Bank" means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; the Lender or any Affiliate of the Lender;
- (b) The Royal Bank of Scotland plc;
- (c) National Westminster Bank Plc; or
- (d) any other bank or financial institution approved by the Lender.

"Accession Deed" means a document substantially in the form set out in Schedule 4 (*Form of Accession Deed*).

"Accounting Principles" means generally accepted accounting principles in the United Kingdom, including where relevant, IFRS.

"Accounting Reference Date" means 31 March.

"Additional Borrower" means a company which becomes an Additional Borrower in accordance with clause 26 (*Changes to the Obligors*).

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with clause 26 (*Changes to the Obligors*).

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

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

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

"Ancillary Document" means each document relating to or evidencing the terms of an Ancillary Facility.

"Ancillary Facility" means any ancillary facility made available by the Lender to any member of the Group by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other ancillary facility made available by the Lender.

"Annual Financial Statements" has the meaning given to that term in clause 21 (*Information Undertakings*).

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

"Availability Period" means:

- (a) in relation to each Term Facility, the period from and including the date of this Agreement to and including the date falling 5 Business Days thereafter; and
- (b) in relation to the Revolving Facility, the period from and including the date of this Agreement to and including the date falling one month prior to the Termination Date.

"Available Commitment" means, in relation to a Facility, the Commitment under that Facility minus:

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

but for the purposes of calculating the Available Commitment in relation to any proposed Utilisation under the Revolving Facility only, any Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from the Revolving Facility Commitment.

"Balance Sheet" means the balance sheet of the relevant member of the Group for the relevant Financial Year (to include, without limitation, a detailed breakdown of fixed assets, current assets, current liabilities, long-term liabilities and shareholder funds as separately identified figures).

"Base Case Model" means (i) the refinance report dated 9 November 2015 and (ii) the 5 year plans to 31 March 2021, each in agreed form relating to the Group and prepared by the Parent.

"Borrower" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 26 (*Changes to the Obligors*)

"Break Costs" means the amount (if any) by which:

(a) the interest excluding the Margin which the Lender should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Budget" means in relation to any period, any budget delivered by the Parent to the Lender in respect of that period pursuant to sub-clause 21.4 (*Budget*) (including for the Financial Years ending on 31 March 2017 and 31 March 2018, an analysis of any key variances from budgets set out in the Base Case Model).

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

"Capital Expenditure" has the meaning given to that term in clause 22.1 (*Financial definitions*).

"Cash" means, at any time, cash denominated in Sterling in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with other Obligors) beneficially entitled and for so long as:

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

"Cash Equivalent Investments" means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

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

in each case, denominated in Sterling, USD or Euro and to which any Obligor is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"Cashflow Statement" means the cashflow statement of the relevant member of the Group for the relevant Financial Year (to be structured and presented in FRS1 funds flow format and to include, without limitation, a 12-month look forward, cash balances of the Group at the end of each Financial Quarter, variance analysis of any material changes, the status of any proposed Property Disposals and material sensitivities).

"Change of Control" means:

- (a) JVCo ceases directly or indirectly to control the Parent;
- (b) Beinhaker Design Services Limited and 1895 Management Holdings Company together, or Beinhaker Design Services Limited individually, cease(s) to control JVCo; or
- (c) SHC ceases to be a wholly-owned Subsidiary of the Parent.

For the purposes of paragraph (a) of this definition:

- (i) **"control"** of the Parent means:

- (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Parent;
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or
 - (iii) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply; and/or
- (B) the holding beneficially of more than 50% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); and

- (ii) **"acting in concert"** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent.

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

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

"Commitment" means the Facility A Commitment, the Facility B Commitment or the Revolving Facility Commitment.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*) or otherwise in form and substance satisfactory to the Lender.

"Confidential Information" means all information relating to the Parent, any Obligor, the Group, the Finance Documents or a Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or a Facility from any member of the Group or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (a) information that:
 - (i) is or becomes public information other than as a direct or indirect result of any breach by the Lender of clause 35 (*Confidential Information*); or
 - (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (iii) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (i) or (ii) or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(b) any Funding Rate.

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

"Contribution Notice" means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004.

"Covenant Calculations" means the covenant calculations of the Parent for the Relevant Period (to include, without limitation, 12-month look forward tests (where appropriate), compliance certificates and a reconciliation to the figures presented in the relevant Profit and Loss Account, Balance Sheet and Cashflow Statement).

"CTA" means the Corporation Tax Act 2009.

"Default" means an Event of Default or any event or circumstance specified in clause 24 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Lender.

"Disruption Event" means either or both of:

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

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

"Dormant Subsidiary" means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £5,000 or more or its equivalent in other currencies.

"EBIT" means, in respect of any Relevant Period, the trading profit of the Group before deduction of interest, taxation and any Exceptional Items but after the deduction of Extraordinary Items and excluding any refinancing costs (and the amortisation thereof) paid in the first 12 months following the date of this Agreement.

"EBITA" means in relation to any specified period, EBIT for the Group after adding back any amortisation of goodwill (to the extent deducted in arriving at EBIT) in respect of the period to which such accounts relate.

"EBITDA" has the meaning given to that term in clause 22.1 (*Financial definitions*).

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

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

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

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

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

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

"Event of Default" means any event or circumstance specified as such in clause 24 (*Events of Default*).

"Existing Facilities" means the facilities made available by the Lender pursuant to the credit agreement originally dated 16 December 2010 (as amended from time to time) and entered into between, amongst others, the Parent and the Lender.

"Facility" means a Term Facility or the Revolving Facility.

"Facility A" means the term loan facility made available under this Agreement as described in clause 2.1(a)(i) (*The Facilities*).

"Facility A Commitment" means £12,000,000 to the extent not cancelled or reduced under this Agreement.

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

"Facility B" means the term loan facility made available under this Agreement as described in clause 2.1(a)(ii) (*The Facilities*).

"Facility B Commitment" means £10,500,000, to the extent not cancelled or reduced under this Agreement.

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

"Facility Office" means the office or offices through which the Lender will perform its obligations under this Agreement.

"Fallback Interest Period" means one week.

"FATCA" means:

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

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

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

"Finance Document" means this Agreement, the First Amendment Agreement, any Accession Deed, any Ancillary Document, any Compliance Certificate, any Hedging Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a **"Finance Document"** by the Lender and the Parent.

"Finance Lease" has the meaning given to that term in clause 22.1 (*Financial definitions*).

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

- (a) monies borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the latest scheduled Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the

agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;

- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j).

"Financial Quarter" has the meaning given to that term in clause 22.1 (*Financial definitions*).

"Financial Support Direction" means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004.

"Financial Year" has the meaning given to that term in clause 22.1 (*Financial definitions*).

"First Amendment Agreement" means the amendment and restatement agreement entered into in relation to this Agreement by the Parties on or about 23 November 2017.

"First Amendment Date" means the Effective Date (as defined in the First Amendment Agreement).

"Funding Rate" means any individual rate notified by the Lender to the Parent pursuant to clause 12.3(a)(ii) (*Cost of funds*).

"Group" means the Parent and each of its Subsidiaries for the time being.

"Group Structure Chart" means the group structure chart in the agreed form.

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 26 (*Changes to the Obligors*).

"Harbour Revision Order" means The Sutton Harbour Revision Order 2010 (statutory instrument 2010 No. 1887) made on 20 July 2010 and which came into force on 10 August 2010.

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Borrower and the Lender for the purpose of hedging the types of liabilities and/or risks in relation to the Term Facilities which the Hedging Letter (by reference to its form at the time that agreement is entered into) either requires or had required, to be hedged.

"Hedging Letter" means the letter dated on or before the date of this Agreement and made between the Lender and the Parent describing the hedging arrangements to be entered into in respect of the interest rate liabilities and/or the exchange rate risks of the Borrowers of, and in relation to, the Term Facilities.

"Historic Screen Rate" means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than 3 Business Days before the Quotation Day.

"Holding Account" means an interest-bearing account:

- (a) held in England by an Obligor with the Lender;
- (b) identified in a letter between the Parent and the Lender as a Holding Account; and

- (c) subject to Security in favour of the Lender which Security is in form and substance satisfactory to the Lender,

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

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

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

"Intellectual Property" means:

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

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

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

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

each for the currency of that Loan and each of which is as of a day which is no more than 3 Business Days before the Quotation Day.

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

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

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

"ITA" means the Income Tax Act 2007.

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

"JVCo" means FB Investors LLP (registration number: OC419889), a limited liability partnership incorporated in England and Wales and whose registered office is at c/o Lopian Gross Barnett & Co, 6th Floor, Cardinal House, 20 St. Mary's Parsonage, Manchester, M2 2LG.

"Legal Opinion" means any legal opinion delivered to the Lender under clause 4.1 (*Initial conditions precedent*) or clause 26 (*Changes to the Obligors*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

"Lender" means:

- (a) the Original Lender; and
- (b) any New Lender,

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

"Lender's Spot Rate of Exchange" means the Lender's spot rate of exchange for the purchase of the relevant currency with Sterling in the London foreign exchange market at or about 11:00 a.m. on a particular day.

"LIBOR" means, in relation to any Loan:

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

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

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LMA" means the Loan Market Association.

"Loan" means a Term Loan or a Revolving Facility Loan.

"Mandatory Prepayment Account" means an interest-bearing account:

- (a) held in England by a Borrower with the Lender;
- (b) identified in a letter between the Parent and the Lender as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Lender which Security is in form and substance satisfactory to the Lender; and

- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

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

"Margin" means:

- (a) in relation to any Facility A Loan 2.50% per annum;
- (b) in relation to any Facility B Loan 3.25% per annum;
- (c) in relation to any Revolving Facility Loan 2.5% per annum;
- (d) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
- (e) in relation to any other Unpaid Sum, the highest rate specified above.

"Material Adverse Effect" means in the reasonable opinion of the Lender a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
- (b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- (c) the validity, legality and enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Lender under any of the Finance Documents.

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

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

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

"New Lender" has the meaning given to that term in clause 25 (*Changes to the Lender*).

"Obligor" means a Borrower or a Guarantor.

"Obligors' Agent" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to clause 2.2 (*Obligors' Agent*).

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

"Original Financial Statements" means:

- (a) in relation to the Parent:
 - (i) its consolidated audited financial statements for its Financial Year ended 31 March 2015; and
 - (ii) its consolidated quarterly financial statements for its Financial Quarter ended 31 December 2015; and
- (b) in relation to each Original Obligor other than the Parent, its audited financial statements for its Financial Year ended 31 March 2015; and
- (c) in relation to any other Obligor, its audited financial statements delivered to the Lender as required by clause 26 (*Changes to the Obligors*).

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Obligor, as at the date on which that Additional Obligor becomes Party as a Borrower or a Guarantor (as the case may be).

"Original Obligor" means an Original Borrower or an Original Guarantor.

"Parent's Auditors" means, at any time, the statutory auditors of the Parent at such time.

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

"Party" means a party to this Agreement.

"PAT" means in relation to any specified period, EBIT for the Group after the deduction of interest and corporation tax payable in respect of the period to which the relevant accounts relate.

"PBIT" means in relation to any specified period, EBIT for the Group before corporation tax payable and the deduction of interest in respect of the period to which the relevant accounts relate.

"PBT" means in relation to any specified period, EBIT for the Group before corporation tax payable but after the deduction of interest in respect of the period to which such accounts relate.

"Pensions Regulator" means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004.

"Permitted Acquisition" means:

- (a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
- (b) an acquisition of shares or securities pursuant to a Permitted Share Issue;
- (c) an acquisition of securities which are Cash Equivalent Investments so long as those Cash Equivalent Investments become subject to the Transaction Security as soon as is reasonably practicable;
- (d) the incorporation of a company which on incorporation becomes a member of the Group, but only if:

- (i) that company is incorporated in England and Wales or Scotland with limited liability; and
 - (ii) if the shares in the company are owned by an Obligor, Security over the shares of that company (except for the avoidance of doubt Transaction Security shall not be required to be granted over the shares in SH SPV), in form and substance satisfactory to the Lender, is created in favour of the Lender within 30 days of the date of its incorporation; or
- (e) an acquisition of (A) all of the issued share capital of a limited liability company or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern, but only if:
- (i) no Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (ii) the acquired company, business or undertaking is incorporated or established, and carries on its principal business in, the United Kingdom and is engaged in a business substantially the same as that carried on by the Group;
 - (iii) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of acquisition (the "**Consideration**") does not exceed £1,000,000 or its equivalent;
 - (iv) the Parent has delivered to the Lender not later than 20 Business Days before legally committing to make such acquisition a certificate signed by two directors of the Parent:
 - (A) attaching a copy of the latest audited accounts (or if not available, management accounts) of the target company or business; and
 - (B) providing calculations showing in reasonable detail that the Parent would have remained in compliance with its obligations under clause 22 (*Financial Covenants*) if the covenant tests were recalculated for the specified period ending on the most recent Quarter Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that specified period.

"Permitted Disposal" means any sale, lease, licence, transfer or other disposal which, except in the case of paragraph (b), is on arm's length terms:

- (a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and

- (iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
- (c) of assets (other than shares, businesses, Real Property or Intellectual Property) in exchange for other assets comparable or superior as to type, value and quality;
- (d) of obsolete or redundant vehicles, plant and equipment for cash;
- (e) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (f) constituted by a licence of intellectual property rights permitted by clause 23.25 (*Intellectual Property*);
- (g) to a Joint Venture, to the extent permitted by clause 23.9 (*Joint ventures*);
- (h) arising as a result of any Permitted Security;
- (i) on and from the SH Permitted Transfer Date, an SH Property Disposal;
- (j) on and from the SH Permitted Transfer Date, the disposal by the SH SPV of any units constructed on the SH Property provided that the proceeds of such disposal are applied by the SH SPV and the SH Holdco in accordance with paragraphs (a) and (b) (respectively) of clause 23.36 (*Obligations of the SH Holdco and the SH SPV*); and
- (k) of assets (other than shares) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs or as a Permitted Transaction) does not exceed £100,000 (or its equivalent) in any Financial Year of the Parent.

"Permitted Distribution" means:

- (a) the payment of a dividend to the Parent or any other Obligor;
- (b) the payment of a dividend by the Parent to its shareholders **provided that:**
 - (i) the proposed payment is in accordance with the Parent's stated dividend policy;
 - (ii) no breach of any financial covenant or other Default has occurred and is continuing or would be caused by the making of the proposed payment;
 - (iii) a certificate signed by two executive directors of the Parent is provided to the Lender containing a confirmation (without personal liability) that the relevant directors have carefully considered the position and are satisfied that there is no reasonable likelihood that a Default would occur in the next 12 months (assuming the proposed payment has been made) and annexing supporting calculations and breakdowns; and
 - (iv) the conditions set out in clause 23.19(b)(i) (*Dividends and share redemption*) are satisfied.

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) arising under any of the Finance Documents;
- (b) owed to the Lender or to the extent covered by a letter of credit, guarantee or indemnity issued under an Ancillary Facility;

- (c) arising under a Permitted Loan or a Permitted Guarantee or as permitted by clause 23.28 (*Treasury Transactions*);
- (d) under Finance Leases of vehicles, plant, equipment or computers, **provided that** the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £600,000 (or its equivalent in other currencies) at any time; and
- (e) on and from the SH Permitted Transfer Date, incurred by the SH SPV in order to fund the development of the SH Property.

"Permitted Guarantee" means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade and the contingent amount of which does not exceed £1,000,000 (or its equivalent) in aggregate for the Group at any time;
- (c) any guarantee of a Joint Venture to the extent permitted by clause 23.9 (*Joint Ventures*);
- (d) any guarantee permitted under clause 23.20 (*Financial Indebtedness*);
- (e) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (d) of the definition of "Permitted Security"; or
- (f) any indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which indemnity is in a customary form and subject to customary limitations.

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

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

does not exceed £100,000 (or its equivalent in other currencies).

"Permitted Loan" means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;

- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (c) of that definition);
- (c) a loan made to a Joint Venture to the extent permitted under clause 23.9 (*Joint Ventures*);
- (d) a loan made by an Obligor (other than the Parent) to another Obligor (other than the Parent) or made by a member of the Group which is not an Obligor to another member of the Group (other than the Parent);
- (e) any loan made by an Obligor (other than the Parent) to a member of the Group which is not an Obligor so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £100,000 (or its equivalent) at any time;
- (f) a loan made by the Parent to the SH Holdco in a maximum aggregate amount of £2,000,000 in respect of the soft development costs of the SH Property, provided that such loan is funded by an issue of shares by the Parent pursuant to paragraph (a) of the definition of "Permitted Share Issue";
- (g) on and from the SH Permitted Transfer Date, a loan made by an Obligor to the SH Holdco in respect of consideration payable to that Obligor for the SH Property Disposal and/or the development costs of the SH Property; and
- (h) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed £50,000 (or its equivalent) at any time,

so long as in the case of paragraphs (d), (e), (f) and (g), the creditor of such Financial Indebtedness shall (if it is an Obligor) grant security over its rights in respect of such Financial Indebtedness in favour of the Lender on terms acceptable to the Lender.

"Permitted Security" means:

- (a) the Transaction Security;
- (b) the legal charge dated 27 April 2004 and granted by Plymouth City Airport Limited in favour of The Council of the City of Plymouth;
- (c) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (d) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;
- (e) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (f) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the

supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;

- (g) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (d) of the definition of "Permitted Financial Indebtedness"; or
- (h) on and from the SH Permitted Transfer Date, any Security or Quasi-Security granted by:
 - (i) the SH Holdco over the shares that it holds in the SH SPV; and
 - (ii) the SH SPV over any or all of its assets,

in each case, in support of Financial Indebtedness permitted pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness".

"Permitted Share Issue" means an issue of ordinary shares:

- (a) by the Parent to the JVCo, paid for in full in cash upon issue and which by their terms are not redeemable and where (i) such shares are of the same class and on the same terms as those initially issued by the Parent, and (ii) such issue does not lead to a Change of Control of the Parent; and
- (b) by a member of the Group which is a Subsidiary to its immediate Holding Company for non-cash consideration where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms.

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to an Obligor; or
- (c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms.

"Practical Completion" means, in respect of a given phase of the SH Property development, the date on which the certificate of practical completion (as defined in the relevant development agreement) has been issued in respect of that phase in accordance with such agreement.

"Profit and Loss Account" means the detailed profit and loss account of the relevant member of the Group for the relevant Financial Year to include, without limitation:

- (a) by member of the Group (or division where appropriate), turnover, gross margin and EBITDA as separately identified figures; and
- (b) on a consolidated Group basis, EBITA, PBIT, PBT and PAT as separately identified figures.

"Properties" means each of the properties listed in Schedule 8 (*Properties*) and any other Real Property acquired by an Obligor after the date of this Agreement, provided that the SH Property shall cease to be a Property for the purposes of this Agreement on and from the date

it is transferred to SH SPV in accordance with this Agreement (unless and until the SH Property Disposal is reversed in accordance with the terms of this Agreement and the undertaking given pursuant to paragraph (g) of the definition of "SH Permitted Transfer Date", after which the SH Property shall once more be a Property). A reference to a "Property" is a reference to any of the Properties.

"Property Disposal" means as such term is defined in clause 8.2 (*Disposal, Insurance, SH and Property Disposal Proceeds*).

"Property Holding Account" means an interest-bearing account:

- (a) held by an Obligor with the Lender;
- (b) identified in a letter between the Parent and the Lender as the Property Holding Account; and
- (c) subject to Security in favour of the Lender which Security is in form and substance satisfactory to the Lender,

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

"Property Valuation Report" means each of:

- (a) the valuation report in relation to certain of the Properties by JLL dated 30th September 2015;
- (b) the valuation report in relation to certain of the Properties by JLL dated 31st March 2015;
- (c) the valuation and survey report in relation to certain of the Properties by DTZ dated 21 February 2013 (containing a valuation as at 10 December 2012); and
- (d) any other valuation obtained by the Lender under Clause 21.10 (*Valuation and environmental reports*),

in each case, addressed to, and/or capable of being relied upon, by the Lender.

"Qualifying Lender" has the meaning given to that term in clause 14 (*Tax gross-up and Indemnities*).

"Quarter Date" has the meaning given to that term in clause 22.1 (*Financial definitions*).

"Quasi-Security" has the meaning given to that term in clause 23.14 (*Negative pledge*).

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

"Real Property" means:

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

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

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

"Relevant Jurisdiction" means, in relation to an Obligor:

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

"Relevant Market" means the London interbank market.

"Relevant Period" has the meaning given to that term in clause 22.1 (*Financial definitions*).

"Repeating Representations" means each of the representations set out in clause 20.2 (*Status*) to clause 20.7 (*Governing law and enforcement*), clause 20.11 (*No default*), clause 20.12(f) (*No misleading information*), clause 20.13 (*Original Financial Statements*), clause 20.20 (*Ranking*) to clause 20.22 (*Legal and beneficial ownership*), clause 20.28 (*Centre of main interests and establishments*) and clause 20.32 (*Sanctions*).

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

"Resignation Letter" means a letter substantially in the form set out in Schedule 5 (*Form of Resignation Letter*).

"Restricted Person" means a person that is:

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

"Revolving Facility" means the revolving credit facility made available under this Agreement as described in clause 2.1(a)(iii) (*The Facilities*).

"Revolving Facility Commitment" means £2,500,000 to the extent not cancelled or reduced under this Agreement.

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

"Revolving Facility Utilisation" means a Revolving Facility Loan.

"Rollover Loan" means one or more Revolving Facility Loans:

- (a) made or to be made on the same day that a maturing Revolving Facility Loan is due to be repaid;

- (b) the aggregate amount of which is equal to or less than the amount of the maturing Revolving Facility Loan;
- (c) in the same currency as the maturing Revolving Facility Loan; and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Revolving Facility Loan.

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

"Sanctions Authority" means:

- (a) the United Nations;
- (b) the United States of America;
- (c) the European Union;
- (d) the United Kingdom of Great Britain and Northern Ireland; and
- (e) the governments and official institutions or agencies of any of paragraphs (a) to (d) above, including without limitation, OFAC, the United States Department of State, and Her Majesty's Treasury.

"Sanctions List" means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty's Treasury, or any similar list issued or maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

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

"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.

"Selection Notice" means a notice substantially in the form set out in Part 2 of Schedule 3 (*Requests and Notices*) given in accordance with clause 11 (*Interest Periods*) in relation to a Term Facility.

"SH Holdco" means a company incorporated in England and Wales with limited liability on or after the First Amendment Date, the entire issued share capital of which is owned by an Obligor, and which does not trade, carry on any business, own any assets or incur any liabilities except for ownership of the entire issued share capital of the SH SPV, intra-Group debit balances and intra-Group credit balances.

"SH Permitted Transfer Date" means the date on which the Lender has notified the Parent that it has received all of the following documents and other evidence in form and substance satisfactory to the Lender:

- (a) a copy of the constitutional documents of the SH Holdco and the SH SPV;

- (b) a copy of the agreed form documentation effecting the SH Property Disposal (with a duly executed copy to be provided immediately following completion of the SH Property Disposal);
- (c) the original share certificate(s) and duly executed stock transfer form(s) relating to the entire issued share capital in the SH Holdco, together with any other documentation that the Lender may reasonably require in order to perfect the Transaction Security over the entire issued share capital in the SH Holdco;
- (d) evidence that the SH Property Disposal does not, and could not reasonably be expected to have:
 - (i) any adverse effect on the access to the Properties (other than the SH Property);
 - (ii) any material adverse effect on the value of those other Properties resulting from access changes,

provided that, where the SH Property Disposal requires a change in the access to a Property (other than the SH Property), that Property is granted replacement access rights satisfactory to the Lender (acting reasonably);

- (e) a copy of the outline planning permission granted to the Group in respect of the development of the SH Property;
- (f) an undertaking from the SH Holdco to the Lender (satisfactory to the Lender, acting reasonably) to, subject to compliance with all applicable law and its constitutional documents: (i) pay any SH Proceeds to its immediate Holding Company for application in accordance with clause 8.2(b) (*Disposal, Insurance, SH and Property Disposal Proceeds*), (ii) supply to the Lender regular updates regarding the development of the SH Property, the sale of units at it and the cash position of the SH SPV, (iii) take all reasonable steps required to procure the reversal of the SH Property Disposal in circumstances where the proposed financing and development of the SH Property has not begun within 12 months of the date of the SH Permitted Transfer Date, and (iv) procure that the SH SPV shall use all cash available to it (other than any SH Surplus Cash) for the sole purposes of the development of the SH Property and for servicing any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness";
- (g) an undertaking from the SH SPV to the Lender (satisfactory to the Lender, acting reasonably) to, subject to compliance with all applicable law, its constitutional documents and the terms of any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness": (i) pay to SH Holdco by way of dividend or intra-group loan repayment all SH Surplus Cash to the extent that (A) this constitutes a permitted payment (howsoever described) by the terms of any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness", and (B) Practical Completion has occurred in respect of the relevant phase of development of the SH Property, (ii) supply to the Lender regular updates regarding the development of the SH Property, the sale of units at it and the cash position of the SH SPV, (iii) take all reasonable steps required to reverse the SH Property Disposal in circumstances where the proposed financing and development of the SH Property has not begun within 12 months of the date of the SH Permitted Transfer Date, and (iv) use all cash available to it (other than any SH Surplus Cash) for the sole purposes of the development of the SH Property and for servicing any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness"; and
- (h) a certificate signed by two directors of the Parent:

- (i) confirming that, in the reasonable opinion of the Parent, no Default is continuing or will occur during the period of 12 consecutive months immediately following the SH Property Disposal; and
- (ii) attaching the projections for the Parent in respect of the period of 12 consecutive months immediately following the SH Property Disposal which demonstrate compliance with the financial covenants set out in clause 22 (*Financial covenants*) during such period.

"SH Proceeds" means amounts received by the SH Holdco by way of dividend or intra-group loan repayment from the SH SPV.

"SH Property" means the whole or any part of the land registered with freehold title numbers DN561436 and DN548554 and such other part of an Obligor's adjoining freehold land as is agreed between the Parent and the Lender (acting reasonably) and as is necessary to implement the planning permission referred to in paragraph (e) of the definition of "SH Permitted Transfer Date".

"SH Property Disposal" means

- (a) a disposal by an Obligor of all or part of the SH Property:
 - (i) to the SH SPV; and/or
 - (ii) to the SH Holdco, provided that the SH Holdco transfers the SH Property to the SH SPV promptly thereafter; and/or
- (b) a disposal by the SH Holdco of all or part of the SH Property to the SH SPV.

"SH SPV" means a company incorporated in England and Wales with limited liability on or after the First Amendment Date, the entire issued share capital of which is owned by the SH Holdco.

"SH Surplus Cash" means all surplus cash available to the SH SPV at a given time, calculated as follows:

- (a) all SH SPV's cash resources, income and sources of funds including, but not limited to, any intra-group loans and equity investment made available to the SH SPV by the SH Holdco and any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness"; less
- (b) any cash the SH SPV determines (acting reasonably and prudently) it should retain in order to be able to discharge the current and future liabilities it has incurred in connection with the development of the SH Property; less
- (c) a £1,000,000 buffer.

"SHC" means Sutton Harbour Company (company number ZC000187) whose registered office is at Tin Quay House, Sutton Harbour, Plymouth, Devon, PL4 0RA.

"Specified Time" means a day or time determined in accordance with Schedule 7 (*Timetables*).

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 and/or a subsidiary within the meaning of section 1159 of the Companies Act 2006.

"Sum" has the meaning given to that term in Clause 16.1 (*Currency indemnity*).

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

"Term Facility" means Facility A or Facility B.

"Term Loan" means a Facility A Loan or a Facility B Loan.

"Termination Date" means 31 March 2021.

"Total Commitments" means the aggregate of the Facility A Commitment, the Facility B Commitment and the Revolving Facility Commitment, being £25,000,000 at the date of this Agreement.

"Transaction Security" means the Security created or expressed to be created in favour of the Lender pursuant to the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) each of the documents listed in Schedule 9 (*Existing Security Documents*);
- (b) each of the documents listed as being a Transaction Security Document in Part 1 of Schedule 2 (*Conditions precedent*);
- (c) any document creating or expressed to create Security required to be delivered to the Lender under Part 2 of Schedule 2 (*Conditions precedent*); and
- (d) any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

"Transfer Date" means, in relation to a New Lender, the date on which the previous Lender assigns, transfers, novates or otherwise disposes of any of its rights and obligations under any Finance Documents to such New Lender.

"Transfer Document" means, in relation to a New Lender, the transfer documentation by which it becomes the Lender.

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

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

"US" means the United States of America.

"US Tax Obligor" means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a Loan.

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

"Utilisation Request" means a notice substantially in the form set out in Part 1 of Schedule 3 (*Requests and notices*).

"VAT" means:

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

1.2 **Construction**

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **"Lender"**, any **"Obligor"**, any **"Party"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Parent and the Lender or, if not so agreed, is in the form specified by the Lender;
 - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) 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;
 - (v) **"guarantee"** means (other than in clause 19 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vi) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) 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);
 - (viii) 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;
 - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
 - (x) a time of day is a reference to London time.

- (b) The determination of the extent to which a rate is **"for a period equal in length"** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is **"continuing"** if it has not been remedied or waived and an Event of Default is **"continuing"** if it has not been waived.

1.3 ***Currency symbols and definitions***

- (a) **"\$"**, **"USD"** and **"Dollars"** denote the lawful currency of the United States of America.
- (b) **"£"**, **"GBP"** and **"Sterling"** denote the lawful currency of the United Kingdom.
- (c) **"€"**, **"EUR"** and **"Euro"** denote the single currency of the Participating Member States.

1.4 ***Third party rights***

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

SECTION 2
THE FACILITIES

2. The Facilities

2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lender makes available:
- (i) a Sterling term loan facility in an aggregate amount equal to the Facility A Commitment;
 - (ii) a Sterling term loan facility in an aggregate amount equal to the Facility B Commitment; and
 - (iii) a Sterling revolving credit facility in an aggregate amount of which is equal to the Revolving Facility Commitment.
- (b) Each Term Facility will be available to SHC and the Revolving Facility will be available to all the Borrowers.

2.2 Obligor's Agent

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

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

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

3. Purpose

3.1 Purpose

- (a) Each Borrower shall apply all amounts borrowed by it under each Term Facility towards refinancing all outstanding Financial Indebtedness under the Existing Facilities.
- (b) Each Borrower shall apply all amounts borrowed by it under the Revolving Facility towards:
 - (i) refinancing all outstanding Financial Indebtedness under the Existing Facilities;
 - (ii) the general corporate and working capital purposes of the Group;
 - (iii) development projects of up to a maximum of £250,000 per project; and
 - (iv) with the prior written consent of the Lender, development projects with a value in excess of £250,000 per project.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. Conditions of Utilisation

4.1 Initial conditions precedent

The Lender will only be obliged to comply with any Utilisation Request if on or before the Utilisation Date for the Utilisation requested in that Utilisation Request, the Lender has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Parent promptly upon being so satisfied.

4.2 Further conditions precedent

Subject to clause 4.1 (*Initial conditions precedent*), the Lender will only be obliged to comply with any Utilisation Request if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan, and in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation; and
- (b) in relation to any Utilisation on the date of this Agreement, all the representations and warranties in clause 20 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true.

4.3 Maximum number of Utilisations

A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation:

- (a) more than 1 Facility A Loan would be outstanding;
- (b) more than 1 Facility B Loan would be outstanding; or

(c) more than 6 Revolving Facility Utilisations would be outstanding.

SECTION 3

UTILISATION

5. Utilisation

5.1 *Delivery of a Utilisation Request*

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Lender of a duly completed Utilisation Request not later than the Specified Time.

5.2 *Completion of a Utilisation Request for Loans*

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with clause 11 (*Interest Periods*).
- (b) Unless the Lender agrees otherwise from time to time, only one Utilisation may be requested in each Utilisation Request.

5.3 *Currency and amount*

- (a) The currency specified in a Utilisation Request must be Sterling.
- (b) The amount of the proposed Utilisation must be:
 - (i) for Facility A, an amount equal to the Available Commitment; or
 - (ii) for Facility B, an amount equal to the Available Commitment; or
 - (iii) for the Revolving Facility a minimum of £100,000 or, if less, the Available Commitment.

5.4 *Limitations on Utilisations*

The Revolving Facility shall not be utilised unless each Term Facility has been utilised.

5.5 *Cancellation of Commitment*

- (a) The Facility A Commitment which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.
- (b) The Facility B Commitment which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

- (c) The Revolving Facility Commitment which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period for the Revolving Facility.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6. **Repayment**

6.1 **Repayment of Term Loans**

- (a) The Borrowers under Facility A shall repay the aggregate Facility A Loans on the Termination Date for Facility A.
- (b) The Borrowers under Facility B shall repay the aggregate Facility B Loans in full on the Termination Date for Facility B.
- (c) The Borrowers may not reborrow any part of a Term Facility which is repaid.

6.2 **Repayment of Revolving Facility Loans**

- (a) Each Borrower which has drawn a Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under clause 6.2(a), if one or more Revolving Facility Loans are to be made available to a Borrower:
 - (i) on the same day that a maturing Revolving Facility Loan is due to be repaid by that Borrower;
 - (ii) in the same currency as the maturing Revolving Facility Loan; and
 - (iii) in whole or in part for the purpose of refinancing the maturing Revolving Facility Loan,

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

- (A) if the amount of the maturing Revolving Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans:
 - (i) the relevant Borrower will only be required to make a payment to the Lender in an amount in the relevant currency equal to that excess; and
 - (ii) the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of the maturing Revolving Facility Loan and the Lender will not be required to make a payment to the Borrower in respect of the new Revolving Facility Loans; and
- (B) if the amount of the maturing Revolving Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans:
 - (i) the relevant Borrower will not be required to make a payment to the Lender; and

- (ii) the Lender will be required to make a payment to the relevant Borrower in respect of the new Revolving Facility Loans only to the extent that the new Revolving Facility Loans exceed the maturing Revolving Facility Loan and the remainder of the new Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of the maturing Revolving Facility Loan.

7. Illegality, voluntary prepayment and cancellation

7.1 Illegality

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

- (a) the Lender, shall promptly notify the Parent upon becoming aware of that event;
- (b) upon the Lender notifying the Parent, each Available Commitment will be immediately cancelled; and
- (c) each Borrower shall repay the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Lender has notified the Parent or, if earlier, the date specified by the Lender in the notice delivered to the Parent (being no earlier than the last day of any applicable grace period permitted by law) and the corresponding Commitment(s) shall be cancelled in the amount of the Utilisations repaid.

7.2 Voluntary cancellation

- (a) Subject to clause 7.2(b), the Parent may, if it gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of £500,000 and an integral multiple of £250,000) of an Available Commitment.
- (b) Any notice of cancellation of the Available Commitments with respect to the Revolving Facility delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncanceled must be accompanied by evidence, in form and substance satisfactory to the Lender, that the Group will have sufficient working capital facilities available to it following such cancellation.

7.3 Voluntary prepayment of Facility A Loans

- (a) A Borrower to which a Facility A Loan has been made may, if it or the Parent gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of that Facility A Loan (but, if in part, being an amount that reduces the amount of that Facility A Loan by a minimum amount of £500,000 and an integral multiple of £250,000).
- (b) A Facility A Loan may only be prepaid after the last day of the Availability Period for Facility A (or, if earlier, the day on which the applicable Available Commitment is zero).

7.4 Voluntary prepayment of Facility B Loans

- (a) A Borrower to which a Facility B Loan has been made may, if it or the Parent gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of that Facility B Loan (but, if in part, being an amount that reduces the amount of that Facility B Loan by a minimum amount of £250,000 and an integral multiple of £125,000).

- (b) A Facility B Loan may only be prepaid after the last day of the Availability Period for Facility B (or, if earlier, the day on which the applicable Available Commitment is zero).

7.5 **Voluntary prepayment of Revolving Facility Utilisations**

A Borrower to which a Revolving Facility Utilisation has been made may, if it or the Parent gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the amount of the Revolving Facility Utilisation by a minimum amount of £250,000 and an integral multiple of £125,000).

8. **Mandatory Prepayment and Cancellation**

8.1 **Exit**

- (a) For the purpose of this clause 8.1:
- "Sale" means the sale (whether in a single transaction or a series of transactions) of all or substantially all of the assets of the Parent or SHC.
- "Third Party Refinancing" means the refinancing of all or any part of the Facilities (other than by the Lender or any Affiliate of the Lender).

- (b) Upon the occurrence of:

- (i) any Sale; or
- (ii) a Change of Control; or
- (iii) any Third Party Refinancing; or
- (iv) the sale (other than by way of a Property Disposal) of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

the Facilities will be cancelled and all outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

- (c) The Parent shall give the Lender at least 30 days' prior notice of the date upon which any Sale or Change of Control is proposed to occur.

8.2 **Disposal, Insurance, SH and Property Disposal Proceeds**

- (a) For the purposes of this clause 8.2, clause 8.3 (*Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds*) and clause 8.5 (*Mandatory Prepayment Accounts and Holding Accounts*):

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

"Disposal Proceeds" means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) in excess of £50,000 for any Disposal made by any member of the Group and after deducting:

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

"Excluded Insurance Proceeds" means any proceeds of an insurance claim which the Parent notifies the Lender which the Parent notifies the Lender are less than £50,000, or are, or are to be, applied:

- (i) to meet a third party claim; or
- (ii) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in the case of (ii) above, in any event within 6 months of receipt of the relevant proceeds (or within 12 months only where the Lender is provided with evidence satisfactory to it that such proceeds are intended to be used to reinstate property but third party consents are needed before such reinstatement can occur)), (or such longer time period as the Lender may agree).

"Excluded Property Disposal Proceeds" means such part of any Property Disposal Proceeds which the Lender agrees are not required to be applied in prepayment of Utilisations under this Clause 8 (*Mandatory Prepayment*).

"Insurance Proceeds" means the proceeds of any insurance claim under any insurance maintained by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

"Property Disposal" means a Disposal of any Property or any part thereof other than an SH Property Disposal.

"Property Disposal Proceeds" means (excluding any Excluded Property Disposal Proceeds) the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Property Disposal after deducting:

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

(b) The Parent shall ensure that the Borrowers prepay Utilisations, and cancel Available Commitments, in amounts equal to the following amounts at the times and in the order of application contemplated by clause 8.3 (*Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds*):

- (i) the amount of Disposal Proceeds;
- (ii) the amount of Insurance Proceeds; and

- (iii) the amount of SH Proceeds, up to a maximum principal amount of £10,000,000, and further provided that the Borrowers shall only be required to make a prepayment under this paragraph (iii) if the amount of SH Proceeds is greater than or equal to £1,000,000.
- (c) The relevant Borrower shall prepay Utilisations in the amount of any Property Disposal Proceeds at the times and in the order of application contemplated by clause 8.4 (*Application of mandatory prepayments for Property Disposal Proceeds*).

8.3 Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds

- (a) A prepayment of Utilisations or cancellation of Available Commitments made under clause 8.2(b) (*Disposal, Insurance, SH and Property Disposal Proceeds*) shall be applied in the following order:
 - (i) first, in prepayment of Term Loans as contemplated in clause 8.3(b) to (e) inclusive;
 - (ii) secondly, in cancellation of the Available Commitment under the Revolving Facility; and
 - (iii) thirdly, in prepayment of Revolving Facility Utilisations on a *pro rata* basis and cancellation of the corresponding Revolving Facility Commitments.
- (b) Unless the Parent makes an election under clause 8.3(d), the Borrowers shall prepay Loans in the case of any prepayment relating to the amounts of Disposal Proceeds or Insurance Proceeds, promptly upon receipt of those proceeds.
- (c) A prepayment under clause 8.2(b) (*Disposal, Insurance, SH and Property Disposal Proceeds*) shall prepay the Term Loans in prepayment of the Facility B Loans and, when all the Facility B Loans have been prepaid in full, prepayment of the Facility A Loan *pro rata*.
- (d) Subject to clause 8.3(e), the Parent may elect that any prepayment under clause 8.2(b) (*Disposal, Insurance, SH and Property Disposal Proceeds*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.
- (e) If the Parent has made an election under clause 8.3(d) but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Lender otherwise agrees in writing).

8.4 Application of mandatory prepayments and cancellations for Property Disposal Proceeds

- (a) A prepayment of Utilisations or cancellation of Available Commitments made under clause 8.2(c) (*Disposal, Insurance, SH and Property Disposal Proceeds*) shall be applied in the following order:
 - (i) first, in prepayment of Term Loans as contemplated in clause 8.4(b) to (e) inclusive;
 - (ii) secondly, in cancellation of the Available Commitment under the Revolving Facility; and

- (iii) thirdly, in prepayment of Revolving Facility Utilisations on a *pro rata* basis and cancellation of the corresponding Revolving Facility Commitments.
- (b) Unless the Parent makes an election under clause 8.4(d), the Borrowers shall prepay Loans in the case of any prepayment relating to the amounts of Property Disposal Proceeds, promptly upon receipt of those proceeds.
- (c) A prepayment under clause 8.2(c) (*Disposal, Insurance, SH and Property Disposal Proceeds*) shall prepay the Term Loans in prepayment of the Facility B Loans and, when all the Facility B Loans have been prepaid in full, prepayment of the Facility A Loan *pro rata*.
- (d) Subject to clause 8.4(e), the Parent may elect that any prepayment under clause 8.2(c) (*Disposal, Insurance, SH and Property Disposal Proceeds*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.
- (e) If the Parent has made an election under clause 8.4(d) but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Lender otherwise agrees in writing).

8.5 **Mandatory Prepayment Accounts and Holding Accounts**

- (a) The Parent shall ensure that:
 - (i) Disposal Proceeds, Insurance Proceeds and SH Proceeds in respect of which the Parent has made an election under clause 8.3(d) (*Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds*) or Property Disposal Proceeds in respect of which the Parent has made an election under clause 8.4(d) (*Application of mandatory prepayments and cancellations for Property Disposal Proceeds*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
 - (ii) any amounts of Excluded Insurance Proceeds to be applied in replacement, reinstatement or repair of assets are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.
- (b) The Parent and each Borrower irrevocably authorise the Lender to apply:
 - (i) amounts credited to the Mandatory Prepayment Account; and
 - (ii) amounts credited to the Holding Account which have not been applied for a use and within a timeframe contemplated by the definitions of Excluded Insurance Proceeds (or such longer time period as the Lender may agree),

to pay amounts due and payable under clause 8.3 (*Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds*) or clause 8.4 (*Application of mandatory prepayments and cancellations for Property Disposal Proceeds*) (as the case may be) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Lender to so apply amounts credited to the Holding Account at any time when a Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise the Lender to transfer any amounts credited to the Holding Account referred to in this clause 8.5(b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such

amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).

- (c) The Lender acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to any Mandatory Prepayment Account or Holding Account and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

8.6 **Property Holding Account**

- (a) In circumstances where a Property Disposal has taken place and the Parent has identified a replacement property which will provide the Group with an equal or better investment yield than the disposed Property, the Parent may (with the prior written consent of the Lender) pay the Property Disposal Proceeds into the Property Holding Account.
- (b) Amounts credited to the Property Holding Account may only be used to fund the acquisition of a replacement property (up to 75% of the agreed valuation) and cannot be used for any other purpose.
- (c) The Parent and each Borrower irrevocably authorise the Lender to apply:
 - (i) amounts credited to the Mandatory Prepayment Account; and
 - (ii) amounts credited to the Property Holding Account which have not been applied towards the acquisition of a replacement property within 4 months of receipt of the relevant proceeds (or such longer time period as the Lender may agree),

to pay amounts due and payable under Clause 8.4 (*Application of mandatory prepayments for Property Disposal Proceeds*) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Lender to so apply amounts credited to the Property Holding Account whether or not 4 months have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise the Lender to transfer any amounts credited to the Property Holding Account referred to in this paragraph (c) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Property Holding Account).

- (d) The maximum amount standing to the credit of the Property Holding Account at any time shall be £3,000,000 and the Parent and each Borrower irrevocably authorises the Lender to apply any amount in excess of this limit from time to time in prepayment of Term Loan Facility A Loans at the end of the next following Interest Period.
- (e) The Lender acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to the Property Holding Account and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) such account is subject to the Transaction Security.

8.7 **Excluded Insurance Proceeds**

Where Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the definition of Excluded Insurance Proceeds), the Parent shall ensure that those amounts are used for that purpose and, if

requested to do so by the Lender, shall promptly deliver a certificate to the Lender at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

9. Restrictions

9.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under clause 7 (*Illegality, Voluntary Prepayment and Cancellation*), clause 8.3(d) (*Application of mandatory prepayments and cancellations for Disposal, Insurance and SH Proceeds*), clause 8.4(d) (*Application of mandatory prepayments and cancellations for Property Disposal Proceeds*) or clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*) shall (subject to the terms of those clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

9.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

9.3 No reborrowing of Term Facilities

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

9.4 Reborrowing of Revolving Facility

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

9.5 Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

9.6 No reinstatement of Commitments

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

9.7 Effect of repayment and prepayment on Commitments

If all or part of any Utilisation under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of clause 4.2 (*Further conditions precedent*)), an amount of the Commitment (equal to the amount of the Utilisation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5
COSTS OF UTILISATION

10. Interest

10.1 Calculation of interest

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

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

10.2 Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than 6 Months, on the dates falling at 6 Monthly intervals after the first day of the Interest Period).

10.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to clause 10.3(b), is 2% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this clause 10.3 shall be immediately payable by the Obligor on demand by the Lender.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10.4 Notification of rates of interest

The Lender shall promptly notify the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

11. Interest Periods

11.1 Selection of Interest Periods and Terms

- (a) A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Lender by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.
- (c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Lender in accordance with clause 11.1(b), the relevant Interest Period will be 3 Months.
- (d) Subject to this clause 11, a Borrower (or the Parent) may select an Interest Period of:
 - (i) in relation to a Term Loan, 3 or 6 Months; or
 - (ii) in relation to a Revolving Facility Loan, 1,3 or 6 Months,or, in either case, of any other period agreed between the Parent and the Lender in relation to the relevant Loan.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
- (f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) A Revolving Facility Loan has one Interest Period only.

11.2 Non-Business Days

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

12. Changes to the Calculation of Interest

12.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Shortened Interest Period:* If no Screen Rate is available for LIBOR for:
 - (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable LIBOR for that shortened Interest Period shall be determined pursuant to the definition of "LIBOR".

(c) *Shortened Interest Period and Historic Screen Rate:* If the Interest Period of a Loan is, after giving effect to clause 12.1(b), either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR for:

- (i) the currency of that Loan; or
- (ii) the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR shall be the Historic Screen Rate for that Loan.

(d) *Shortened Interest Period and Interpolated Historic Screen Rate:* If clause 12.1(c) applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.

(e) *Cost of funds:* If clause 12.1(d) applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to clause 12.1(b), revert to its previous length and there shall be no LIBOR for that Loan and clause 12.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

12.2 **Market disruption**

If LIBOR is determined and before close of business in London on the Quotation Day for the relevant Interest Period the Lender notifies the Parent that the cost to the Lender of funding that Loan from whatever source it may reasonably select would be in excess of LIBOR then there shall be no LIBOR for that Loan and clause 12.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

12.3 **Cost of funds**

(a) If this clause 12.3 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the Margin; and
- (ii) the rate notified by the Lender to that Parent as soon as practicable and in any event by the date falling 2 Business Days before the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding that Loan from whatever source it may reasonably select.

(b) If this clause 12.3 applies and the Lender or the Parent so requires, the Lender and the Parent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

(c) Any alternative basis agreed pursuant to clause 12.3(b) shall, with the prior consent of the Lender and the Parent, be binding on all Parties.

(d) If this clause 12.3 applies pursuant to clause 12.2 (*Market disruption*) and the Lender's Funding Rate is less than LIBOR then the cost to that Lender of funding that Loan for that Interest Period shall be deemed, for the purposes of clause 12.3(a), to be LIBOR.

12.4 **Break Costs**

(a) Each Borrower shall, within 3 Business Days of demand by the Lender, pay to the Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being

paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

- (b) The Lender shall, as soon as reasonably practicable after a demand by the Parent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

13. Fees

13.1 *Commitment fee*

- (a) The Parent shall pay to the Lender a fee in Sterling computed at the rate of 1% per annum on the Available Commitment under the Revolving Facility for the Availability Period applicable to the Revolving Facility.
- (b) The accrued commitment fee is payable on the last day of each successive period of 3 Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and, if cancelled in full, on the cancelled amount of the relevant Commitment at the time the cancellation is effective.

13.2 *Arrangement fee*

- (a) The Parent shall pay to the Lender a total arrangement fee of £246,250 on the date of this Agreement. It is acknowledged that as at the date of the First Amendment Agreement this fee has been paid.
- (b) The Parent shall pay to the Lender an arrangement fee in accordance with the terms of the First Amendment Agreement.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

14. Tax gross-up and indemnities

14.1 Definitions

In this Agreement:

"Borrower DTTP Filing" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Borrower, which relates to a New Lender which is a Treaty Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that New Lender in the relevant Transfer Document, and:

- (a) where the Borrower is a Borrower as at the relevant Transfer Date is filed with HM Revenue & Customs within 30 days of that Transfer Date; or
- (b) where the Borrower is not a Borrower as at the relevant Transfer Date is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

"Qualifying Lender" means:

- (a) the Lender provided that it is beneficially entitled to interest payable to it in respect of an advance under a Finance Document and is:
 - (i) a lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
 - (ii) a lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest

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

- (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (iii) a Treaty Lender; or
- (b) the Lender to the extent it is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

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

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to the Lender under clause 14.2 (*Tax gross-up*) or a payment under clause 14.3 (*Tax indemnity*).

"Treaty Lender" means the Lender if it:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty; and/or
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which the Loan is effectively connected.

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

"UK Non-Bank Lender" means any New Lender which gives a Tax Confirmation in the Transfer Document which it executes on becoming a Party.

Unless a contrary indication appears, in this clause 14 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

14.2 *Tax gross-up*

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, a Lender shall notify the Parent on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under clause 14.2(c) by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
 - (i) the payment could have been made to the Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became the Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "Qualifying Lender" and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and the Lender has received from the Obligor making the payment or from the Parent a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "Qualifying Lender" and:
 - (A) the Lender has not given a Tax Confirmation to the Parent; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
 - (iv) the Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had the Lender complied with its obligations under clauses 14.2(h) or 14.2(i) (as applicable).
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender entitled to the payment a statement under section 975 of the ITA

or other evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

- (g) Subject to clause 14.2(h), if the Lender is a Treaty Lender, it and each Obligor which makes a payment to which the Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
 - (h) A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Document which it executes, and, having done so, that New Lender shall be under no obligation pursuant to clause 14.2(g).
 - (i) If the Lender is a Treaty Lender and it has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with clause 14.2(h); and:
 - (i) a Borrower making a payment to the Lender has not made a Borrower DTTP Filing in respect of the Lender; or
 - (ii) a Borrower making a payment to the Lender has made a Borrower DTTP Filing in respect of the Lender but:
 - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
 - (B) HM Revenue & Customs has not given the Borrower authority to make payments to the Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,
- and in each case, the Borrower has notified the Lender in writing, the Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.
- (j) If the Lender is a Treaty Lender and it has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with clause 14.2(h), no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of the Lender, any Commitment or any Utilisation unless the Lender otherwise agrees.
 - (k) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Lender.
 - (l) If the Lender is a UK Non-Bank Lender, it shall promptly notify the Parent if there is any change in the position from that set out in any Tax Confirmation given by it.

14.3 **Tax indemnity**

- (a) The Parent shall (within 3 Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.
- (b) Clause 14.3(a) shall not apply:
 - (i) with respect to any Tax assessed on the Lender:

(A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which the Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under clause 14.2 (*Tax gross-up*); or

(B) would have been compensated for by an increased payment under clause 14.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in clause 14.2(d) (*Tax gross-up*) applied; or

(C) relates to a FATCA Deduction required to be made by a Party.

14.4 **Tax Credit**

If an Obligor makes a Tax Payment and the Lender determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) the Lender has obtained and utilised that Tax Credit,

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

14.5 **Stamp taxes**

The Parent shall pay and, within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability which the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

14.6 **VAT**

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

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

- (c) Any reference in this clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "**representative member**" to have the same meaning as in the Value Added Tax Act 1994).
- (d) In relation to any supply made by the Lender to any Party under a Finance Document, if reasonably requested by the Lender, that Party must promptly provide the Lender with details of that Party's VAT registration and such other information as is reasonably requested in connection with the Lender's VAT reporting requirements in relation to such supply.

14.7 **FATCA Information**

- (a) Subject to clause 14.7(c), each Party shall, within 10 Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to clause 14.7(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Clause 14.7(a) shall not oblige the Lender to do anything, and clause 14.7(a)(iii) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clause 14.7(a)(i) or clause 14.7(a)(ii) (including, for the avoidance of doubt, where clause 14.7(c) applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor:
 - (i) where an Original Borrower is a US Tax Obligor, the Lender shall, within 10 Business Days of the date of this Agreement;

- (ii) where a Borrower is a US Tax Obligor on a Transfer Date, the relevant New Lender shall within 10 Business Days of the relevant Transfer Date;
- (iii) where a new US Tax Obligor accedes as a Borrower, the Lender at such time shall, within 10 Business Days of the date of accession;

supply to the Parent:

- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Parent may reasonably require to certify or establish the status of the Lender under FATCA or that other law or regulation.
- (f) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Parent by the Lender pursuant to clause 14.7(e) is or becomes materially inaccurate or incomplete, the Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Parent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Parent).

14.8 **FATCA Deduction**

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

15. **Increased Costs**

15.1 **Increased Costs**

- (a) Subject to clause 15.3 (*Exceptions*) the Parent shall, within 3 Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation, (ii) compliance with any law or regulation made after the date of this Agreement, or (iii) the implementation or application of, or compliance with CRD IV, Basel III or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, the Lender or any of its Affiliates).

- (b) In this Agreement:

"Basel III" means:

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

- (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"CRD IV" means:

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

"Increased Costs" means:

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

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

15.2 **Increased Cost claims**

If the Lender intends to make a claim pursuant to clause 15.1 (*Increased Costs*) it shall notify the Parent of the event giving rise to the claim.

15.3 **Exceptions**

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by clause 14.3 (*Tax indemnity*) (or would have been compensated for under clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in clause 14.3(b) (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (b) In this clause 15.3 reference to a **"Tax Deduction"** has the same meaning given to the term in clause 14.1 (*Definitions*).

16. **Other indemnities**

16.1 **Currency indemnity**

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

that Obligor shall as an independent obligation, within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

16.2 **Other indemnities**

The Parent shall (or shall procure that an Obligor will), within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);
- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent;
- (e) investigating any event which it reasonably believes is a Default;
- (f) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (g) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

16.3 **Indemnity in relation to Security**

- (a) Each Obligor jointly and severally shall promptly indemnify the Lender and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
- (i) any failure by the Parent to comply with its obligations under clause 18 (*Costs and expenses*);

- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the Lender's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 16.3 will not be prejudiced by any release or disposal of any Charged Property.
- (c) The Lender and every Receiver and Delegate may, in priority to any payment to the Lender, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 16.3 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

17. Mitigation by the Lender

17.1 Mitigation

- (a) The Lender shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality*), clause 14 (*Tax gross-up and indemnities*) or clause 15 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Clause 17.1(a) does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 Limitation of liability

- (a) The Parent shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under clause 17.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under clause 17.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

18. Costs and expenses

18.1 Transaction expenses

The Parent shall, promptly on demand, pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender, any Receiver or any Delegate in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Finance Documents executed after the date of this Agreement.

18.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to clause 28.7 (*Change of currency*),

the Parent shall, within 3 Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender, any Receiver or any Delegate in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 Enforcement and preservation costs

The Parent shall, within 3 Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Lender as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7
GUARANTEE

19. Guarantee and indemnity

19.1 *Guarantee and indemnity*

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by each other Obligor of all that Obligor's obligations to the Lender from time to time, whether under the Finance Documents or otherwise;
- (b) undertakes with the Lender that whenever another Obligor does not pay any amount when due to the Lender, whether under or in connection with any Finance Document or otherwise, that Guarantor shall immediately on demand pay that amount as if it was the principal Obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it to the Lender, whether under any Finance Document or otherwise on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

19.2 *Continuing Guarantee*

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

19.3 *Reinstatement*

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

19.4 *Waiver of defences*

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

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.5 ***Guarantor intent***

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

19.6 ***Immediate recourse***

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

19.7 ***Appropriations***

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

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

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

Until all amounts which may be or become payable by the Obligors to the Lender, whether under or in connection with the Finance Documents or otherwise, have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will exercise any rights which it

may have by reason of performance by it of its obligations to the Lender, whether under the Finance Documents or otherwise, or by reason of any amount being payable, or liability arising, under this clause 19:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations to the Lender, whether under the Finance Documents or otherwise;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender, whether under the Finance Documents or otherwise or of any other guarantee or security taken by the Lender whether pursuant to, or in connection with, the Finance Documents or otherwise;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 19.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable by the Obligors to the Lender, whether under or in connection with the Finance Documents or otherwise, to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with clause 28 (*Payment mechanics*).

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

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

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

19.10 **Additional security**

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

19.11 **Guarantee Limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor and, with respect to any Additional Guarantor, is

subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

20. Representations

20.1 *General*

Each Obligor makes the representations and warranties set out in this clause 20 to the Lender.

20.2 *Status*

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

20.3 *Binding obligations*

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of clause 20.3(a)), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

20.4 *Non-conflict with other obligations*

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

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

20.5 *Power and authority*

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

20.6 **Validity and admissibility in evidence**

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

20.7 **Governing law and enforcement**

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

20.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in clause 24.7(a) (*Insolvency proceedings*); or
- (b) creditors' process described in clause 24.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group; and none of the circumstances described in clause 24.6 (*Insolvency*) applies to a member of the Group.

20.9 **No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) registration of particulars of Transaction Security Documents at the Companies Registration Office in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees;
- (b) registration of particulars of Security created over any trademarks or patents pursuant to the Transaction Security Documents at the Trade Marks Registry at the Patent Office in England and Wales and payment of associated fees;
- (c) registration of any Security created over Real Property at the Land Registry or Land Charges Registry in England and Wales and payment of associated fees; and
- (d) any other filing, recording or enrolling or any tax or fee payable in relation to a Finance Document which is referred to in any Legal Opinion;

which registrations, filings, taxes and fees will (save to the extent not required by the Lender) be made and paid promptly after the date of the relevant Finance Document.

20.10 **Deduction of Tax**

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

- (a) a Qualifying Lender:
 - (i) falling within paragraph (a)(i) of the definition of "**Qualifying Lender**"; or
 - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of "**Qualifying Lender**"; or
 - (iii) falling within paragraph (b) of the definition of "**Qualifying Lender**" or;
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

20.11 **No default**

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

20.12 **No misleading information**

Save as disclosed in writing to the Lender prior to the date of this Agreement:

- (a) any factual information provided by it or on its behalf to the Lender in connection with the Finance Documents was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;
- (c) any financial projection or forecast contained in the information referred to at paragraph (a) above has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the information referred to at paragraph (a) above were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

- (e) no event or circumstance has occurred or arisen and no information has been omitted from the information referred to at paragraph (a) above and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the information referred to at paragraph (a) above being untrue or misleading in any material respect; and
- (f) all other written information provided by any member of the Group (including its advisers) to the Lender was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

20.13 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its unaudited Original Financial Statements fairly represent its financial condition and results of operations for the relevant period.
- (c) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
- (d) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the Original Financial Statements.
- (e) Its most recent financial statements delivered pursuant to clause 21.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Base Case Model; and
 - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (f) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- (g) Since the date of the most recent financial statements delivered pursuant to clause 21.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

20.14 No proceedings pending or threatened

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

20.15 No breach of laws

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

20.16 Environmental Laws

- (a) Each member of the Group is in compliance with clause 23.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Base Case Model.

20.17 Taxation

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

20.18 Anti-corruption law

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

20.19 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than Permitted Security.
- (b) No member of the Group has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

20.20 Ranking

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

20.21 Good title to assets

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

20.22 Legal and beneficial ownership

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

20.23 **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

20.24 **Intellectual Property**

It and each of its Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Base Case Model;
- (b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property which is required by it in order to carry on its business as it is being conducted and as contemplated in the Base Case Model.

20.25 **Group Structure Chart**

The Group Structure Chart delivered to the Lender pursuant to Part 1 of Schedule 2 (*Conditions precedent*) is true, complete and accurate in all material respects and shows the following information:

- (a) each member of the Group, including current name and company registration number, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a member of the Group which is not an Obligor) and/or its jurisdiction of establishment, a list of shareholders and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and
- (b) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

20.26 **Obligors**

Each Subsidiary of the Parent (other than a Dormant Subsidiary) is or will be an Obligor on the date of this Agreement.

20.27 **Accounting Reference Date**

The Accounting Reference Date of each member of the Group is 31 March.

20.28 **Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation.

20.29 **Pensions**

- (a) Neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993).
- (b) Neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.

20.30 **No adverse consequences**

- (a) It is not necessary under the laws of its Relevant Jurisdictions:
 - (i) in order to enable the Lender to enforce its rights under any Finance Document; or
 - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,that the Lender should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
- (b) The Lender is not and will not be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

20.31 **Dormant Subsidiaries**

Sutton Harbour Commercial Limited is a Dormant Subsidiary.

20.32 **Sanctions**

- (a) No Obligor, nor any of its Subsidiaries, nor any directors, officers or employees of it or any of its Subsidiaries:
 - (i) is a Restricted Person or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Person;
 - (ii) is or ever has been subject to any claim, proceeding, formal notice or investigation with respect to Sanctions;
 - (iii) is engaging or has engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
 - (iv) has engaged or is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Person where such trade, business or activity is in breach of Sanctions.
- (b) No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise been made to fund or finance any business activities or transactions:
 - (i) of or with a Restricted Person; or
 - (ii) in any other manner which would result in any member of the Group or the Lender being in breach of any Sanctions or becoming a Restricted Person.

20.33 **Times when representations made**

- (a) All the representations and warranties in this clause 20 are made by each Original Obligor on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date, on the first day of each Interest Period (except that those contained in clauses 20.13(a) to 20.13(d) (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- (c) All the representations and warranties in this clause 20 except clause 20.12 (*No misleading information*), clause 20.25 (*Group Structure Chart*) and clause 20.31 (*Dormant Subsidiaries*) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

21. **Information undertakings**

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

In this clause 21:

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to clause 21.1(a) (*Financial statements*).

"Quarterly Financial Statements" means the financial statements delivered pursuant to clause 21.1(d) (*Financial statements*).

"Semi-Annual Financial Statements" means the financial statements delivered pursuant to clause 21.1(b) (*Financial statements*).

21.1 **Financial statements**

The Parent shall supply to the Lender:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years, its audited consolidated financial statements for that Financial Year (including a reconciliation to the Quarterly Financial Statements);
- (b) as soon as they are available, but in any event within 120 days after the halfway point in each of its Financial Years, its audited consolidated half-year financial statements for that Financial half year (including a reconciliation to the Quarterly Financial Statements);
- (c) at the request of the Lender and as soon as they are available, but in any event within 180 days after the end of each of its Financial Years, the audited financial statements of each member of the Group for that Financial Year; and
- (d) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter (including the cumulative figures for the current Financial Year, Budget and preceding Financial Year).

21.2 **Provision and contents of Compliance Certificate**

- (a) The Parent shall supply a Compliance Certificate to the Lender with each set of its Annual Financial Statements and each set of its Quarterly Financial Statements.
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with clause 22 (*Financial covenants*).
- (c) Each Compliance Certificate shall be signed by 2 directors of the Parent and, if required to be delivered with the Annual Financial Statements of the Parent, shall be reported on by the Parent's Auditors in the form agreed by the Parent and the Lender.

21.3 **Requirements as to financial statements**

- (a) The Parent shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a Balance Sheet, Profit and Loss Account and Cashflow Statement. In addition the Parent shall procure that:
 - (i) each set of its Annual Financial Statements shall be audited by the Parent's Auditors; and
 - (ii) each set of Quarterly Financial Statements is accompanied by variance analysis with the prior Financial Year actual figures and the current Budget and analytical commentary explaining trends, reasons for any variance to the current Budget and a view on trading moving forward.
- (b) Each set of financial statements delivered pursuant to clause 21.1 (*Financial statements*):
 - (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the auditors of those Annual Financial Statements and accompanying those Annual Financial Statements; and
 - (ii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:
 - (A) in the case of the Parent, in the preparation of the Base Case Model; and
 - (B) in the case of any Obligor, in the preparation of the Original Financial Statements for that Obligor,

unless, in relation to any set of financial statements, the Parent notifies the Lender that there has been a change in the Accounting Principles or the accounting practices and the Parent's Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Lender:

- (A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Base Case Model or, as the case may be, that Obligor's Original Financial Statements were prepared; and
- (B) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether clause 22 (*Financial covenants*) has been complied with and to make

an accurate comparison between the financial position indicated in those financial statements and the Base Case Model (in the case of the Parent) or that Obligor's Original Financial Statements (in the case of an Obligor).

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Case Model or, as the case may be, the Original Financial Statements were prepared.

- (c) If the Lender wishes to discuss the financial position of any member of the Group with the auditors of that member of the Group, the Lender may notify the Parent, stating the questions or issues which the Lender wishes to discuss with those auditors. In this event, the Parent must ensure that those auditors are authorised (at the expense of the Parent):
- (i) to discuss the financial position of the relevant member of the Group with the Lender on request from the Lender; and
 - (ii) to disclose to the Lender any information which the Lender may reasonably request.

21.4 **Budget**

- (a) The Parent shall supply to the Lender, as soon as the same become available but in any event within 30 days before the start of each of its Financial Years, an annual Budget for that Financial Year.
- (b) The Parent shall ensure that each Budget:
- (i) is in a form reasonably acceptable to the Lender and includes a projected consolidated Profit and Loss Account, Balance Sheet and Cashflow Statement for the Group, together with projected Covenant Calculations and is broken down month by month;
 - (ii) includes budgeted Capital Expenditure spend during the next Financial Year, in an amount approved by the Lender;
 - (iii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under clause 21.1 (*Financial statements*); and
 - (iv) has been approved by the board of directors of the Parent.
- (c) If the Parent updates or changes the Budget, it shall promptly deliver to the Lender such updated or changed Budget together with a written explanation of the main changes in that Budget.

21.5 **Presentations**

Once in every Financial Year, or more frequently if requested to do so by the Lender if the Lender reasonably suspects a Default is continuing or may have occurred or may occur, at least 2 directors of the Parent (one of whom shall be the finance director) must give a presentation to the Lender about the on-going business and financial performance of the Group.

21.6 **Year-end**

The Parent shall not (and shall procure that each member of the Group shall not) change its Accounting Reference Date or Quarter Dates.

21.7 **Information: miscellaneous**

The Parent shall supply to the Lender:

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly, such information as the Lender may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (d) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to the senior management of the Group and an up to date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as the Lender may reasonably request.

21.8 **Notification of Default**

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Lender, the Parent shall supply to the Lender a certificate signed by 2 of its directors on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

21.9 **"Know your customer" checks**

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by the Lender of any of its rights and/or obligations under this Agreement,

obliges the Lender (or, in the case of clause 21.9(a)(iii), any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender for itself or, in the case of the event described in clause 21.9(a)(iii), on behalf of any prospective new Lender) in order for the Lender or, in the case of the event described in clause 21.9(a)(iii), any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) The Parent shall, by not less than 10 Business Days' prior written notice to the Lender, notify the Lender of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to clause 26 (*Changes to the Obligors*).
- (c) Following the giving of any notice pursuant to clause 21.9(b), if the accession of such Additional Obligor obliges the Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective new Lender) in order for the Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

21.10 *Valuation and environmental reports*

- (a) If so requested by the Lender, the Parent shall permit the Lender and its agents and servants free access, on reasonable notice during normal working hours (or otherwise by prior consultation with the Parent) to all the property, assets and records of the Group in order to permit the following reports to be carried out on behalf of the Lender:
 - (i) a valuation report in respect of any assets, any Property or any other properties of the Group; and/or
 - (ii) an environmental report in respect of any properties of the Parent.
- (b) The cost of any such report shall be borne by the Parent, save that, if the Lender commissions more than one such valuation report or, as the case may be, more than one such environmental report, in respect of the same property or asset, in any period of 12 months, the costs of such additional valuation report(s) or, as the case may be, environmental report(s) will be for the account of the Lender unless:
 - (i) in the case of any additional valuation report, the sale of a Property is proposed or the Lender had reasonable grounds to believe that there has been a material diminution in the aggregate value of assets that were the subject of the valuation report; or
 - (ii) in the case of any additional environmental report, the Lender had reasonable grounds to believe that an Environmental Claim is existing and/or there has been, or is likely to be, a breach of Environmental Law by the Parent; or
 - (iii) a Default has occurred and is continuing.
- (c) Each valuation report and each environmental report delivered pursuant to this clause 21.10 (*Valuation and environmental reports*) shall be addressed to and/or capable of being relied upon by the Lender.

22. **Financial covenants**

22.1 *Financial definitions*

In this Agreement:

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

- (a) monies borrowed and debit balances at banks or other financial institutions;

- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the latest scheduled Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (j) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i).

"Capital Expenditure" means any expenditure or obligation in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).

"Charged Security Properties" means each of the Properties which are, at any given time, subject to a fixed charge in favour of the Lender pursuant to the Transaction Security.

"Covenant Group" means all members of the Group excluding the SH Holdco and the SH SPV.

"EBITDA" means, in respect of any Relevant Period, the consolidated operating profit of the Covenant Group for that Relevant Period before taxation:

- (a) **before deducting** any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Covenant Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) **not including** any accrued interest owing to any member of the Covenant Group;
- (c) **after adding back** any amount attributable to the amortisation or depreciation of assets of members of the Covenant Group;
- (d) **before taking into account** any Exceptional Items;

- (e) **after deducting** the amount of any profit (or adding back the amount of any loss) of any member of the Covenant Group which is attributable to minority interests;
- (f) **plus or minus** the Covenant Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities;
- (g) **before taking into account** any unrealised gains or losses on any derivative financial instrument (other than any instrument which is accounted for on a hedge accounting basis);
- (h) **before taking into account** any gain or loss arising from an upward or downward revaluation or impairment of any other asset; and
- (i) **before taking into account** any Pension Items;

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Covenant Group before taxation.

"**Exceptional Items**" means any exceptional, one off, non-recurring or extraordinary items in the Annual Financial Statements (whether they appear on the face of such financial statements or in the notes).

"**Extraordinary Items**" means extraordinary items in the Annual Financial Statements including items which are incurred, paid or received otherwise than in the ordinary course of business (whether they appear on the face of such financial statements or in the notes).

"**Finance Charges**" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness whether paid, payable or capitalised by any member of the Covenant Group (calculated on a consolidated basis) in respect of that Relevant Period:

- (a) **excluding** any upfront fees or upfront costs;
- (b) **including** the interest (but not the capital) element of payments in respect of Finance Leases;
- (c) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Covenant Group under any interest rate hedging arrangement; and
- (d) **taking no account of** any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis,

together with the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period and so that no amount shall be added (or deducted) more than once.

"**Finance Lease**" means any lease or hire purchase contract which would, in accordance with the Accounting Principles as at the First Amendment Date, be treated as a finance or capital lease.

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

"**Financial Year**" means the annual accounting period of the Group ending on or about 31 March in each year.

"**Interest**" means, in respect of any Relevant Period, the aggregate of:

- (a) the aggregate amount of interest, capitalised interest, commission and other recurrent financial expenses attributable to Borrowings including in respect of any Relevant Period and any commitment fee pursuant to clause 13.1 (*Commitment fee*) of this Agreement due to the Lender (but excluding for the avoidance of doubt any arrangement fee due to the Lender); and
- (b) the aggregate outstanding interest (but not the capital) element of payments in respect of Finance Leases due from members of the Covenant Group for that Relevant Period.

"Market Value" means the market value of the Properties as shown in the most recent Property Valuation Reports or any later valuation obtained by the Lender under this Agreement.

"Non- Group Entity" means any investment or entity (which is not itself a member of the Covenant Group (including associates and joint ventures) in which any member of the Covenant Group has an ownership interest.

"Pensions Items" means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Relevant Period" means each period of 12 months ending on or about the last day of the Financial Year and each period of 12 months ending on or about the last day of each Financial Quarter.

"Senior Debt" means the aggregate amount of all obligations of each member of the Covenant Group for or in respect of Borrowings under the Facilities or otherwise from the Lender (other than obligations in respect of any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness").

22.2 **Financial condition**

The Parent shall ensure that:

- (a) *Loan to Value:* Senior Debt will not at any time exceed 55% of the Market Value of the Charged Security Properties.
- (b) *Interest cover:* The ratio of EBITDA to Interest in respect of any Relevant Period shall not be less than 1.25 : 1.
- (c) *Capital Expenditure:* it does not incur (and shall procure that no member of the Covenant Group incurs) any Capital Expenditure (actually or contingently) in any Financial Year which involves aggregate spending for the Covenant Group:
 - (i) for the Financial Years ending 2016, in excess of 110% of the budgeted Capital Expenditure spend as set out in the Base Case Model; and
 - (ii) for any other Financial Year, in excess of 110% of the budgeted Capital Expenditure spend as set out in the Budget for the relevant Financial Year delivered under Clause 21.4 (*Budget*),

without the prior written consent of the Lender.

22.3 **Financial testing**

The financial covenants set out in Clause 22.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles consistently applied and tested as follows:

- (a) the financial covenant set out in Clause 22.2(a) (*Loan to Value*) shall be tested on each Quarter Date and at any time by reference to the latest Property Valuation Reports; and
- (b) the financial covenant set out in clause 22.2(b) (*Interest cover*) shall be tested on each Quarter Date on a rolling 12-month basis by reference to each of the financial statements delivered pursuant to Clause 21.1 (*Financial Statements*) and/or (but only to the extent the calculations set out therein are correct) each Compliance Certificate delivered pursuant to clause 21.2 (*Provision and contents of Compliance Certificate*); provided that where any financial covenant is tested by reference to Quarterly Financial Statements or Semi-Annual Financial Statements, it shall be tested again by reference to Annual Financial Statements when the relevant Annual Financial Statements become available.

23. **General undertakings**

The undertakings in this clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and compliance with laws

23.1 **Authorisations**

Each Obligor shall promptly:

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

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

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

23.2 **Compliance with laws**

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

23.3 **Environmental compliance**

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

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

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

23.4 **Environmental Claims**

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

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

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

23.5 **Taxation**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Lender under clause 21.1 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No member of the Group may change its residence for Tax purposes.

Restrictions on business focus

23.6 **Merger**

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction or any sale, lease, transfer or other disposal permitted pursuant to clause 23.15 (*Disposals*).

23.7 **Change of business**

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent, the Obligors or the Group taken as a whole from that carried on by the Group at the date of this Agreement.

23.8 **Acquisitions**

- (a) Except as permitted under clause 23.8(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company.
- (b) Clause 23.8(a) does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
 - (i) a Permitted Acquisition; or

- (ii) a Permitted Transaction.

23.9 **Joint Ventures**

- (a) Except as permitted under clause 23.9(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
 - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Clause 23.9(a) does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Loan or a Permitted Joint Venture.

23.10 **New Subsidiaries**

The Parent shall inform the Lender promptly of the acquisition or formation of any new member of the Group, or of any non-trading member of the Group commencing to trade or acquiring assets.

23.11 **Dormant Subsidiaries**

No Obligor shall (and the Parent shall ensure no other member of the Group will) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with clause 26.4 (*Additional Guarantors*).

Restrictions on dealing with assets and Security

23.12 **Preservation of assets**

Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

23.13 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.14 **Negative pledge**

In this clause 23.14, "**Quasi-Security**" means an arrangement or transaction described in clause 23.14(b).

Except as permitted under clause 23.14(c):

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):

- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,
in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Clause 23.14(a) and (b) do not apply to any Security or (as the case may be) Quasi-Security, which is:
- (i) Permitted Security; or
 - (ii) a Permitted Transaction.

23.15 Disposals

- (a) Except as permitted under clause 23.15(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Clause 23.15(a) does not apply to any sale, lease, transfer or other disposal which is:
- (i) a Permitted Disposal; or
 - (ii) a Permitted Transaction; or
 - (iii) a Property Disposal with the prior written consent of the Lender.

23.16 Arm's length basis

- (a) Except as permitted by clause 23.16(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.
- (b) The following transactions shall not be a breach of this clause 23.16:
- (i) intra-Group loans permitted under clause 23.17 (*Loans or credit*);
 - (ii) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Lender under clause 4.1 (*Initial conditions precedent*) or agreed by the Lender; and
 - (iii) any Permitted Transaction.

Restrictions on movement of cash - cash out

23.17 Loans or credit

- (a) Except as permitted under clause 23.17(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Clause 23.17(a) does not apply to:
 - (i) a Permitted Loan; or
 - (ii) a Permitted Transaction.

23.18 No guarantees or indemnities

- (a) Except as permitted under clause 23.18(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Clause 23.18(a) does not apply to a guarantee which is:
 - (i) a Permitted Guarantee; or
 - (ii) a Permitted Transaction.

23.19 Dividends and share redemption

- (a) Except as permitted under clause 23.19(b), the Parent shall not (and will ensure that no other member of the Group will):
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in Cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (b) Clause 23.19(a) does not apply to:
 - (i) a Permitted Distribution, provided that:
 - (A) Facility B has been repaid in full; or
 - (B) where Facility B has not been repaid in full:
 - (i) Facility B has been materially reduced (as determined by the Lender) and the Lender has provided prior written consent to such Permitted Distribution; or
 - (ii) the Borrower has prepaid Utilisations of Facility B of at least £10,000,000 in accordance with clause 8.2(b)(iii) (*Disposal, Insurance, SH and Property Disposal Proceeds*); or

- (ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

Restrictions on movement of Cash - Cash in

23.20 Financial Indebtedness

- (a) Except as permitted under clause 23.20(b), no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Clause 23.20(a) does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.
- (c) The Parent shall not (and shall ensure that no other member of the Group shall) enter into an arrangement for finance which is not shown in its balance sheet as Financial Indebtedness.

23.21 Share capital

No Obligor shall (and the Parent shall ensure that no other member of the Group will) issue any shares except pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

Miscellaneous

23.22 Insurance

- (a) Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business and such other risks as the Lender may from time to time require.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

23.23 Pensions

- (a) The Parent shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of their employees are fully funded based on the statutory funding objective under sections 221 and 222 of the Pensions Act 2004 and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including, without limitation, the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any member of such a pension scheme).
- (b) The Parent shall ensure that no member of the Group is or has been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such an employer.

- (c) The Parent shall deliver to the Lender at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the Parent), actuarial reports in relation to all pension schemes mentioned in clause 23.23(a).
- (d) The Parent shall promptly notify the Lender of any material change in the rate of contributions to any pension schemes mentioned in clause 23.23(a) paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).
- (e) Each Obligor shall immediately notify the Lender of any investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to any member of the Group.
- (f) Each Obligor shall immediately notify the Lender if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.

23.24 **Access**

If a Default is continuing or the Lender reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Parent shall ensure that each member of the Group will, permit the Lender and/or accountants or other professional advisers and contractors of the Lender free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Parent to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with the directors of the Parent or relevant Obligor.

23.25 **Intellectual Property**

- (a) Each Obligor shall (and the Parent shall procure that each other member of the Group will):
 - (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) make registrations and pay all registration fees and Taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
 - (iv) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
 - (v) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of clause 23.25(a)(i) and (ii), or, in the case of clause 23.25(a)(iv) and (v), such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

- (b) Failure to comply with any part of clause 23.25(a) shall not be a breach of this clause 23.25 to the extent that any dealing with Intellectual Property which would otherwise be a breach of clause 23.25(a) is contemplated by the definition of Permitted Transaction.

23.26 Amendments of constitutional documents

Save in respect of any amendment or variation which is non-material or of a minor or technical nature and, in either case, which could not reasonably be considered adverse to the interests of the Lender, the Parent shall not (and shall ensure that no other member of the Group shall) agree to amend, vary or waive or permit the amendment, variation or waiver of its memorandum or articles of association.

23.27 Group bank accounts

The Parent shall ensure that all bank accounts of the Group shall be opened and maintained with the Lender or an Affiliate of the Lender and are subject to valid Security under the Transaction Security Documents.

23.28 Treasury Transactions

No Obligor shall (and the Parent will procure that no other member of the Group will) enter into any Treasury Transaction (other than the hedging transactions documented by the Hedging Agreements) without the prior written consent of the Lender.

23.29 Hedging

- (a) The Parent shall ensure that all exchange rate and interest rate hedging arrangements required by the Hedging Letter are implemented in accordance with the terms of the Hedging Letter and that such arrangements are not terminated, varied or cancelled without the consent of the Lender.
- (b) If at any time, the aggregate notional amount of the transactions in respect of the Hedging Agreements exceeds or, as a result of a prepayment, will exceed 100 per cent of the aggregate amount of the Loans at that time, the Borrowers must promptly notify the Lender and must, at the request of the Lender, reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Lender so that it no longer exceeds or will not exceed 100 per cent of the aggregate amount of the Loans then or that will be outstanding.

23.30 Further assurance

- (a) Each Obligor shall (and the Parent shall procure that each other member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Lender Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Parent shall procure that each other member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection,

protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents.

23.31 **Sanctions**

No member of the Group may:

- (a) use, lend, contribute or otherwise make available any part of the proceeds of any Loan or other transaction contemplated:
 - (i) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Person; or
 - (ii) in any other manner that would reasonably be expected to result in any person being in breach of any Sanctions or becoming a Restricted Person;
- (b) engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
- (c) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Person, or from any action which is in breach of any Sanctions.

23.32 **Corporate status**

Each Obligor shall (and the Parent shall ensure that each member of the Group shall) do all such things as are necessary to maintain its corporate existence.

23.33 **Transactions with directors**

Each Obligor shall not (and the Parent shall ensure that no other member of the Group shall) enter into any material transaction, agreement or arrangement (other than service agreements) with or for the benefit of any director of any Group Company or any person connected with any such director.

23.34 **Material contracts**

- (a) Save in respect of any amendment or variation which is non-material or of a minor or technical nature and, in either case, which could not reasonably be considered adverse to the interests of the Lender, each Obligor shall not (and the Parent shall ensure that no other member of the Group shall) agree to amend, vary or waive or permit the amendment, variation or waiver of any of the material contracts of the Group to which it is a party, except for any amendment, variation or waiver by any member of the Group of a contract relating to the SH Property which is required or desirable in connection with the development of the SH Property and provided that such amendment, variation or waiver could not reasonably be considered adverse to the interests of the Lender.
- (b) Each Obligor shall (and the Parent shall ensure that each member of the Group shall) comply with all material terms of the material contracts of the Group to which it is a party.

23.35 **Property**

Each Obligor shall not (and the Parent shall ensure that no other member of the Group shall) acquire any further Real Property and/or incur any further obligations in relation to any Real Property, except for the acquisition by the SH SPV (or by the SH Holdco provided it transfers the SH Property to the SH SPV promptly thereafter) of the SH Property and obligations incurred by any member of the Group in relation to the development of the SH Property.

23.36 **Obligations of the SH Holdco and the SH SPV**

The Parent shall ensure and procure that:

- (a) subject to compliance with all applicable law, the SH SPV's constitutional documents and the terms of any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness", the SH SPV shall pay to the SH Holdco by way of dividend or intra-group loan repayment all SH Surplus Cash in accordance with the undertaking given pursuant to paragraph (g) of the definition of "SH Permitted Transfer Date";
- (b) subject to compliance with all applicable law and the SH Holdco's constitutional documents, the SH Holdco shall pay any SH Proceeds it receives in accordance with paragraph (a) above to its immediate Holding Company, or to any Obligor by way of intra-group loan repayment in respect of a loan made by that Obligor to the SH Holdco pursuant to paragraph (f) or (h) of the definition of "Permitted Loan", in each case for application in accordance with clause 8.2(b) (*Disposal, Insurance, SH and Property Disposal Proceeds*);
- (c) each of the SH SPV and the SH Holdco shall supply to the Lender regular updates regarding the development of the SH Property, the disposal of units at the SH Property and the cash position of the SH SPV; and
- (d) the SH SPV shall use all cash available to it (other than any SH Surplus Cash) for the sole purposes of the development of the SH Property and for servicing any Financial Indebtedness incurred by the SH SPV pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness".

23.37 **Release of Transaction Security over SH Property**

On the occurrence of the SH Permitted Transfer Date, the Lender shall as soon as reasonably practicable release and discharge the Transaction Security created over the SH Property, and shall deliver to the Parent such duly executed deeds of release, forms DS1 and/or other documentation as may be required to give full effect to such release and discharge.

24. **Events of Default**

Each of the events or circumstances set out in this clause 24 is an Event of Default (save for clause 24.20 (*Acceleration*)).

24.1 **Non-payment**

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

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 3 Business Days of its due date.

24.2 **Financial covenants and other obligations**

- (a) Any requirement of clause 22 (*Financial Covenants*) is not satisfied or an Obligor does not comply with the provisions of clause 21 (*Information undertakings*) and/or clause 23.8 (*Acquisitions*) and/or clause 23.14 (*Negative pledge*) and/or clause 23.19 (*Dividends and share redemption*) and/or clause 23.20 (*Financial Indebtedness*).

- (b) An Obligor does not comply with any provision of any Transaction Security Document.

24.3 **Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 24.1 (*Non-payment*) and clause 24.2 (*Financial covenants and other obligations*)).
- (b) No Event of Default under clause 24.3(a) will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (i) the Lender giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.

24.4 **Misrepresentation**

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.
- (b) No Event of Default under clause 24.4(a) shall occur if the circumstance or event giving rise to the breach of the representation or statement is capable of remedy and is remedied within 10 Business Days of the earlier of (i) the Lender giving notice to the Parent or the relevant Obligor and (ii) an Obligor becoming aware of the breach.

24.5 **Cross default**

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this clause 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clause 24.5(a) to (d) is less than £40,000 (or its equivalent in any other currency or currencies).

24.6 **Insolvency**

- (a) A member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or

- (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

24.7 *Insolvency proceedings*

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
 - (iv) enforcement of any Security over any assets of any member of the Group,
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Clause 24.7(a) shall not apply to:
 - (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement; or
 - (ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction".

24.8 *Creditors' process*

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group and is not discharged within 21 days.

24.9 *Unlawfulness and invalidity*

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.
- (b) Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.

24.10 **Cessation of business**

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

24.11 **Loss of licence**

The cessation for any reason of any consent, authorisation, licence and/or exemption which is required to enable any Obligor or any of its Subsidiaries to carry on its business, or the taking by any governmental, regulatory or other authority of any action in relation to that Obligor or any of its Subsidiaries which could, in the Lender's opinion, acting reasonably, have a Material Adverse Effect.

24.12 **Change of ownership**

After the date of this Agreement, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent except, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

24.13 **Change of management**

Any of Natasha Gadsdon, Jason Schofield or Philip Beinhaker cease to be employed by the Parent or to devote the time and attention to the business, trade and offices of the Group or perform the functions required under the terms of his or her service contract and a replacement person approved in writing by the Lender (such approval not to be unreasonably withheld or delayed) has not given a legally binding acceptance to an offer of employment and resigned from his or her existing employment within 180 days of that cessation. This Event of Default shall also apply to any replacement person as if references in this clause to any of Natasha Gadsdon, Jason Schofield or Philip Beinhaker were references to that replacement person (as relevant) and references to "**service contract**" were references to the service contract of that person.

24.14 **Audit qualification**

The Parent's Auditors qualify the audited annual consolidated financial statements of the Parent or the auditors of any other Obligor qualify the audited annual financial statements of any other Obligor.

24.15 **Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.

24.16 **Repudiation and rescission of Finance Documents**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

24.17 **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.

24.18 **Pensions**

The Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any member of the Group which has or is reasonably likely to have a Material Adverse Effect.

24.19 **Material adverse change**

Any event or circumstance occurs which the Lender reasonably believes has or is reasonably likely to have a Material Adverse Effect.

24.20 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Parent:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

SECTION 9
CHANGES TO PARTIES

25. Changes to the Lender

25.1 Assignments and transfers by the Lender

Subject to this clause 25 the Lender (the "**Existing Lender**") may:

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

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

25.2 Security over Lender's rights

In addition to the other rights provided to the Lender under this clause 25, the Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of the Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) if the Lender is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by the Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

26. Changes to the Obligors

26.1 Assignment and transfers by Obligors

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

26.2 Additional Borrowers

- (a) Subject to compliance with the provisions of clauses 21.9(b) and 21.9(c) ("*Know your customer*" checks), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:

- (i) the Lender approves the addition of that Subsidiary;
 - (ii) the Parent and that Subsidiary deliver to the Lender a duly completed and executed Accession Deed;
 - (iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
 - (iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
 - (v) the Lender has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Lender.
- (b) The Lender shall notify the Parent promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*).

26.3 **Resignation of a Borrower**

- (a) In this clause 26.3, clause 26.5 (*Resignation of a Guarantor*) and clause 26.7 (*Resignation and release of security on disposal*), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under clause 23.15 (*Disposals*) or made with the approval of the Lender (and the Parent has confirmed this is the case).
- (b) If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent or SHC) ceases to be a Borrower by delivering to the Lender a Resignation Letter.
- (c) The Lender shall accept a Resignation Letter and notify the Parent of its acceptance if:
- (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;
 - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with clause 26.5 (*Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and
 - (iv) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with clause 8.2 (*Disposal, Insurance, SH and Property Disposal Proceeds*).
- (d) Upon notification by the Lender to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.
- (e) The Lender may, at the cost and expense of the Parent, require a legal opinion from counsel to the Lender confirming the matters set out in clause 26.3(c)(iii) and the

Lender shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

26.4 **Additional Guarantors**

- (a) Subject to compliance with the provisions of clause 21.9(b) and (c) ("*Know your customer*" checks), the Parent may request that any of its wholly owned Subsidiaries become a Guarantor.
- (b) The Parent shall procure that any other member of the Group which is not a Dormant Subsidiary (other than SH Holdco and SH SPV) shall, as soon as possible after becoming a member of the Group (or ceasing to be a Dormant Subsidiary), become an Additional Guarantor and grant Security as the Lender may require.
- (c) A member of the Group shall become an Additional Guarantor if:
 - (i) the Parent and the proposed Additional Guarantor deliver to the Lender a duly completed and executed Accession Deed; and
 - (ii) the Lender has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Lender.
- (d) The Lender shall notify the Parent promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*).

26.5 **Resignation of a Guarantor**

- (a) The Parent may request that a Guarantor (other than the Parent or SHC) ceases to be a Guarantor by delivering to the Lender a Resignation Letter if:
 - (i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in clause 26.3 (*Resignation of a Borrower*)) and the Parent has confirmed this is the case; or
 - (ii) the Lender has consented to the resignation of that Guarantor.
- (b) The Lender shall accept a Resignation Letter and notify the Parent of its acceptance if:
 - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no payment is due from the Guarantor under clause 19.1 (*Guarantee and indemnity*);
 - (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under clause 26.3 (*Resignation of a Borrower*); and
 - (iv) the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied in accordance with clause 8.2 (*Disposal, Insurance, SH and Property Disposal Proceeds*).
- (c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

26.6 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in clause 20.33(c) (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

26.7 Resignation and release of security on disposal

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

- (a) where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Lender, or Transaction Security in favour of the Lender was created over the shares (or equivalent) of that Borrower or Guarantor, the Lender may, at the cost and request of the Parent, release those assets, business or shares (or equivalent); and
- (b) any resignation of that Borrower or Guarantor and related release of Transaction Security referred to in clause 26.7(a) shall become effective only on the making of that disposal.

SECTION 10
ADMINISTRATION

27. Role of the Lender

27.1 Business with the Group

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

27.2 Rights and discretions

(a) The Lender may:

- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts; and
- (iii) rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Lender 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.

(b) Notwithstanding any other provision of any Finance Document to the contrary, the Lender 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.

27.3 Conduct of business by the Lender

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

28. Payment mechanics

28.1 Payments to the Lender

- (a) On each date on which an Obligor is required to make a payment under a Finance Document, that Obligor shall make the same available to the Lender (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 Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in such

Participating Member State or London, as specified by the Lender) and with such bank as the Lender, in each case, specifies.

28.2 Distributions to an Obligor

The Lender may (with the consent of the Obligor or in accordance with clause 29 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

28.3 Partial payments

(a) If the Lender receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Lender under the Finance Documents;
- (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
- (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
- (iv) **fourthly**, in or towards payment *pro rata* of any other Sum due but unpaid under the Finance Documents.

(b) The Lender may vary the order set out in clause 28.3(a)(ii) to (a)(iv).

(c) Clause 28.3(a) and (b) will override any appropriation made by an Obligor.

28.4 Set-off by Obligors

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

28.5 Business Days

(a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

28.6 Currency of account

(a) Subject to clause 28.6(b) to (e), Sterling is the currency of account and payment for any Sum due from an Obligor under any Finance Document.

(b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.

- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than Sterling shall be paid in that other currency.

28.7 Change of currency

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

28.8 Disruption to payment systems etc.

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

- (a) the Lender may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Parent in relation to any changes mentioned in clause 28.8(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause 34 (*Amendments and waivers*); and
- (d) the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 28.8.

29. **Set-off**

The Lender may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. **Notices**

30.1 ***Communications in writing***

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

30.2 ***Addresses***

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

- (a) in the case of the Lender or the Parent that identified with its name below; and
- (b) in the case of each other Obligor, that notified in writing to the Lender on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than 5 Business Days' notice.

30.3 ***Delivery***

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 30.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this clause 30.3 will be deemed to have been made or delivered to each of the Obligors.
- (d) Any communication or document which becomes effective, in accordance with clause 30.3(a) to (c), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

30.4 **Notification of address and fax number**

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

30.5 **Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 Business Days' notice.
- (b) Any such electronic communication as specified in clause 30.5(a) to be made between an Obligor and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in clause 30.5(a) made between any 2 Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with clause 30.5(c), after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause 30.5.

30.6 **Use of websites**

- (a) The Parent may satisfy its obligation under this Agreement to deliver any information to the Lender by posting this information onto an electronic website designated by the Parent and the Lender (the "**Designated Website**") if:
 - (i) the Lender expressly agrees that it will accept communication of the information by this method;
 - (ii) both the Parent and the Lender are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Parent and the Lender.
- (b) The Parent shall promptly upon becoming aware of its occurrence notify the Lender if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) the Parent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Parent notifies the Lender under clause 30.6(b)(i) or (v), all information to be provided by the Parent under this Agreement after the date of that notice shall be supplied in paper form unless and until the Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (c) The Lender may request, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within 10 Business Days.

30.7 **English language**

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

31. **Calculations and Certificates**

31.1 **Accounts**

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

31.2 **Certificates and determinations**

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

31.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

32. **Partial Invalidity**

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

33. **Remedies and waivers**

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

34. **Amendments and waivers**

- (a) Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Parent and any such amendment or waiver will be binding on all Parties.
- (b) Each Obligor agrees to any such amendment or waiver permitted by this clause 34 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (b), require the consent of all of the Guarantors.

35. **Confidential Information**

35.1 **Confidentiality**

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 35.2 (*Disclosure of Confidential Information*) and clause 35.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

35.2 **Disclosure of Confidential Information**

The Lender may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this clause 35.2(a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Lender and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by the Lender or by a person to whom clause 35.2(b)(i) or (ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in clause 35.2(b)(i) or (ii);
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to clause 25.2 (*Security over Lender's rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Parent,

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to clause 35.2(b)(i), (ii) and (iii), the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to clause 35.2(b)(iv), the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to clause 35.2(b)(v), (vi) and (vii), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any person appointed by the Lender or by a person to whom clause 35.2(b)(i) or (ii) applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking; and
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its

normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

35.3 **Disclosure to numbering service providers**

(a) The Lender may disclose to any national or international numbering service provider appointed by the Lender to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:

- (i) names of Obligors;
- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of this Agreement;
- (v) Clause 38 (*Governing law*);
- (vi) the name of the Lender;
- (vii) date of each amendment and restatement of this Agreement;
- (viii) amounts of, and names of, the Facilities (and any tranches);
- (ix) amount of Total Commitments;
- (x) currencies of the Facilities;
- (xi) type of Facilities;
- (xii) ranking of Facilities;
- (xiii) Termination Date for Facilities;
- (xiv) changes to any of the information previously supplied pursuant to clause 35.3(a)(i) to (xiii); and
- (xv) such other information agreed between the Lender and the Parent,

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

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in clause 35.3(a)(i) to (a)(xv) is, nor will at any time be, unpublished price-sensitive information.
- (d) The Lender shall notify the Parent of:
 - (i) the name of any numbering service provider appointed by the Lender in respect of this Agreement, the Facilities and/or one or more Obligors; and

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

35.4 Entire agreement

This clause 35 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

35.5 Inside information

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

35.6 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Parent:

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

35.7 Continuing obligations

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

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

36. Confidentiality of Funding Rates

36.1 Confidentiality and disclosure

- (a) Each Obligor agrees to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by clause 36.1(b).
- (b) Each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this clause 36.1(b)(i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or

other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the relevant Obligor, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the relevant Obligor, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the Lender.

36.2 **Related obligations**

- (a) Each Obligor acknowledges that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each Obligor undertakes not to use any Funding Rate for any unlawful purpose.
- (b) Each Obligor agrees (to the extent permitted by law and regulation) to inform the Lender:
 - (i) of the circumstances of any disclosure made pursuant to clause 36.1(b)(ii) (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this clause 36.

36.3 **No Event of Default**

No Event of Default will occur under clause 24.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this clause 36.

37. **Counterparts**

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

SECTION 11

GOVERNING LAW AND ENFORCEMENT

38. **Governing law**

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

39. **Enforcement**

39.1 ***Jurisdiction of English courts***

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 39.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

39.2 ***Service of process***

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints the Parent (the "**Process Agent**") as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Process Agent by its execution of this Agreement, accepts that appointment); and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within 5 Business Days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.
- (c) The Process Agent expressly agrees and consents to the provisions of this clause 39 and clause 38 (*Governing law*).

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

SCHEDULES

Schedule 1

The Original Obligors

Name of Original Borrower	Registration number (or equivalent, if any) Original Jurisdiction
Sutton Harbour Holdings Plc	02425189 (England and Wales)
Sutton Harbour Company	ZC000187 (England and Wales)

Name of Original Guarantor	Registration number (or equivalent, if any) Original Jurisdiction
Sutton Harbour Holdings Plc	02425189 (England and Wales)
Sutton Harbour Projects (No.2) Limited	06547580 (England and Wales)
Plymouth City Airport Limited	01213405 (England and Wales)
Sutton Harbour Services Limited	02421958 (England and Wales)
Sutton Harbour Projects Limited	06299193 (England and Wales)
Sutton Harbour Property and Regeneration Limited	05692318 (England and Wales)
Sutton Harbour Car Parks Limited	06030965 (England and Wales)

Schedule 2

Conditions Precedent

Part 1

Conditions precedent

[Confirmed all satisfied]

1. Obligors

- (a) A copy of the constitutional documents of each Original Obligor (including the Harbour Revision Order)
- (b) A copy of a resolution of the board of directors of each Original Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of an Obligor other than the Parent, authorising the Parent to act as its agent in connection with the Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) in relation to the Finance Documents and related documents.
- (d) A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor (other than the Parent), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.
- (e) A copy of a resolution of the board of directors of each corporate shareholder of each Original Guarantor approving the terms of the resolution referred to in paragraph (d).
- (f) A certificate or certificates signed by a director of each Original Obligor in the form required by the Lender's solicitors:
 - (i) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on that Original Obligor to be exceeded; and
 - (ii) certifying that each copy document relating to that Original Obligor specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (g) All documentation and information required by the Lender in relation to each Original Obligor to enable it to comply with all necessary "know your customer" or similar identification procedures with which it is required to comply under applicable laws and regulations in connection with the transactions contemplated by the Finance Documents.

2. **Finance Documents**

- (a) This Agreement executed by the members of the Group party to this Agreement.
- (b) The Hedging Letter in agreed form and executed by the Parent.

3. **Transaction Security Documents**

- (a) At least 2 originals of the following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:

Name of Original Obligor	Transaction Security Document
---------------------------------	--------------------------------------

Each Original Obligor	All assets debenture.
-----------------------	-----------------------

- (b) A copy of all notices required to be sent under the Transaction Security Documents executed by the relevant Obligors.
- (c) All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

4. **Insurance**

A letter from the insurance broker to the Group dated the date of this Agreement addressed to the Lender listing the insurance policies of the Group and confirming that they are on risk, that the interest of the Lender is (or will be) noted on the policies and that the insurance for the Group at the date of this Agreement is at an appropriate level and covering appropriate risks for the business carried out by the Group.

5. **Legal Opinions**

A legal opinion of Osborne Clarke LLP, legal advisers to the Lender as to English law substantially in the form distributed to the Lender prior to signing this Agreement.

6. **Other documents and evidence**

- (a) The Group Structure Chart.
- (b) The Original Financial Statements of each Obligor.
- (c) Satisfaction of the Lender with the latest management accounts of the Parent.
- (d) Evidence that the fees, costs and expenses then due from the Parent pursuant to clause 13 (*Fees*), clause 14.5 (*Stamp taxes*) and clause 18 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (e) Utilisation Requests relating to any Utilisations to be made on the date of this Agreement.
- (f) Receipt by the Lender of all required bank mandates from each of the Original Borrowers.
- (g) Satisfaction of the Lender's solicitors that any and all amendments required by the Lender to be made to the constitutional documents of the Original Obligors have been effected.

- (h) Evidence that all Security (other than those permitted under clause 23.14 (*Negative pledge*) of this Agreement) of the Group has been or will on the date of this Agreement and immediately upon receipt of a specified amount be released by the party in whose favour it was granted.
- (i) Evidence that all Financial Indebtedness (other than that (i) permitted under clause 23.20 (*Financial Indebtedness*) of this Agreement or (ii) satisfactorily taken into account in the funding structure) of the Group has been or will on the date of this Agreement and immediately upon receipt of a specified amount be discharged by the relevant member of the Group.
- (j) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Parent accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

Part 2

Conditions precedent required to be delivered by an Additional Obligor

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is a party;
 - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Parent to act as its agent in connection with the Finance Documents
4. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3.
6. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6.
8. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
10. A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
11. If available, the latest audited financial statements of the Additional Obligor.
12. The following legal opinions, each addressed to the Lender:

- (a) A legal opinion of the legal advisers to the Lender in England, as to English law in the form distributed to the Lender prior to signing the Accession Deed.
 - (b) If the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in clause 20.28 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Lender in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lender prior to signing the Accession Deed.
13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 39.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
14. Any Transaction Security Documents which are required by the Lender to be executed by the proposed Additional Obligor.
15. Any notices or documents required to be given or executed under the terms of those security documents.
- 16.
- (a) If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
 - (b) If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Lender may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
17. All documents and information required by the Lender pursuant to clause 21.9 ("*Know your customer*" checks) in connection with the accession of such Additional Obligor to this Agreement.

Schedule 3

Requests and Notices

Part 1

Utilisation Request Loans

From: •[Borrower] [Parent]*

To: •[Lender]

Dated: •

Dear Sirs

Sutton Harbour Holdings plc and Sutton Harbour Company – £25,000,000 Senior Facilities Agreement dated • (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Borrower: •
 - (b) Proposed Utilisation Date: • (or, if that is not a Business Day, the next Business Day)
 - (c) Facility to be utilised: [Facility A][Facility B] [Revolving Facility]**
 - (d) Currency of Loan: •
 - (e) Amount: • or, if less, the Available Commitment
 - (f) Interest Period: •
3. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. [This Loan is to be made in [whole] [part] for the purpose of refinancing [identify maturing Revolving Facility Loan]. [The proceeds of this Loan should be credited to [account]].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[the Parent on behalf of [• insert name of relevant Borrower]] [insert name of Borrower]*

NOTES:

- * Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.**
- ** Select the Facility to be utilised and delete references to the other Facilities.**

Part 2

Selection Notice

Applicable to a Term Loan

From: [Borrower] [Parent]*

To: [Lender]

Dated: •

Dear Sirs

Sutton Harbour Holdings plc and Sutton Harbour Company – £25,000,000 Senior Facilities Agreement dated • (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility [A] [B] Loan[s] with an Interest Period ending on •**.
3. We request that the next Interest Period for the above Facility [A][B] Loan[s] is •.
4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
[the Parent on behalf of] •[insert name of relevant Borrower] ***

NOTES:

- * Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.
- ** Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.
- *** Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

Schedule 4

Form of Accession Deed

To: [●] as Lender

From: [Subsidiary] and [Parent]

Dated: ●

Dear Sirs

Sutton Harbour Holdings plc and Sutton Harbour Company – £25,000,000 Senior Facilities Agreement dated ● (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in paragraphs 0-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [Subsidiary] agrees to become an Additional [Borrower][Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower][Guarantor] pursuant to clause [26.2 (*Additional Borrowers*)][Clause 26.4 (*Additional Guarantors*)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company with registered number ●.
3. [The Parent confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower].
4. [Subsidiary's] administrative details for the purposes of the Facilities Agreement are as follows:

Address:

Fax No.:

Attention:
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Accession Deed has been signed on behalf of the Parent and executed as a deed by [Subsidiary] and is delivered on the date stated above.

[Subsidiary]

[Executed as a Deed)
By: [Subsidiary])

_____ Director

_____ Director/Secretary

OR

[Executed as a Deed
By: [Subsidiary]

_____ Signature of Director

_____ Name of Director

in the presence of

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____ Occupation of witness]

The Parent

_____ [Parent]

By:

Schedule 5

Form of Resignation Letter

To: • as Lender

From: • [resigning Obligor] and [Parent]

Dated: •

Dear Sirs

Sutton Harbour Holdings plc and Sutton Harbour Company – £25,000,000 Senior Facilities Agreement dated • (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [clause 26.3 (*Resignation of a Borrower*)] [clause 26.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower] [Guarantor] under the Facilities Agreement and the Finance Documents.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) *[[this request is given in relation to a Third Party Disposal of [resigning Obligor]];
 - (c) [the Disposal Proceeds have been or will be applied in accordance with clause 8.2 (*Disposal, Insurance, SH and Property Disposal Proceeds*);]**]
 - (d) •***
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Obligor]

By:

By:

NOTES:

- * Insert where resignation only permitted in case of a Third Party Disposal.
- ** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.
- *** Insert any other conditions required by the Facilities Agreement.

Schedule 6

Form of Compliance Certificate

To: • as Lender

From: [Parent]

Dated: •

Dear Sirs

Sutton Harbour Holdings plc and Sutton Harbour Company – £25,000,000 Senior Facilities Agreement dated • (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
[• Insert details of covenants to be certified].
3. [We confirm that no Default is continuing.]*
4. We attach supporting evidence for the statements in paragraphs 2 and 3.

Signed
	Director	Director
	of	of
	[Parent]	[Parent]

[• Insert applicable certification language]

.....
for and on behalf of
[• name of [Parent's Auditors]**

NOTES:

- * If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.
- ** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Parent's Auditors.

Schedule 7

Timetables

Loans

Delivery of a duly completed Utilisation Request (clause 5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (clause 11.1 (*Selection of Interest Periods and Terms*)) U-1
9:30 a.m.

LIBOR is fixed Quotation Day
11:00 a.m.

"U" = date of Utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U - X" = X Business Days prior to date of Utilisation

Schedule 8

Properties

Name of Obligor	Short Property Description	Title Number (if any)
Sutton Harbour Company	Salt Quay Phase II	DN469597
Sutton Harbour Company	China House & Yard, Sutton Harbour, Plymouth	DN479735
Sutton Harbour Company	Johnson Quay and car park, Sutton Harbour, Plymouth (Also known as Lockers Quay)	
Sutton Harbour Company	St. Catherine's Warehouse, Lockers Quay, Plymouth	DN59687
Sutton Harbour Company	Baylys Wharf, Sutton Harbour, Plymouth (Also known as Fishmarket)	DN306997
Sutton Harbour Company	Land on the South Side of Teats Hill Coxside, Sutton Harbour, Plymouth (Also known as Fishmarket Units)	DN112358
Sutton Harbour Company	Calor Gas Side, Baylys Wharf, Sutton Harbour, Plymouth (Also known as Marine Aquarium)	DN98930
Sutton Harbour Company	Fishmarket & Stores, Quay Road, Sutton Harbour, Plymouth	
Sutton Harbour Company	Guys Quay, Sutton Harbour, Plymouth	
Sutton Harbour Company	Little Vauxhall Quay, Sutton Harbour, Plymouth	DN646959
Sutton Harbour Company	Cuisine Spontanee, 4 Sutton Wharf, Plymouth	DN498874
Sutton Harbour Company	Sutton Harbour Jetty, Marina & Tin Quay House	
Sutton Harbour Company	Warehouse & Horsewash Site, Harbour Avenue, Sutton Harbour, Plymouth	

Sutton Harbour Company	Shipwright Arms, Sutton Harbour, Plymouth	
Sutton Harbour Company	Lifeboat House, East Pier, Sutton Harbour Lock, Plymouth	
Sutton Harbour Company	Lockyers Quay, Sutton Harbour, Plymouth	
Sutton Harbour Company	Yard, stores & warehouse at Lockyers Quay, Sutton Harbour, Plymouth	
Sutton Harbour Company	North Quay, Sutton Harbour, Plymouth	
Sutton Harbour Company	Land on the North side of Par Street, Sutton Harbour, Plymouth	
Sutton Harbour Company	Land lying to the west of Sutton Road, Plymouth known as East Quays Boatyard	DN458554
Sutton Harbour Services Ltd	Eau 1 Harbour Avenue, Coxside, Camels Head, Plymouth	DN531237
Sutton Harbour Services Ltd	Units 1, 2 and 3 East Quay House, Marrowbone Slip, Plymouth (known as Eau 2)	DN546647
Sutton Harbour Services Ltd	Commercial Units 1 and 2 Penrose Yard, Lockyers Quay, Plymouth	DN554897
Sutton Harbour Services Ltd	Unit 1, 2 and 3 Moon Street, known as Unit 1, Unit 2 (7 North Street), Lunar Rise, The Barbican and Unit 3, Lunar Rise, 55-57 Bretonside, Plymouth	DN56580 and DN573709
Sutton Harbour Services Ltd	King Point Marina, Millbay, Plymouth	DN630065
Sutton Harbour Services Ltd	Land on the South West side of Exeter Street, Plymouth (adjoining Brunswick House)	DN153330

Sutton Harbour Services Ltd	North Quay House and Car Park	DN282030
Sutton Harbour Services Ltd	82-84 Vauxhall Street, Plymouth	DN186474
Sutton Harbour Projects Ltd	Land and buildings at Boatyard, Marrowbone Slip, Plymouth	DN561436
Sutton Harbour Car Parks Ltd	Land to the south side of Lambhay Hill, Plymouth	DN553329
Sutton Harbour Car Parks Ltd	Land and Buildings lying to the west of Commercial Road, Coxside, Plymouth (Also known as Coxside Car Park)	DN340824

Schedule 9

Existing Security Documents

Name of Obligor	Company Number	Security Document	Date
Plymouth City Airport Limited	01213405	Debenture	1 September 2003
Plymouth City Airport Limited	01213405	All-Monies Guarantee	28 November 2007
Sutton Harbour Car Parks Limited	06030965	Debenture	21 December 2007
Sutton Harbour Car Parks Limited	06030965	First Legal Charges over: <ul style="list-style-type: none"> • Land to the south side of Lambhay Hill, Plymouth known as Lambhay Hill Car Park (Land Registry title number DN553329); and • Land and Buildings lying to the west of Commercial Road, Coxside, Plymouth known as Coxside Car Park (Land Registry title number DN340824). 	27 November 2009
Sutton Harbour Car Parks Limited	06030965	All-Monies Guarantee	28 November 2007
Sutton Harbour Company	ZC000187	First legal charge over Freehold land lying to the west of Sutton Road, Plymouth known as East Quays Boatyard (Land Registry title number DN548554)	19 November 2010
Sutton Harbour Company	ZC000187	Debenture	10 June 1992
Sutton Harbour Company	ZC000187	First Legal Charge over Cuisine Spontanee, 4 Sutton Wharf, Plymouth (Land Registry title number DN498874)	27 November 2009
Sutton Harbour Company	ZC000187	First legal charge over Salt Quay Phase II (Land Registry title number DN469597)	31 July 2013

Sutton Harbour Company	ZC000187	First legal charge over China House & Yard, Sutton Harbour, Plymouth (Land Registry title number DN479735)	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Johnson Quay, Sutton Harbour, Plymouth (Also known as Lockers Quay)	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over St. Catherine's Warehouse, Lockers Quay, Plymouth (Land Registry title number DN59687)	27 November 2009
Sutton Harbour Company	ZC000187	First legal charge over Baylys Wharf, Sutton Harbour, Plymouth (Land Registry title number DN306997) (Also known as Fishmarket)	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Land on the South Side of Teats Hill Coxsides, Sutton Harbour, Plymouth (Land Registry title number DN112358) (Also known as Fish market Units)	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Calor Gas Side, Baylys Wharf, Sutton Harbour, Plymouth (Land Registry title number DN98930) (Also known as Marine Aquarium)	31 January 1994
Sutton Harbour Company	ZC000187	First legal charge over Fishmarket & Stores, Quay Road, Sutton Harbour, Plymouth	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Guys Quay, Sutton Harbour, Plymouth	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Little Vauxhall Quay, Sutton Harbour, Plymouth (Land Registry title number DN646959)	10 June 1992
Sutton Harbour Company	ZC000187	First legal charge over Sutton Harbour Jetty	10 June 1992
Sutton Harbour Holdings Plc	02425189	Debenture	10 June 1992
Sutton Harbour Holdings Plc	02425189	Downstream Guarantee	22 February 2006
Sutton Harbour Holdings Plc	02425189	All-Monies Guarantee	28 November 2007
Sutton Harbour	02425189	Charge of Securities	2 May 2008

Holdings Plc			
Sutton Harbour Projects (No. 2) Limited	06547580	Debenture	19 November 2010
Sutton Harbour Projects (No. 2) Limited	06547580	Accession to All-Monies Guarantee	19 November 2010
Sutton Harbour Projects Limited	06299193	All-Monies Guarantee	28 November 2007
Sutton Harbour Projects Limited	06299193	Debenture	21 December 2007
Sutton Harbour Projects Limited	06299193	First Legal Charge over the freehold land and buildings at Boatyard, Marrowbone Slip, Plymouth, PL4 0HX (Land Registry title number: DN561436)	19 November 2010
Sutton Harbour Property & Regeneration Limited	05692318	All-Monies Guarantee	28 November 2007
Sutton Harbour Property & Regeneration Limited	05692318	Debenture	6 May 2009
Sutton Harbour Services Limited	02421958	All-Monies Guarantee	28 November 2007
Sutton Harbour Services Limited	02421958	Mortgage Debenture	10 June 1992
Sutton Harbour Services Limited	02421958	First Legal Charge over North Quay House, Sutton Harbour, Plymouth (Land Registry title number DN282030)	31 March 2004
Sutton Harbour Services Limited	02421958	First Legal Charge over 82-84 Vauxhall Street, Plymouth (Land Registry title number DN186474)	30 March 2007

Sutton Harbour Services Limited	02421958	<p>First Legal Charges over:</p> <ul style="list-style-type: none"> • Eau 1 Harbour Avenue, Coxside, Camels Head, Plymouth (Land Registry title number DN531237); • Units 1, 2 and 3 East Quay House, Marrowbone Slip, Plymouth (known as Eau 2) (Land Registry title number DN546647); • Commercial Units 1 and 2 Penrose Yard, Lockyers Quay, Plymouth (Land Registry title number DN554897); and • Units 1, 2 and 3 Moon Street, known as Unit 1, Unit 2 (7 North Street) Lunar Rise, The Barbican and Unit 3, Lunar Rise, 55-57 Bretonside, Plymouth (Land Registry title numbers DN565850 and DN573709). 	27 November 2009
Sutton Harbour Services Limited	02421958	Land on the South West side of Exeter Street, Plymouth (adjoining Brunswick House) with Land Registry title number DN153330 AND SHOWN AS EDGED AND HATCHED RED ON THE PLAN ANNEXED TO THE DEED AND THE ACCESSWAY EDGED AND HATCHED BLUE OF THE PLAN PART T/NO DN465707	31 July 2013
Sutton Harbour Services Limited	02421958	King Point Maria, Millbay Docks, Plymouth (Land Registry title number DN630065)	6 September 2013

[Original Signature Pages not restated]

Signatures

The Parent

Executed as a deed by

Sutton Harbour Holdings Plc
acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

Rachael Ruane *Rachael Ruane*

Name:

RACHAEL RUANE

Address:

**BURGES SALMON
LLP
ONE GLASS WHARF
BRISTOL
BS2 0ZX**

Occupation:

SOLICITOR

Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

The Original Borrowers

Executed as a deed by

Sutton Harbour Holdings Plc
acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

Rachael Ruane *Rachael Ruane*

Name:

RACHAEL RUANE

Address:

**BURGES SALMON
LLP
ONE GLASS WHARF
BRISTOL
BS2 0ZX**

Occupation:

SOLICITOR

Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Sutton Harbour Company

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

Rachael Ruane

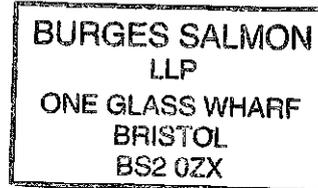
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

The Original Guarantors

Executed as a deed by

Sutton Harbour Holdings Plc

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

Rachael Ruane

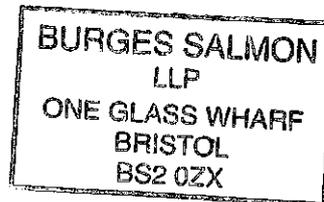
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Sutton Harbour Projects (No. 2) Limited

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Handwritten signature]

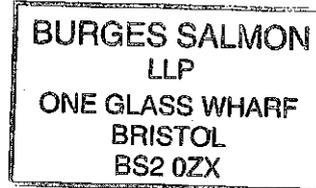
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Plymouth City Airport Limited

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Handwritten signature]

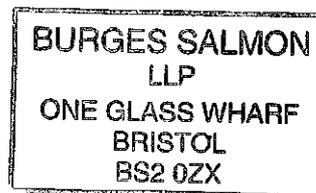
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Sutton Harbour Services Limited

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Two handwritten signatures]

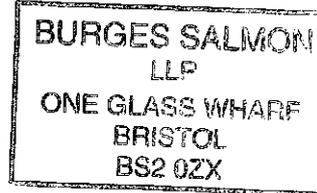
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Sutton Harbour Projects Limited

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Two handwritten signatures]

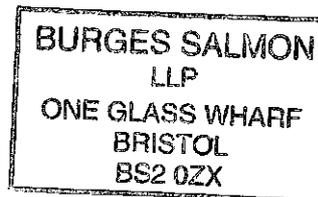
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

**Sutton Harbour Property and
Regeneration Limited**

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Handwritten signatures]

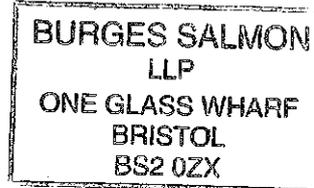
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

Executed as a deed by

Sutton Harbour Car Parks Limited

acting by a director
in the presence of:

Natasha Gadsdon

Director

Signature of witness:

[Handwritten signatures]

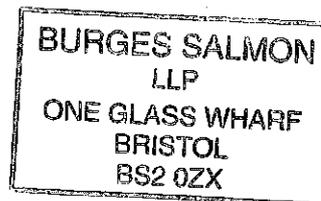
Name:

RACHAEL RUANE

Address:

Occupation:

SOLICITOR



Notice details

Address: Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA
Attention: Natasha Gadsdon

The Lender



The Royal Bank of Scotland plc acting as agent for National Westminster Bank plc

By: ANDREW JONES

Address: 1st Floor, Trinity Quay 1, Avon Street, Bristol BS2 0PT

Attention: Alan Fry