

**INTERIM FACILITIES AGREEMENT**

**dated 13 May 2021**

**for**

**Equitix Ether Bidco Limited**

**arranged by**

**Credit Agricole Corporate and Investment Bank**

**BNP Paribas**

**Goldman Sachs Bank USA**

**as Arrangers**

**with**

**Lucid Agency Services Limited**

**acting as Interim Facility Agent**

**and**

**Lucid Trustee Services Limited**

**acting as Interim Security Agent**

**£550,000,000 Interim Term Facility**

**SIMPSON THACHER & BARTLETT LLP  
LONDON**

**THIS AGREEMENT** is dated 13 May 2021 and made between:

- (1) Credit Agricole Corporate and Investment Bank, BNP Paribas and Goldman Sachs Bank USA as mandated lead arrangers (the Arrangers);
- (2) Credit Agricole Corporate and Investment Bank, BNP Paribas, BNP Paribas Fortis S.A./N.V. and Goldman Sachs Bank USA as lenders (the Original Interim Lenders); (3) Lucid Agency Services Limited as facility agent for the other Interim Finance Parties (the **Interim Facility Agent**);
- (4) Lucid Trustee Services Limited as security agent for the other Interim Finance Parties (the **Interim Security Agent**);
- (5) Equitix Ether Midco Limited, a non-cellular company limited by shares incorporated under the laws of Guernsey with registered number 69156 (**Holdco**); and
- (6) Equitix Ether Bidco Limited, a non-cellular company limited by shares incorporated under the laws of Guernsey with registered number 69157 (**Bidco**).

IT IS AGREED as follows:

## 1. INTERPRETATION

Words and expressions defined in Schedule 1 to this Agreement shall have the same meaning when used in this Agreement or in the Schedules to this Agreement.

## 2. THE INTERIM FACILITIES

Subject to the terms of this Agreement the Interim Term Lenders make available to Bidco an interim term loan facility in an aggregate amount equal to the Total Interim Term Commitments (the **Interim Term Facility**).

## 3. CONDITIONS PRECEDENT TO THE INTERIM FACILITIES

- (a) The obligation of each Interim Lender to participate in an Interim Utilisation is subject to the condition that on the date on which such Interim Utilisation is to be made:
  - (i) the Interim Facility Agent has received (or waived the requirement to receive) all of the documents and evidence set out in Schedule 4, in each case (unless specified otherwise in Schedule 4) in form and substance satisfactory to the Interim Facility Agent (acting reasonably);
  - (ii) the Interim Facility Agent has received a certificate from Bidco confirming that:
    - (A) one or more Equity Investments from the Equity Investors in an aggregate amount equal to not less than 40 per cent. of the aggregate amount of:
      - (1) the Equity Investments received from the Equity Investors; and
      - (2) the Total Interim Term Commitments as at the First Utilisation Date,

have been, or will on or prior to the First Utilisation Date be, received by Bidco as contemplated by the Tax Structure Memorandum and any other non-cash rollover into alternative equity or other instruments, for this purpose only that investment will be deemed to have been made to the Group as an Equity Investment on the First Utilisation Date);

- (iii) the Interim Facility Agent has received (or waived the requirement to receive) a funds flow memorandum in a form prepared on a basis consistent in all material respects with the Tax Structure Memorandum or otherwise in a form not materially prejudicial to the interests of the Interim Lenders taken as a whole under the Interim Documents (the **Funds Flow Memorandum**) demonstrating, amongst other things, the funds flow steps occurring on the First Utilisation Date (which Funds Flow Memorandum shall be provided to the Arrangers only on a confidential basis for the purposes of executing the First Utilisation Date transaction steps and shall not be made available to the other Interim Finance Parties);
- (iv) the Interim Facility Agent, in its capacity as the interim facility agent under the Kepler Interim Facility Agreement, having received the certificate from the Bidder contemplated at Clause 3(a)(ii) of the Kepler Interim Facility Agreement;
- (v) the Major Representations are accurate in all material respects and will remain accurate in all material respects immediately after the making of that Interim Utilisation;
- (vi) no Major Default is continuing or would result from the making of that Interim Utilisation; and
- (vii) no Change of Control Event has occurred.

The Interim Facility Agent shall promptly confirm in writing to Bidco and the Interim Lenders the satisfaction of the relevant documents and other evidence referred to above as and when they are satisfied.

- (b) Notwithstanding any other term of this Agreement or any other Interim Document, during the period from the date of this Agreement to the Termination Date, no Interim Lender may:
  - (i) refuse to participate in or make available any Interim Utilisation provided that on the date when that Interim Utilisation is proposed to be made the conditions precedent referred to in paragraph (a) above are complied with;
  - (ii) cancel an Interim Commitment;
  - (iii) exercise any right of cancellation, rescission, set-off, counterclaim or similar right or remedy which it may have in relation to this Agreement, the Interim Facilities or any Interim Utilisation (or the proceeds thereof); or
  - (iv) accelerate any Interim Utilisation or otherwise demand or require repayment or prepayment of any sum from any Obligor or enforce (or instruct the Interim Security Agent to enforce) any Security Interest under any Interim Document,

unless:

- (A) it has become unlawful in any applicable jurisdiction for such Interim Lender to fund or make the relevant Interim Utilisation or, as the case may be, continue to make available the relevant Interim Commitment, in each case as contemplated by this Agreement (however, for the avoidance of doubt, such unlawfulness shall not affect obligation of any other Interim Lender to fund or make available any Interim Utilisation); or
  - (B) a Major Default has occurred and is continuing.
- (c) Notwithstanding any other term of this Agreement or any other Interim Document, none of the steps set out in, or reorganisations expressly contemplated by, the Tax Structure Memorandum (or the actions necessary to implement any of them) shall constitute a breach of any representation, warranty or general undertaking in the Interim Documents or result in the occurrence of a Major Default, actual or potential (and provided further that any intermediate steps in any such reorganisation which are not specified in the Tax Structure Memorandum shall not be prohibited).

#### **4. PURPOSE**

- (a) Bidco shall apply the proceeds of each Interim Term Loan in or towards (directly or indirectly):
  - (i) subscribing for notes and/or advancing funds to Aqueduct Midco Limited pursuant to the Ether Bridge Shareholder Loan Agreement; and/or
  - (ii) financing the payment of costs, fees and expenses incurred in connection with the Transaction Documents.
- (b) [Reserved]
- (c) Bidco shall be entitled to advance any amount drawn by it under the Interim Facilities to a member of the Group in order that such amounts may be applied in or towards (directly or indirectly) any of the purposes specified in paragraph (a) above.

#### **5. NATURE OF AN INTERIM FINANCE PARTY'S RIGHTS AND OBLIGATIONS**

- (a) Each Interim Lender will participate in an Interim Term Loan in the proportion which its Interim Term Commitment bears to the Total Interim Term Commitments immediately before the making of that Interim Term Loan.
- (b) No Interim Lender nor the Interim Facility Agent is bound to monitor or verify any utilisation of the Interim Facilities nor be responsible for the consequences of such utilisation.
- (c) Unless all the Interim Finance Parties and Bidco agree otherwise:
  - (i) the obligations of each Interim Finance Party under the Interim Documents are several;

- (ii) failure by an Interim Finance Party to perform its obligations does not affect the obligations of any other Interim Finance Party under the Interim Documents;
  - (iii) no Interim Finance Party is responsible for the obligations of any other Interim Finance Party under the Interim Documents;
  - (iv) the rights of each Interim Finance Party under the Interim Documents are separate and independent rights;
  - (v) an Interim Finance Party may, except as otherwise stated in the Interim Documents, separately enforce its rights under the Interim Documents; and
  - (vi) any debt arising under the Interim Documents to an Interim Finance Party from an Obligor shall be a separate and independent debt.
- (d) Each Interim Lender will promptly notify Bidco if it becomes aware of any matter or circumstance which would entitle it not to advance or participate in any Interim Utilisation.

## **6. UTILISATION**

### **6.1 Giving of Utilisation Requests**

- (a) Bidco may borrow an Interim Loan by delivery to the Interim Facility Agent of a duly completed Utilisation Request.
- (b) Each Utilisation Request is, once given, irrevocable.
- (c) Unless otherwise agreed by the Interim Facility Agent, the latest time for receipt by the Interim Facility Agent of a duly completed Utilisation Request is 11.00 a.m. three Business Days before the proposed Utilisation Date.
- (d) Bidco may not deliver a Utilisation Request if as a result of the proposed Interim Utilisation more than 10 Interim Term Loans would be outstanding.

### **6.2 Completion of Utilisation Requests**

A Utilisation Request for an Interim Loan will not be regarded as having been duly completed unless:

- (a) [Reserved]
- (b) the proposed Utilisation Date is a Business Day falling within the relevant Availability Period;
- (c) the Base Currency Amount of the Interim Term Loan requested, when aggregated with the Base Currency Amount of each other Interim Term Loan made or due to be made on or before the proposed Utilisation Date, does not exceed the Total Interim Term Commitments; and
- (d) the currency of the Interim Term Loan requested is in Sterling.

### 6.3 Advance of an Interim Loan

- (a) The Interim Facility Agent must promptly notify each Interim Lender of the details of a requested Interim Loan and the amount of its share in that Interim Loan.
- (b) The amount of each Interim Lender's share of an Interim Loan will be equal to its pro rata share of the Interim Loan on the proposed Utilisation Date calculated in accordance with paragraph (a) of Clause 5 (Nature of an Interim Finance Party's Rights and Obligations).
- (c) No Interim Lender is obliged to participate in an Interim Loan if as a result the Base Currency Amount of its share in the Interim Term Loans would exceed its Interim Term Commitment.
- (d) If the applicable conditions set out in this Agreement have been met, each Interim Lender shall make its participation in each Interim Loan available to the Interim Facility Agent for the account of Bidco by the Utilisation Date through its Facility Office.

## 7. Repayment and Cancellation

- (a) Bidco shall repay all outstanding Interim Utilisations and other amounts due under the Interim Documents, and the Interim Facilities shall be cancelled in full and the Interim Commitments reduced to zero, on the date (the **Termination Date**) which is the earlier of:
  - (i) the date falling 30 days after the last day of the Certain Funds Period;
  - (ii) the date of receipt by Bidco of a written demand from the Interim Facility Agent (acting on the instructions of the Majority Interim Lenders) following the occurrence of a Major Default which is continuing requiring prepayment and cancellation in full of the Interim Facilities; and
  - (iii) the date of receipt by Bidco of the proceeds of the first utilisation made under the Debt Facilities (if applicable, free of any escrow or similar arrangements).
- (b) Bidco may, if it gives the Interim Facility Agent not less than 5 Business Days' prior notice, cancel or prepay the whole or any part of any Interim Facility or Interim Utilisation.
- (c) All Interim Utilisations shall be repaid together with accrued but unpaid interest.
- (d) No part of the Interim Term Facility which is repaid may be re-borrowed.
- (e) [Reserved]
- (f) The Interim Commitments of each Interim Lender under each Interim Facility will be automatically cancelled at the close of business in London on the last day of the Availability Period for that Interim Facility to the extent undrawn at that date.
- (g) The Interim Facilities shall be cancelled in full and the Interim Commitments reduced to zero at 11:59 p.m. London time on the last day of the Certain Funds Period.

## **8. INTEREST**

### **8.1 Calculation of Interest**

The rate of interest on each Compounded Rate Loan for any day during a particular Interest Period shall be the rate per annum determined by the Interim Facility Agent to be the sum of:

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

### **8.2 Payment of Interest**

- (a) Bidco shall pay accrued interest on each Interim Loan made to it on the last day of its Interest Period (or, in each case in relation to a Compounded Rate Loan, if later than the last day of the relevant Interest Period or other period, the date falling 3 Business Days from the date on which the Interim Facility Agent notifies Bidco in writing of the amount of the relevant interest to be paid).
- (b) Each Interest Period for an Interim Loan shall be of one month duration (or any other duration as may be agreed by the Interim Facility Agent) as selected by Bidco in the Utilisation Request for that Interim Loan or (if that Interim Loan has already been borrowed) by notice to the Interim Facility Agent no later than 11.00 a.m. one Business Day before the last day of the then current Interest Period.

### **8.3 Interest on Overdue Amounts**

If any Obligor fails to pay when due any amount payable by it under the Interim Documents (an **Unpaid Sum**), it must immediately on demand by the Interim Facility Agent pay interest on the Unpaid Sum from its due date up to the date of actual payment, both before and after judgment. Interest on an Unpaid Sum is payable at a rate determined by the Interim Facility Agent to be one per cent. per annum above the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of an Interim Loan in the currency of the Unpaid Sum. Interest (if unpaid) on an Unpaid Sum will be compounded with that Unpaid Sum on the last day of its Interest Period (each to be of a duration selected by the Interim Facility Agent acting reasonably and having regard to the likely duration of the default) but will remain immediately due and payable.

### **8.4 Interest Calculation**

- (a) Interest shall be paid in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued and shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and a 365 day year.
- (c) If any day during an Interest Period for a Compounded Rate Loan is not an RFR Banking Day, the rate of interest on that Compounded Rate Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.
- (d) The Interim Facility Agent shall promptly upon such total amount of interest being determinable, notify the relevant Interim Lenders and Bidco of:

- (i) the determination of the total amount of accrued interest that:
  - (A) relates to a Compounded Rate Loan (or, in the case of an Interim Lender, relates to its participation in that Compounded Rate Loan); and
  - (B) is, or is scheduled to become, payable under any Interim Document; and
- (ii) the applicable rate of interest for each day relating to that determination.
- (e) Paragraphs (c) and (d) above shall not require the Interim Facility Agent to make any notification to any Party on a day which is not a Business Day.
- (f) Except as otherwise set out in the definition of “Daily Rate” and in Schedule 6, the aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under an Interim Document shall be rounded to 2 decimal places.

## 8.5 Ticking Fee

- (a) Bidco shall pay or procure there is paid to the Interim Facility Agent (for the account of each Interim Lender) a ticking fee on that Interim Lender’s undrawn and uncanceled amount of the Interim Term Commitments, computed as follows:
  - (i) until the date falling 6 months after the Announcement Date, zero;
  - (ii) from the date falling after 6 months after the Announcement Date until the First Utilisation Date, 30% of the Margin on the Interim Facility.

### **provided that:**

- (A) no ticking fee shall be payable unless the First Utilisation Date occurs; and
- (B) a ticking fee will only accrue from the date falling 6 months after the Announcement Date.

The accrued ticking fee is payable on the First Utilisation Date, provided that no ticking fee is payable until the date falling 3 Business Days from the date on which the Interim Facility Agent notifies Bidco in writing of the amount of the relevant ticking fee to be paid (such notification to include reasonable details of the calculation of the amount payable).

## 9. [Reserved]

## 10. TAXES

### 10.1 Gross-Up

- (a) Each Obligor must make all payments to be made by it under the Interim Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If an Obligor or an Interim Lender becomes 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) it shall promptly notify the Interim Facility Agent. If the Interim Facility Agent receives such notification from an Interim Lender it shall promptly notify the relevant Obligor.



- (c) If an Obligor is required by law to make any Tax Deduction:
- (i) except as provided in Clause 10.2 (Exceptions from Gross-Up) below, the amount of the payment due from that Obligor will be increased to an amount which (after taking into account any Tax Deduction) leaves an amount equal to the amount which would have been due if no Tax Deduction had been required; and
  - (ii) that Obligor will:
    - (A) make that Tax Deduction in the minimum amount required by law;
    - (B) pay to the relevant Taxation authorities by the due date for such payment (or prior to any material interest or penalty accruing in respect thereof), that Tax Deduction and any payment required in connection with that Tax Deduction; and
    - (C) within thirty days of making any Tax Deduction or any payment to the Taxation authorities required in connection with that Tax Deduction, deliver to the Interim Facility Agent (for the Interim Finance Party entitled to the payment) evidence satisfactory to that Interim Finance Party (acting reasonably) that such Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (d)
- (i) Each Interim Lender shall:
    - (A) promptly co-operate with each Obligor by submitting such information, forms and documents and completing such other procedural formalities as may be necessary for that Obligor to obtain authorisation to make any payment without a Tax Deduction; and
    - (B) satisfy all applicable legal and regulatory requirements for lending to Bidco.
  - (ii) Without limiting the generality of the foregoing, if a payment made to an Interim Finance Party under any Interim Document is subject to the reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the US Internal Revenue Code, as applicable) and any obligations or laws implemented in accordance with the OECD's "common reporting standard" (CRS), such Interim Finance Party shall deliver to the Obligor and the Interim Facility Agent at the time or times prescribed by law and at such time or times reasonably requested by that Obligor or the Interim Facility Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the US Internal Revenue Code) and such additional documentation reasonably requested by that Obligor or the Interim Facility Agent as may be necessary for such Obligor and the Interim Facility Agent to comply with their obligations under FATCA or CRS and to determine that such Interim Finance Party has complied with its obligations under FATCA or CRS or to determine the amount to deduct and withhold from such payment. If an Interim Finance Party becomes aware that it is not entitled to receive any payment made under the Interim Documents free from any deduction

or withholding imposed under FATCA it shall promptly notify the Interim Facility Agent and Bidco (together with the amount of any applicable deduction or withholding). Without prejudice to the foregoing, each Interim Finance Party shall promptly provide to the Interim Facility Agent and Bidco (if requested by the Interim Facility Agent or Bidco) (A) a written confirmation that so far as it is aware it is or, as the case may be, is not entitled to receive payments made under the Interim Documents free from any deduction or withholding imposed under FATCA and (B) such documents and other evidence as the Interim Facility Agent and/or Bidco may reasonably require to (1) support any confirmation given pursuant to (A) and/or (2) as applicable, calculate the amount of any deduction or withholding to be made on account of FATCA on any payment made under the Interim Documents to that Interim Finance Party. If an Interim Finance Party fails to comply with its obligations under this paragraph (ii), until such time as that Interim Finance Party has complied with its obligations the Interim Facility Agent and each Obligor shall be entitled to treat such Interim Finance Party as not being entitled to receive all or any part of any payment made under the Interim Documents free from any deduction or withholding imposed under FATCA.

(iii) Each Interim Lender shall indicate opposite its name in Schedule 7 (or, in the case of a person becoming an Interim Lender after the date of this Agreement, in the documentation which it executes on becoming an Interim Lender) which of the following categories it falls into:

(A) a Domestic Lender;

(B) a Treaty Lender (and, if such Treaty Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to this Agreement, shall further indicate its scheme reference number and its jurisdiction of tax residence); or

(C) a Bank Lender.

(e) Each Interim Lender confirms that it is a Qualifying Interim Lender as at the date of this Agreement (or, in the case of any person becoming an Interim Lender after the date of this Agreement, as at the date on which it becomes an Interim Lender). Each Interim Lender undertakes to promptly notify the Interim Facility Agent and Bidco if it ceases to be a Qualifying Interim Lender.

## 10.2 Exceptions from Gross-Up

(a) No Obligor is required to make any increased payment to an Interim Lender under Clause 10.1 (Gross-Up) if, on the date the payment falls due, that Interim Lender:

(i) is not or has ceased to be a Qualifying Interim Lender (unless that Interim Lender has ceased to be a Qualifying Interim Lender as a result of a change in any law or double taxation agreement or any published practice or published concession of any relevant Tax authority, in each case after the date on which it became an Interim Lender under this Agreement); or

(ii) has not complied with its obligations under paragraph (d) of Clause 10.1 (Gross-Up);

- (iii) the relevant Interim Lender is a Qualifying Interim Lender solely by virtue of being a Domestic Lender and an officer of HM Revenue & Customs has given (and not revoked) a direction under section 931 of Income Tax Act 2007 which relates to the payment and the relevant Interim Lender has received a certified copy of such direction from the Obligor; or
  - (iv) such payment, deduction or withholding is for or on account of FATCA.
- (b) No Obligor will be obliged to make a payment or any increased payment pursuant to this Clause 10 with respect to a payment by it of a liability due for payment by another Obligor to the extent that, had the payment been made by that other Obligor, Tax would have been imposed on such payment for which that other Obligor would not have been obliged to make a payment or increased payment pursuant to this Clause 10.

### 10.3 Tax Indemnity

- (a) Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand by the Interim Facility Agent, pay to an Interim Finance Party an amount equal to the loss or liability which that Interim Finance Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Interim Finance Party in relation to a payment received or receivable from an Obligor under an Interim Document.
- (b) Paragraph (a) above shall not apply:
- (i) to any Tax assessed on an Interim Finance Party under the law of the jurisdiction in which:
    - (A) that Interim Finance Party is incorporated or, if different, in which that Interim Finance Party is treated as resident for tax purposes; or
    - (B) that Interim Finance Party's Facility Office is located in respect of amounts received or receivable under the Interim Documents in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income or gross receipts received or receivable (but not any sum deemed to be received or receivable such as a Tax Deduction) by that Interim Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 10.1 (Gross-Up) or would have been so compensated but for the operation of Clause 10.2 (Exceptions from Gross-Up); or
    - (B) is suffered or incurred by an Interim Lender and would not have been suffered or incurred if such Interim Lender had been a Qualifying Interim Lender at the relevant time (unless that Interim Lender was not a Qualifying Interim Lender at the relevant time as a result of a change in any law or double taxation agreement or any published practice or

published concession of any relevant Tax authority, in each case after the date on which it became an Interim Lender under this Agreement); or

- (C) is suffered or incurred by an Interim Lender as a result of such Interim Lender's failure to comply with its obligations under paragraph (d) of Clause 10.1 (Gross-Up); or
  - (D) is suffered or incurred in respect of any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy); or
  - (E) is suffered or incurred in respect of FATCA (or any payment attributable to, or liability arising as a consequence of, FATCA).
- (c) An Interim Finance Party making, or intending to make a claim under paragraph (a) above shall promptly notify Bidco and the Interim Facility Agent of the event which has given, or will give, rise to the claim.
- (d) An Interim Finance Party shall, on receiving payment from a member of the Group under paragraph (a) above, notify the Interim Facility Agent.

#### 10.4 **Tax Credit**

If an Obligor pays an additional amount under Clause 10.1 (Gross-Up) or Clause 10.3 (Tax Indemnity) and the relevant Interim Finance Party determines (acting reasonably and in good faith) that it has obtained, utilised and retained on an affiliated group basis a Tax Credit or other similar Tax benefit which is attributable to that payment or the Tax giving rise to that payment, that Interim Finance Party shall pay to that Obligor an amount which that Interim Finance Party determines (acting reasonably and in good faith) will leave such Interim Finance Party (after that payment by it) in the same after-Tax position as it would have been in if the payment of that additional amount by that Obligor had not been made.

#### 10.5 **Stamp Taxes**

Bidco shall pay (or shall procure that another member of the Group pays) and, within ten Business Days of demand, indemnify each Interim Finance Party against any cost, loss or liability which that Interim Finance Party incurs in relation to all stamp duty, registration or other similar Taxes payable in respect of any Interim Document other than any such Tax payable in respect of any Transfer Certificate or other document relating to the assignment or transfer by any Interim Lender of any of its rights and/or obligations under any Interim Document).

#### 10.6 **Value Added Taxes**

- (a) All amounts expressed to be payable under an Interim Document by any Party to an Interim Finance Party shall (unless otherwise agreed) be deemed to be exclusive of any VAT. Subject to paragraph (b) below, if VAT is chargeable on any supply made by any Interim Finance Party to any Party in connection with an Interim Document that Party shall pay to the Interim Finance Party (in addition to and at the same time as paying the consideration for that supply) an amount equal to the amount of the VAT (in each case unless the paying Party is obliged by law to account directly to the tax authorities for such VAT under the reverse charge procedure provided for by Article 196 of the EC Council Directive 2006/112

and/or any relevant tax provisions of the jurisdiction in which the Party receives such supply, in which case the paying Party will pay the relevant amount of VAT to the relevant tax authorities). Any obligation of a Party to pay any amount in respect of VAT pursuant to this Clause 10.6 is subject to the relevant Interim Finance Party promptly providing an appropriate invoice to such Party.

- (b) Where an Interim Document requires any Party to reimburse an Interim Finance Party for any cost or expense, that Party shall reimburse such Interim Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Interim Finance Party reasonably determines that it or any other member of any group of which it is a member for VAT or other Tax purposes is entitled to credit for or repayment of the VAT.

## 10.7 Tax Affairs

Without prejudice to Clause 10.4 (Tax Credit) and subject to paragraph (d) of Clause 10.1 (Gross-Up) and Clause 11.2 (Mitigation), no term of this Agreement will:

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

## 11. CHANGE IN CIRCUMSTANCES

### 11.1 Increased Costs

- (a) Subject to paragraph (c) below, Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand by the Interim Facility Agent, pay for the account of an Interim Finance Party (a **Claiming Party**) the amount of any Increased Costs incurred by it or any of its Affiliates as a result of:
  - (i) the introduction of, or a change in, or a change in the interpretation, administration or application of, any law or regulation; or
  - (ii) compliance with any law or regulation,in each case made after the date it became an Interim Finance Party under this Agreement.
- (b) A Claiming Party intending to make a claim pursuant to paragraph (a) above will notify Bidco and the Interim Facility Agent of the circumstances giving rise to that Increased Cost as soon as reasonably practicable after becoming aware of it and will as soon as reasonably practicable provide a certificate confirming the amount and calculation of that Increased Cost.
- (c) No member of the Group will be obliged to compensate any Claiming Party under paragraph (a) above in relation to any Increased Cost:

- (i) compensated for under Clause 10 (Taxes) or which would have been so compensated for but for an exception in Clause 10.2 (Exceptions from Gross-Up) or Clause 10.3 (Tax Indemnity); or
  - (ii) attributable to a change (whether of basis, timing or otherwise) in the Tax on the overall net income of the Claiming Party (or any Affiliate of it) or of the branch or office through which it lends any Interim Loan; or
  - (iii) attributable to the breach by the Claiming Party (or any Affiliate of it) of:
    - (A) any law or regulation; or
    - (B) the terms of any Interim Document; or
  - (iv) attributable to any penalty having been imposed by the relevant central bank or monetary or fiscal authority upon the Claiming Party (or any Affiliate of it) by virtue of its having exceeded any country or sector borrowing limits or breached any directives imposed upon it; or
  - (v) attributable to the implementation or application of or compliance with the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Interim Finance Party or any of its Affiliates) but excluding any Increased Cost attributable to the implementation or application of or compliance with “Basel III: A global regulatory framework for more resilient banks and banking systems” and “Basel III: International framework for liquidity risk measurement, standards and monitoring” published by the Basel Committee on Banking Supervision in December 2010 in the form existing on the date of this Agreement (**Basel III**) or any other law or regulation which implements Basel III (in each case unless an Interim Finance Party was or reasonably should have been aware of that Increased Cost on the date on which it became an Interim Finance Party under this Agreement); or
  - (vi) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy); or
  - (vii) attributable to FATCA (or any payment attributable to, or liability arising as a consequence of, FATCA); or
  - (viii) not notified to Bidco in accordance with paragraph (b) above.
- (d) In this Agreement **Increased Cost** means:
- (i) an additional or increased cost;
  - (ii) a reduction in any amount due or payable under any Interim Document; or

- (iii) a reduction in the rate of return from an Interim Facility or on the Claiming Party's (or its Affiliate's) overall capital,

which is suffered or incurred by a Claiming Party or any of its Affiliates to the extent that it is attributable to that Claiming Party having entered into or performing its obligations under any Interim Document or making or maintaining its participation in any Interim Loan.

## 11.2 Mitigation

- (a) If circumstances arise which would entitle an Interim Finance Party:
  - (i) to receive payment of an additional amount under Clause 10 (Taxes); or
  - (ii) to demand payment of any amount under Clause 11.1 (Increased Costs); or
  - (iii) to require cancellation or prepayment to it of any amount under Clause 11.3 (Illegality),

then that Interim Finance Party will, in consultation with Bidco, take all reasonable steps to mitigate the effect of those circumstances (including but not limited to by transferring its rights and obligations under the Interim Documents to an Affiliate, changing its Facility Office or transferring its rights and obligations under the Interim Documents for cash at par plus all interests thereon accrued and unpaid to another bank, financial institution or other person nominated for such purpose by Bidco).

- (b) No Interim Finance Party will be obliged to take any such steps under this Clause 11.2 if to do so is likely in its opinion (acting reasonably) to be unlawful or prejudicial to it in any material respect.
- (c) Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand by the relevant Interim Finance Party, indemnify such Interim Finance Party for any costs or expenses reasonably incurred by it as a result of taking any steps under this Clause 11.2.
- (d) This Clause does not in any way limit, reduce or qualify the obligations of any Obligor under the Interim Documents.

## 11.3 Illegality

If at any time after an Interim Lender becomes a party to this Agreement it becomes unlawful in any applicable jurisdiction for it to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Interim Utilisation, then:

- (a) that Interim Lender shall promptly so notify the Interim Facility Agent and Bidco; and
- (b) upon that Interim Lender so notifying the Interim Facility Agent and Bidco, on such date as that Interim Lender shall have specified (being no earlier than the last Business Day allowed by the relevant law (taking into account any applicable grace period) unless otherwise agreed or required by Bidco):

- (i) the Interim Commitments of that Interim Lender will be immediately cancelled; and
- (ii) Bidco shall (or shall procure that another member of the Group will) repay that Interim Lender's participation in the Interim Utilisations (together with accrued interest thereon and all other amounts due to that Interim Lender),

provided that on or prior to such date Bidco shall have the right to require that Interim Lender to transfer its Interim Commitments and participation in each Interim Utilisation to another bank, financial institution or other person nominated for such purpose by Bidco which has agreed to purchase such rights and obligations at par plus accrued interest.

## **12. PAYMENTS**

### **12.1 Place**

- (a) Unless otherwise specified in an Interim Document, on each date on which payment is to be made by any Party (other than the Interim Facility Agent) under an Interim Document, such Party shall pay to the account specified by the Interim Facility Agent, in the relevant currency, the amount required to the Interim Facility Agent, for value on the due date at such time and in such funds as the Interim Facility Agent may specify to the Party concerned as being customary at that time for settlement of transactions in the relevant currency in the place of payment. All such payments shall be made to the account specified by the Interim Facility Agent for that purpose in the principal financial centre of the country of the relevant currency by not less than five Business Days' prior notice to the Party concerned.
- (b) Each payment received by the Interim Facility Agent under the Interim Documents for another Party shall, subject to paragraphs (c) and (d) below and to Clause 12.3 (Assumed Receipt), be made available by the Interim Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of an Interim Lender, for the account of its Facility Office), to such account as that Party may notify to the Interim Facility Agent by not less than three Business Days' notice with a bank in the principal financial centre of the country of that currency.
- (c) The Interim Facility Agent may with the consent of Bidco (or in accordance with Clause 20 (*Set-Off*)) apply any amount received by it for an Obligor in or towards payment (as soon as practicable after receipt) of any amount then due and payable by such Obligor under the Interim Documents or in or towards purchase of any amount of any currency to be so applied.
- (d) Each Agent may deduct from any amount received by it for another Party any amount due to such Agent from that other Party but unpaid and apply the amount deducted in payment of the unpaid debt owed to it.

### **12.2 Currency of Payment**

- (a) Subject to paragraphs (b) to (f) (inclusive) below, any amount payable by an Obligor under the Interim Documents shall be paid in Sterling.



- (b) A repayment or prepayment of an Interim Utilisation shall be made in the currency in which that Interim Utilisation is denominated 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 when the interest accrued.
- (d) Each payment in respect of fees, costs and expenses shall be made in the currency in which they were incurred.
- (e) Each payment under Clause 10.1 (Gross-Up), Clause 10.3 (Tax Indemnity) and 11.1 (Increased Costs) shall be made in the currency specified by the Interim Finance Party making the claim (being the currency in which the Tax or losses were incurred).
- (f) Any amount expressed to be payable in a currency other than Sterling shall be paid in that other currency.

### 12.3 **Assumed Receipt**

- (a) Where an amount is or is required to be paid to the Interim Facility Agent under any Interim Document for the account of another person (the Payee), the Interim Facility Agent is not obliged to pay that amount to the Payee until the Interim Facility Agent is satisfied that it has actually received that amount.
- (b) If the Interim Facility Agent nonetheless pays that amount to the Payee (which it may do at its discretion) and the Interim Facility Agent had not in fact received that amount, then:
  - (i) the Payee will on demand refund that amount to the Interim Facility Agent; and
  - (ii) the person whom should have made available that amount will on demand pay to the Interim Facility Agent interest on that amount at the rate determined by the Interim Facility Agent to be equal to the cost to the Interim Facility Agent of funding that amount for the period from payment by the Interim Facility Agent until refund to the Interim Facility Agent of that amount,

provided that no Obligor will have any obligation to refund any such amount received from the Interim Facility Agent and paid by it (or on its behalf) to any third party for a purpose set out in Clause 4 (Purpose).

### 12.4 **No Set-off or Counterclaim**

All payments made or to be made by an Obligor under the Interim Documents shall be paid in full without set-off or counterclaim.

### 12.5 **Business Days**

- (a) Any payment which is due to be made, or an Interest Period which would otherwise end, on a day which is not a Business Day shall be made or will end, as the case may be, 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 such extension of the due date for payment of any principal or Unpaid Sum, or any extension of an Interest Period, interest shall accrue and be payable at the rate payable on the original due date.
- (c) In relation to a Compounded Rate Loan:
  - (i) if any period is expressed to accrue by reference to a month or any number of months then, in respect of the last month of that period:
    - (A) subject to paragraph (C) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
    - (B) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
    - (C) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end; and
  - (ii) 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).

## 12.6 Change in 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:
  - (i) any reference in any Interim Document to, and any obligations arising under any Interim Document in, the currency of that country shall be translated into, and paid in, the currency or currency unit of that country designated by the Interim Facility Agent (after consultation with Bidco); 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 of that country for the conversion of that currency or currency unit into the other, rounded up or down by the Interim Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, the Interim Documents will, to the extent the Interim Facility Agent specifies is necessary (acting reasonably and after consultation with Bidco), be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency. The Interim Facility Agent will notify the other parties to the relevant Interim Documents of any such amendment, which shall be binding on such parties.

## 12.7 Application of Moneys

- (a) If the Interim Facility Agent receives a payment that is insufficient to discharge all amounts then due and payable by an Obligor under any Interim Document, the Interim Facility Agent shall apply that payment towards the obligations of that Obligor under the Interim Documents in the following order:
  - (i) first, in payment *pro rata* of any fees, costs and expenses of the Agents and the Arrangers due but unpaid;
  - (ii) second, in payment *pro rata* of any fees, costs and expenses of the Interim Lenders and any accrued interest thereon due but unpaid;
  - (iii) third, in payment *pro rata* of any accrued interest or commission due but unpaid under the Interim Documents;
  - (iv) fourth, in payment *pro rata* of any principal due but unpaid under the Interim Documents; and
  - (v) fifth, in payment *pro rata* of any other amounts due but unpaid under the Interim Documents.
- (b) The Interim Facility Agent shall, if directed by all Interim Lenders, vary the order set out in sub-paragraphs (a)(ii) to (a)(v) inclusive above.
- (c) Any such application by the Interim Facility Agent will override any appropriation made by any Obligor.

## 13. INDEMNITIES

### 13.1 General Indemnity

Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand (which demand must be accompanied by reasonable details and calculations of the amount demanded), indemnify each Interim Finance Party against any cost, loss or liability (excluding any loss of Margin) which that Interim Finance Party incurs as a result of:

- (a) the occurrence of any Major Default;
- (b) any failure by any Obligor to pay any amount due under an Interim Document on its due date, including any cost, loss or liability arising as a result of the operation of Clause 19 (Pro Rata Payments);
- (c) funding, or making arrangements to fund, its participation in an Interim Loan requested by an Obligor in a Utilisation Request but not made by reason of the operation of any one or more provisions of this Agreement (other than by reason of default or negligence of that Interim Finance Party);
- (d) [Reserved]; or
- (e) an Interim Loan (or part of an Interim Loan) not being prepaid in accordance with a notice of prepayment given by an Obligor under the Interim Documents.

### 13.2 **Interim Facility Agent's Indemnity**

Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand (which demand must be accompanied by reasonable details and calculations of the amount demanded), indemnify the Interim Facility Agent against any reasonable third party cost, loss or liability incurred by the Interim Facility Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Major Default (provided that if after doing so it is established that such event is not a Major Default, the cost, loss or liability of investigation shall be for the account of the Interim Lenders); or
- (b) acting or relying on any notice, request or instruction from an Obligor which it reasonably believes to be genuine, correct and appropriately authorised.

### 13.3 **Interim Security Agent's Indemnity**

Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand (which demand must be accompanied by reasonable details and calculations of the amount demanded), indemnify the Interim Security Agent against any reasonable third party cost, loss or liability incurred by the Interim Security Agent (acting reasonably) as a result of:

- (a) the taking, holding, protection or enforcement of the Security Interests created under the Security Documents;
- (b) the exercise of any of the rights, powers, discretions and remedies vested in the Interim Security Agent by the Interim Documents or by law; or
- (c) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Interim Documents.

The Interim Security Agent may, in priority to any payment to the other Interim Finance Parties, indemnify itself out of the assets the subject of the Security Documents in respect of, any pay and retain, all sums necessary to give effect to the indemnity in this Clause 13.3 and shall have a lien on the proceeds of the enforcement of any Security Interest created under the Security Documents for all monies payable to it.

### 13.4 **Currency Indemnity**

- (a) If:
  - (i) any amount payable by an Obligor under or in connection with any Interim Document is received by any Interim Finance Party (or by an Agent on behalf of any Interim Finance Party) in a currency (the **Payment Currency**) other than that agreed in the relevant Interim Document (the **Agreed Currency**), and the amount produced by such Interim Finance Party converting the Payment Currency so received into the Agreed Currency is less than or greater than the required amount of the Agreed Currency; or
  - (ii) any amount payable by an Obligor under or in connection with any Interim Document has to be converted from the Agreed Currency into another currency for

the purpose of making, filing, obtaining or enforcing any claim, proof, order or judgment,

then that Obligor will, as an independent obligation, within ten Business Days of demand indemnify the relevant Interim Finance Party for any loss or liability incurred by it as a result of the conversion provided that if the amount produced or payable as a result of the conversion is greater than the relevant amount due that Interim Finance Party will promptly refund such excess amount to the relevant Obligor.

- (b) Any conversion required will be made by the relevant Interim Finance Party at the prevailing rate of exchange on the date and in the market determined by that Interim Finance Party, acting reasonably, as being most appropriate for the conversion. The relevant Obligor will also pay the reasonable costs of the conversion.
- (c) Each Obligor waives any right it may have in any jurisdiction to pay any amount under any Interim Document in a currency other than that in which it is expressed to be payable in that Interim Document.

## **14. COSTS, EXPENSES AND FEES**

### **14.1 Transaction Expenses**

Bidco shall (or shall procure that another member of the Group will), within twenty Business Days of demand, reimburse the Interim Facility Agent, the Interim Security Agent and the Arrangers for all reasonable third party costs and expenses (including legal fees) properly incurred by any of them in connection with the negotiation, preparation, printing, execution, perfection and registration (in each case, to the extent applicable) of this Agreement and any other Interim Document, subject always to limits as agreed between Bidco and the Arrangers from time to time (in the Fee Letter or otherwise).

### **14.2 Amendment Costs**

Bidco shall (or shall procure that another member of the Group will), within one month of demand, reimburse the Interim Facility Agent and the Interim Security Agent for all reasonable third party costs and expenses (including legal fees) properly incurred by either of them in responding to, evaluating, negotiating or complying with any amendment, waiver or consent requested by any Obligor, subject always to limits as agreed between Bidco and the Arrangers from time to time.

### **14.3 Enforcement Costs**

Bidco shall (or shall procure that another member of the Group will), within ten Business Days of demand, reimburse each Interim Finance Party for all third party costs and expenses (including legal fees) properly incurred by such Interim Finance Party in connection with the preservation or enforcement of any such Interim Finance Party's rights under any Interim Document.

### **14.4 Costs and Expenses**

Notwithstanding anything to the contrary in any Interim Document:

- (a) no fees, costs or expenses shall be payable to any Interim Finance Party under any Interim Document if the First Utilisation Date does not occur (save, in the case of legal fees, as otherwise agreed prior to the date of this Agreement);
- (b) any demand for reimbursement of costs and expenses incurred by an Interim Finance Party must be accompanied by reasonable details of the amount demanded (including, at the request of Bidco, hours worked, rates charged and individuals involved); and
- (c) if an Interim Lender assigns or transfers any of its rights, benefits or obligations under the Interim Documents no member of the Group shall be required to pay any fees, costs, expenses or other amounts relating to or arising in connection with that assignment or transfer (including, without limitation, any Taxes and any amounts relating to the perfection or amendment of the Security Documents).

**15. [RESERVED]**

**16. REPRESENTATIONS, UNDERTAKINGS AND INFORMATION**

**16.1 Representations and Undertakings**

Each of Holdco and Bidco:

- (a) makes the Major Representations to the Interim Finance Parties on the date of this Agreement, on each Utilisation Date and on the first day of each Interest Period by reference to the facts and circumstances existing at such time; and
- (b) agrees to comply with the Major Undertakings for so long as any amount is outstanding under the Interim Documents or any Interim Commitment is in force.

**16.2 Notification of Default**

- (a) Bidco shall notify the Interim Facility Agent of any Major 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 the other Obligor).
- (b) Promptly upon a request by the Interim Facility Agent, if the Interim Facility Agent has reasonable grounds for believing there is an outstanding Major Default Bidco shall supply to the Interim Facility Agent a certificate signed by an authorised signatory on behalf of Bidco certifying that no Major Default is continuing (or if a Major Default is continuing, specifying the Major Default and the steps, if any, being taken to remedy it).

Each of the parties to this Agreement agrees that the Interim Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents (and no others shall be implied).

**16.3 Receivables Pledge**

Holdco undertakes to enter into the Receivables Pledge as soon as reasonably practicable after the Receivables Agreement is executed.

## **17. SECURITY**

### **17.1 Interim Security Agent as holder of security**

- (a) Unless expressly provided to the contrary, the Interim Security Agent holds and declares that it shall hold, to the fullest extent permitted by law, any security created by a Security Documents on trust for and on behalf of the Interim Finance Parties and will apply all payments and other benefits received by it under a Security Documents in accordance with the Interim Documents.
- (b) Each Interim Finance Party (other than the Interim Security Agent) hereby appoints the Interim Security Agent as trustee (or agent) for and on behalf of the Interim Finance Parties (other than the Interim Security Agent) and the Interim Security Agent hereby accepts such appointment on the terms and to the conditions set out in this Clause 17. The Interim Security Agent shall, in case of any accessory security rights created by way of pledge or other accessory instruments under the Security Documents, administer and, as the case may be, enforce any and all lien or collateral created under such Security Documents in the name and for and on behalf of the Interim Finance Parties, but in each case for the benefit of the Interim Finance Parties. Each Interim Finance Party (other than the Interim Security Agent) hereby authorises the Interim Security Agent (whether or not by or through employers or agents) (i) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Interim Security Agent under the Security Documents together with such powers and discretions as are reasonably incidental thereto and (ii) to take such action on its behalf as may from time to time be authorised under or in connection with the Security Documents.

### **17.2 Responsibility**

The Interim Security Agent is not liable or responsible to any other Interim Finance Party for:

- (a) any failure in registering, perfecting or protecting the security created by any Security Document; or
- (b) any other action taken or not taken by it in connection with a Security Document.

### **17.3 Title**

- (a) The Interim Security Agent may accept, without enquiry, the title (if any) that any person granting the relevant security may have to any asset over which security is intended to be created by any Security Document.
- (b) The Interim Security Agent has no obligation to insure any such asset or the interests of the Interim Finance Parties in any such asset.

### **17.4 Possession of documents**

The Interim Security Agent is not obliged to hold in its own possession any Security Document, title deed or other document in connection with any asset over which security is intended to be created by a Security Document. Without prejudice to the above, the Interim Security Agent may allow any bank providing safe custody services or any professional adviser to the Interim Security Agent to retain any of those documents in its possession.

## 17.5 **Investments**

Except as otherwise provided in any Security Document, all moneys received by the Interim Security Agent under the Interim Documents may be:

- (a) invested in the name of, or under the control of, the Interim Security Agent in any investment for the time being authorised by English law for the investment by trustees of trust money or in any other investments which may be selected by the Interim Security Agent with the consent of the Majority Interim Lenders; or
- (b) placed on deposit in the name of, or under the control of, the Interim Security Agent at such bank or institution (including any other Interim Finance Party) and upon such terms as the Interim Security Agent may think fit (acting reasonably). Any and all such monies and all interest thereon shall be paid to the Interim Facility Agent forthwith upon demand by the Interim Facility Agent.

## 17.6 **Approval**

Each Interim Finance Party confirms its approval of each Security Document and authorises and directs the Interim Security Agent (by itself or by such person(s) as it may nominate) to execute and enforce the same as trustee (or agent) or as otherwise provided (and whether or not expressly in the names of the Interim Finance Parties) on its behalf.

## 17.7 **Enforcement**

- (a) The Interim Security Agent shall act in accordance with any instruction given to it by the Majority Interim Lenders or, if so instructed by the Majority Interim Lenders, refrain from exercising any right, power, authority or discretion vested in it as Interim Security Agent, and the Interim Security Agent shall be entitled to assume that (i) any instructions received by it from the Majority Interim Lenders (or the Interim Facility Agent on their behalf) are duly given in accordance with the terms of this Interim Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions are in full force and effect and have not been revoked.
- (b) The Interim Security Agent shall be entitled to request instructions and clarifications of any direction from the Majority Interim Lenders as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Interim Security Agent may refrain from acting unless and until those instructions or clarifications are received by it.
- (c) Any instruction given to the Interim Security Agent by the Majority Interim Lenders (or the Interim Facility Agent on their behalf) shall override any conflicting instructions given by any other Parties.
- (d) In exercising any discretion to exercise a right, power or authority under this Agreement where it has not received any instructions from the Majority Interim Lenders (or the Interim Facility Agent on their behalf) as to the exercise of that discretion, the Interim Security Agent shall do so having regard to the interests of all the Interim Finance Parties.



- (e) The Interim Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Interim Documents as it considers (in its discretion) to be appropriate.
- (f) Each Interim Finance Party (other than the Interim Security Agent) agrees not to enforce independently or exercise any rights or powers arising under a Security Document except through the Interim Security Agent and in accordance with the Interim Documents.

## 17.8 Release of Security

- (a) Upon repayment of all amounts outstanding under the Interim Documents (if any) and cancellation in full of the Interim Commitments, the Interim Security Agent is irrevocably authorised on behalf of each Interim Finance Party to execute any document and/or take any other action whatsoever in order to release any guarantee and Security Interests granted pursuant to the Interim Documents.
- (b) Each Interim Finance Party will, on the request and at the cost of Bidco, as soon as reasonably practicable execute any document and/or take such other action as is reasonably required to effect any release contemplated by this Clause 17.8.

## 18. AGENTS AND ARRANGERS

### 18.1 Appointment of Agents

- (a) Each Interim Finance Party (other than the relevant Agent) irrevocably authorises and appoints each Agent:
  - (i) to act as its agent under and in connection with the Interim Documents (and in the case of the Interim Security Agent to act as its trustee or agent for the purposes of the Security Document);
  - (ii) to execute and deliver on its behalf such of the Interim Documents as are expressed to be executed by such Agent on its behalf; and
  - (iii) to perform the duties and to exercise the rights, powers and discretions which are specifically delegated to such Agent by the terms of the Interim Documents, together with all other incidental rights, powers and discretions.
- (b) Each Interim Finance Party:
  - (i) irrevocably authorises and appoints, severally, each of the Interim Facility Agent and the Arrangers to accept on its behalf the terms of any reliance letter or engagement letter relating to any report, certificate or letter provided by accountants, auditors or other professional advisers in connection with any of the Interim Documents or any related transactions and to bind such Interim Finance Party in respect of the addressing or reliance or limitation of liability of any person under any report, certificate or letter; and
  - (ii) accepts the terms and any limitation of liability or qualification in the reports or any reliance or engagement letter entered into by the Interim Facility Agent and/or

any Arranger (whether before or after such Interim Finance Party became party to this Agreement) in connection with the Interim Documents.

- (c) The relationship between each Agent and the other Interim Finance Parties is that of principal and agent only.
- (d) Except as specifically provided in the Interim Documents, no Agent shall:
  - (i) have, or be deemed to have, any obligations to, or trust or fiduciary relationship with, any other Party or other person, other than those for which specific provision is made by the Interim Documents; or
  - (ii) be bound to account to any other Interim Finance Party for any sum or the profit element of any sum received by it for its own account.
- (e) Neither Agent is authorised to act on behalf of an Interim Finance Party in any legal or arbitration proceedings relating to any Interim Document without first obtaining that Interim Finance Party's consent except in any proceedings for the protection, preservation or enforcement of any Security Document otherwise permitted by this Agreement.
- (f) Each Interim Finance Party (other than the relevant Agent) hereby releases each Agent (to the extent legally possible) from any restrictions on representing several persons and self-dealing under any applicable law to make use of any authorisation granted under this Agreement and to perform its duties and obligations as Agent hereunder and under or in connection with the Interim Documents (in each case to the extent that Interim Finance Party is able to do so, and provided that any of the Interim Finance Parties which cannot release the relevant Agent from any such restriction shall inform that Agent as soon as practicable).

## 18.2 Agents' Duties

- (a) Each Agent will only have those duties which are expressly specified in the Interim Documents. The duties of the Agents are solely of a mechanical and administrative nature.
- (b) Each Agent shall promptly forward to a Party the original or a copy of each notice or document delivered to that Agent for that Party under any Interim Document.
- (c) Each Agent shall, subject to any terms of this Agreement which require the consent of all the Interim Lenders or of any particular Interim Finance Party:
  - (i) act or refrain from acting in accordance with any instructions from the Majority Interim Lenders and any such instructions shall be binding on all the Interim Finance Parties;
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with the instructions of the Majority Interim Lenders.
- (d) In the absence of any such instructions from the Majority Interim Lenders (or if required all Interim Lenders), save where acting or refraining from acting is specifically stated to require the instructions of the Majority Interim Lenders (or, as the case may be, all Interim Lenders), each Agent may act or refrain from acting as it considers to be in the best interests

of the Interim Lenders and any such action (or omission) shall be binding on all Interim Finance Parties.

### 18.3 Agents' Rights

Each Agent may:

- (a) act under the Interim Documents by or through its personnel or agents;
- (b) except as expressly provided to the contrary in any Interim Document, refrain from exercising any right, power or discretion vested in it under the Interim Documents until it has received instructions from the Majority Interim Lenders or, where relevant, all the Interim Lenders;
- (c) unless it has received notice to the contrary in accordance with this Agreement, treat the Interim Lender which makes available any portion of an Interim Loan as the person entitled to repayment of that portion (and any interest, fees or other amounts in relation thereto);
- (d) notwithstanding any other term of an Interim Document, refrain from doing anything (including disclosing any information) which would, in its opinion, constitute a breach of any law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation;
- (e) assume that no Major Default has occurred, unless it has received notice from another Party stating that a Major Default has occurred and giving details of such Major Default;
- (f) refrain from acting in accordance with the instructions of the Majority Interim Lenders or all the Interim Lenders until it has been indemnified and/or secured to its satisfaction against all losses or liabilities (including legal fees) which it may sustain or incur as a result of so acting;
- (g) rely on any notice or document believed by it to be genuine and correct and assume that any notice or document has been correctly and appropriately authorised and given;
- (h) rely on any statement made by any person regarding any matter which might reasonably be expected to be within such person's knowledge or power to verify;
- (i) engage, obtain, rely on and pay for any legal, accounting or other expert advice or services which may seem necessary or desirable to it;
- (j) at any time, and it shall if instructed by the Majority Interim Lenders, convene a meeting of the Interim Lenders;
- (k) accept without enquiry (and has no obligation to check) any title which an Obligor may have to any asset intended to be the subject of any Security Interest to be created by the Security Documents; and
- (l) deposit any title deeds, transfer documents, share certificates, Security Documents or any other documents in connection with any of the assets charged by the Security Documents with any bank or financial institution or any company whose business includes undertaking

the safe custody of deeds or documents or with any lawyer or firm of lawyers or other professional advisers (each a custodian) and it shall not be responsible or liable for or be required to insure against any loss incurred in connection with any such deposit or the misconduct or default of any such custodian and it may pay all amounts required to be paid on account or in relation to any such deposit.

#### 18.4 **Exoneration of the Arrangers and the Agents**

None of the Arrangers or the Agents are:

- (a) except where an Interim Document specifically provides otherwise, responsible for, or for checking, the adequacy, accuracy or completeness of:
  - (i) any representation, warranty, statement or information (written or oral) made in or given in connection with any report, any Interim Document or any notice or document delivered in connection with any Interim Document; or
  - (ii) any notice, accounts or other document delivered under any Interim Document (irrespective of whether the relevant Agent forwards that notice, those accounts or other documents to another Party);
- (b) responsible for the validity, legality, adequacy, accuracy, completeness, enforceability, admissibility in evidence or performance of any Interim Document or any agreement or document entered into in connection therewith;
- (c) under any obligation or duty either initially or on a continuing basis to provide any Interim Finance Party with any credit, financial or other information relating to an Obligor or any Group Company or the Target Group or any risks arising in connection with any Interim Document, except as expressly specified in this Agreement;
- (d) obliged to monitor or enquire as to the occurrence or continuation of a Major Default;
- (e) deemed to have knowledge of the occurrence of a Major Default unless it has received notice from another Party stating that a Major Default has occurred and giving details of such Major Default;
- (f) responsible for any failure of any Obligor or any party to an Interim Document duly and punctually to observe and perform their respective obligations under any Interim Document;
- (g) responsible for the consequences of relying on the advice of any professional advisers reasonably selected by it in connection with any Interim Document;
- (h) liable for acting (or refraining from acting) in what it believes to be in the best interests of the Interim Finance Parties in circumstances where it has not been given instructions by the Interim Lenders or the Major Interim Lenders (as the case may be);
- (i) liable to any Interim Finance Party for anything done or not done by it under or in connection with any Interim Document, save to the extent directly caused its own negligence or wilful misconduct;

- (j) responsible for any determination as to whether any information provided (or to be provided) to any Interim Finance Party is or may be non-public or price-sensitive information the use of which may be regulated or prohibited by applicable legislation relating to insider dealing or otherwise (provided that if the Agent or an Arranger has received notice from another Party stating that any such information is non-public or price-sensitive it shall treat that information accordingly); or
- (k) under any obligation to enquire into or check the title of any Obligor to, or to insure, any assets or property or any interest therein which is or is purported to be subject to any Security Interest constituted, created or evidenced by any Security Document.

#### 18.5 **The Arrangers and the Agents Individually**

- (a) If it is an Interim Lender, each of the Arrangers and the Agents has the same rights and powers under the Interim Documents as any other Interim Lender and may exercise those rights and powers as if it were not also acting as an Arranger or an Agent.
- (b) Each of the Arrangers and the Agents may:
  - (i) retain for its own benefit and without liability to account to any other person any fee, profit or other amount received by it for its own account under or in connection with the Interim Documents or any of the activities referred to in sub-paragraph (ii) below; and
  - (ii) accept deposits from, lend money to, provide any advisory, trust or other services to or engage in any kind of banking or other business with any Obligor or any Group Company (or Affiliate of any Obligor or any Group Company) or other Party (and, in each case, may do so without liability to account to any other person).
- (c) Except as otherwise expressly provided in this Agreement, each Arranger in its capacity as such does not have, and shall not be deemed to have, any obligation or duty of any kind to, or trust or fiduciary relationship with or fiduciary obligations to, any other Party under or in connection with any Interim Document.

#### 18.6 **Communications and Information**

- (a) All communications by an Interim Finance Party to an Obligor (or any Affiliate of an Obligor) under or in connection with the Interim Documents are, unless otherwise specified in the relevant Interim Document, to be made by or through the Interim Facility Agent. Each Interim Finance Party will notify the Interim Facility Agent of, and provide the Interim Facility Agent with a copy of, any communication between that Interim Finance Party and an Obligor (or Affiliate of an Obligor) on any matter concerning the Interim Facilities or the Interim Documents.
- (b) None of the Arrangers or the Agents will be obliged to transmit to or notify any other Interim Finance Party of any information relating to any Party which that Arranger or Agent has or may acquire otherwise than in connection with the Interim Facilities or the Interim Documents.
- (c) In acting as agent for the Interim Lenders, each Agent's agency division will be treated as a separate entity from any of its other divisions or department (the **Other Divisions**). Any

information relating to any Group Company acquired by any of the Other Divisions of an Agent or which in the opinion of that Agent (acting reasonably) is acquired by it otherwise than in its capacity as Agent under the Interim Documents may be treated by it as confidential and will not be treated as information available to the other Interim Finance Parties.

#### 18.7 **Non-reliance**

- (a) Each other Interim Finance Party confirms that it has made (and will continue to make) its own independent investigation and appraisal of the assets, business, financial condition and creditworthiness of the Group and of any risks arising under or in connection with any Interim Document, and has not relied, and will not at any time rely, on any Arranger or any Agent:
  - (i) to assess the adequacy, accuracy or completeness of any information provided by or on behalf of any Obligor or any Group Company or the Target Group under or in connection with any Interim Document (whether or not that information has been or is at any time circulated to it by an Arranger or an Agent), including any contained in any document delivered pursuant to Clause 3 (*Conditions Precedent to the Interim Facilities*);
  - (ii) to assess the assets, business, financial condition or creditworthiness of any Obligor, the Target Group or any other person; or
  - (iii) to assess the validity, legality, adequacy, accuracy, completeness, enforceability or admissibility in evidence of any Transaction Document.
- (b) No Party may take any proceedings against any officer, delegate, employee or agent of an Agent or Arranger in respect of any claim it may have against that Agent or Arranger or in respect of any act or omission by that officer, delegate, employee or agent in connection with any Interim Document. Any officer, delegate, employee or agent of an Agent or Arranger may rely on this Clause 18.7 in accordance with the Contracts (Rights of Third Parties) Act 1999.
- (c) This Clause 18.7 is without prejudice to the responsibility of any Obligor for the information supplied by it, or on its behalf or in connection with the Interim Documents and each Obligor remains responsible for such information to the extent set out under this Agreement.

#### 18.8 **Agents' Indemnity**

- (a) Each Interim Lender shall on demand indemnify each Agent and Arranger for its share of any loss or liability incurred by the relevant Agent or Arranger in acting, or in connection with its role, as Agent or Arranger under the Interim Documents, except to the extent that the loss or liability is incurred as a result of the relevant Agent's or Arranger's negligence or wilful misconduct.
- (b) An Interim Lender's share of any such loss or liability shall be the proportion which:
  - (i) that Interim Lender's participation in the outstanding Interim Loans bears to the outstanding Interim Loans at the time of demand; or

- (ii) if there is no outstanding Interim Loan at that time, that Interim Lender's Interim Commitments bears to the Total Interim Commitments at that time; or
  - (iii) if the Total Interim Commitments have been cancelled, that Interim Lender's Interim Commitments bore to the Total Interim Commitments immediately before being cancelled.
- (c) The provisions of this Clause 18.8 are without prejudice to any obligations of each Obligor to indemnify the Agents and the Arrangers under the Interim Documents.

## 19. PRO RATA PAYMENTS

### 19.1 Recoveries

Subject to Clause 19.3 (Exceptions to Sharing), if any amount owing by an Obligor under any Interim Document to an Interim Lender (the **Recovering Interim Lender**) is discharged by payment, set-off or any other manner other than through the Interim Facility Agent in accordance with Clause 12 (Payments) (the amount so discharged being a Recovery) then:

- (a) within three Business Days of receipt of the Recovery, the Recovering Interim Lender shall notify details of such Recovery to the Interim Facility Agent;
- (b) the Interim Facility Agent shall determine whether the amount of the Recovery is in excess of the amount which such Recovering Interim Lender should have received had such amount been paid to the Interim Facility Agent under Clause 12 (Payments) (any such excess amount being the Excess Recovery);
- (c) within three Business Days of demand the Recovering Interim Lender shall pay to the Interim Facility Agent an amount equal to the **Excess Recovery**;
- (d) the Interim Facility Agent shall treat that payment of an amount equal to the Excess Recovery as if it was a payment made by that Obligor to the Interim Lenders under Clause 12 (Payments) and distribute it to the Interim Lenders (other than the Recovering Interim Lender) accordingly; and
- (e) the Recovering Interim Lender shall be subrogated to the rights of the Interim Lenders which have shared in the payment under paragraph (d) above and if for any reason the Recovering Interim Lender is unable to rely on such rights of subrogation, the amount of the Excess Recovery shall be treated as not having been paid and (without double counting) that Obligor will owe the Recovering Interim Lender a debt (immediately due and payable) in an amount equal to the Excess Recovery.

### 19.2 Notification of Recovery

If any Recovery has to be wholly or partly refunded by the Recovering Interim Lender after it has paid any amount to the Interim Facility Agent under paragraph (c) of Clause 19.1 (Recoveries), each Interim Lender to which any part of the Excess Recovery (or amount in respect of it) was distributed will, on request from the Recovering Interim Lender, pay to the Recovering Interim Lender that Interim Lender's pro rata share of the amount (including any related interest) which has to be refunded by the Recovering Interim Lender.

### 19.3 **Exceptions to Sharing**

Notwithstanding Clause 19.1 (Recoveries), no Recovering Interim Lender will be obliged to pay any amount to the Interim Facility Agent or any other Interim Lender in respect of any Recovery:

- (a) if it would not after that payment have a valid and enforceable claim against the relevant Obligor in an amount equal to the Excess Recovery; or
- (b) which it receives as a result of legal or arbitration proceedings taken by it to recover any amounts owing to it under the Interim Documents, which proceedings have been notified to the other Interim Finance Parties and where the Interim Lender concerned had a right and opportunity to, but does not, either as soon as reasonably practicable join in those proceedings or promptly after receiving notice commence and diligently pursue separate proceedings to enforce its rights in the same or another court.

### 19.4 **No Security**

The provisions of this Clause 19 shall not constitute a charge by any Interim Lender over all or any part of any amount received or recovered by it under any of the circumstances mentioned in this Clause 19.

## 20. **SET-OFF**

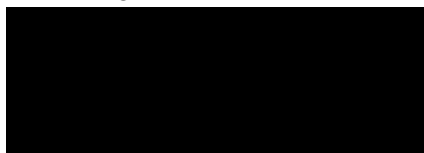
An Interim Finance Party may, at any time while a Major Default is continuing, set off any matured obligation due and payable by an Obligor under an Interim Document (to the extent beneficially owned by that Interim Finance Party) against any matured obligation due and payable by it to that Obligor, regardless of currency, place of payment or booking branch of either obligation. The relevant Interim Finance Party may convert either obligation at a market rate of exchange in its ordinary course of business in order to effect such set-off.

## 21. **NOTICES**

### 21.1 **Mode of Service**

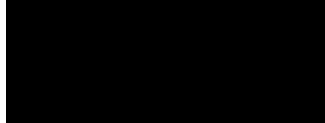
- (a) Any notice, demand, consent or other communication (a Notice) made under or in connection with any Interim Document must be in writing and made by letter or by facsimile transmission or any other electronic communication approved by the Interim Facility Agent.
- (b) An electronic communication will be treated as being in writing for the purposes of this Agreement.
- (c) The address and facsimile number of each Party (and person for whose attention the Notice is to be sent) for the purposes of Notices given under or in connection with the Interim Documents are:
  - (i) in the case of each Obligor:

Address:





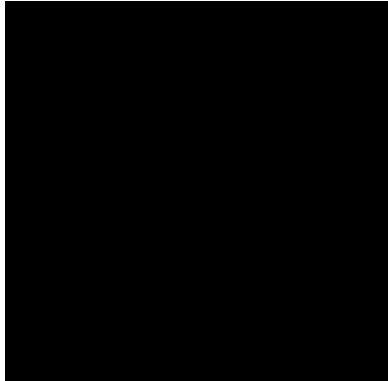
Email:



Attention:

- (ii) in the case of the Interim Facility Agent and the Interim Security Agent:

Address:



Fax number:

Attention:

- (iii) in the case of any other Interim Finance Party, the address and facsimile number notified in writing by that Interim Finance Party for this purpose to the Interim Facility Agent on or before the date it becomes a party to this Agreement; or
  - (iv) any other address and facsimile number notified in writing by that Party for this purpose to the Interim Facility Agent (or in the case of the Interim Facility Agent, notified by the Interim Facility Agent to the other Parties) by not less than five Business Days' notice.
- (d) Any Notice given to an Agent will be effective only:
- (i) if it is marked for the attention of the department or officer specified by that Agent for receipt of Notices; and
  - (ii) when actually received by that Agent.

## 21.2 Deemed Service

- (a) Subject to paragraph (b) below, a Notice will be deemed to be received as follows:
  - (i) if by letter or delivered personally, when delivered;
  - (ii) if by facsimile, when received in legible form;
  - (iii) if by e-mail or any other electronic communication, when received in legible form; and
  - (iv) if by posting to an electronic website, at the time of notification to the relevant recipient of such posting or (if later) the time when the recipient was given access to such website.

- (b) A Notice given in accordance with paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

### 21.3 **Electronic Communication**

- (a) Any communication to be made between the Interim Facility Agent and an Interim Lender under or in connection with the Interim Documents may be made by electronic mail or other electronic means, if the Interim Facility Agent and the relevant Interim Lender:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Interim Facility Agent and an Interim Lender will be effective only when actually received in readable form and in the case of any electronic communication made by an Interim Lender to the Interim Facility Agent only if it is addressed in such a manner as the Interim Facility Agent shall specify for this purpose.
- (c) Electronic communication may only be used for the exchange of correspondence and the transmission of information and documents. Electronic communication may not be used for any declarations of intent, including Utilisation Requests.

### 21.4 **Language**

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

### 21.5 **Personal Liability**

No personal liability shall attach to any director, officer, employee or other individual signing a certificate or other document on behalf of a member of the Group which proves to incorrect in any way, unless that individual acted fraudulently in giving that certificate or other document in which case any liability will be determined in accordance with applicable law.

## **21.4 Electronic Signature and Validity of Electronic copies of this Agreement**

The parties agree that this Agreement and any other documents in relation to this Agreement including the Transaction Documents may be made, signed, and or retained in electronic form or by electronic means and neither the agreement nor any of its provisions (including any power of attorney or agency provision in it) shall be denied legal effect, validity or enforceability solely because it was made, signed, and or retained in electronic form or by electronic means.

## **22. CONFIDENTIALITY**

- (a) Each Interim Finance Party will keep the Interim Documents and any information supplied to it by or on behalf of any member of the Group under the Interim Documents confidential, provided that it may disclose any such document or information:
- (i) which is publicly available (other than by breach of this Clause 22);
  - (ii) if and to the extent required by applicable law or regulation or at the request of any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body;
  - (iii) on a need to know and confidential basis to its professional advisers and auditors;
  - (iv) to any person referred to in and on the terms of Clause 24.6 (Disclosure of Information);
  - (v) to any direct or indirect Holding Company of Bidco (or any investor in any such Holding Company) or any member of the Group;
  - (vi) on a need to know and confidential basis to any Affiliate in connection with the Acquisition and its financing;
  - (vii) to rating agencies on a confidential and need to know basis for the purpose of preparing a private or shadow rating;
  - (viii) in the case of an Interim Lender which is a Fund, to investors in (or other lenders to) that Fund on a confidential and strict need to know basis as a direct consequence of such Funds participation in the Interim Facilities (provided that each Interim Lender which is a Fund will, at the request of Bidco, promptly provide Bidco with details of all documents and other information disclosed pursuant to this paragraph (viii)); or
  - (ix) otherwise with the prior written consent of Bidco.
- (b) This Clause 22 replaces any previous confidentiality undertaking given by any Interim Finance Party in connection with this Agreement prior to it becoming a Party.

## **23. KNOW YOUR CUSTOMER REQUIREMENTS**

Each Obligor must promptly on the request of any Interim Finance Party supply to that Interim Finance Party any documentation or other evidence which is available to it and reasonably requested by that Interim Finance Party (whether for itself, on behalf of any Interim Finance Party or any prospective new Interim Lender) to enable an Interim Finance Party or prospective new

Interim Lender to carry out and be satisfied with the results of all applicable know your customer requirements under applicable laws and regulations.

## 24. CHANGE TO PARTIES

### 24.1 No Transfers by Holdco or Bidco

Neither Holdco nor Bidco may assign, novate or transfer all or any part of its rights and obligations under any Interim Document.

### 24.2 Transfers by Interim Lenders

(a) An Interim Lender (an **Existing Interim Lender**) may:

- (i) assign any of its rights and benefits; or
- (ii) transfer by novation any of its rights, benefits and obligations,

under the Interim Documents 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 (a **New Interim Lender**).

(b) Subject to paragraph (e) below, any assignment, transfer, participation or other syndication of any rights, benefits and/or obligations under the Interim Documents by an Interim Lender shall require the prior written consent of Bidco if prior to the expiry of the Certain Funds Period.

(c) After the expiry of the Certain Funds Period and subject to paragraph (d) below, any assignment, transfer, participation or other syndication of any rights, benefits and/or obligations under the Interim Documents by an Interim Lender shall require the prior written consent of Bidco unless such assignment, transfer, participation or other syndication of any rights, benefits and/or obligations is to an Existing Interim Lender or an Affiliate of an Existing Interim Lender or any event or circumstance specified in paragraph 1 (*Payment Default*), paragraph 5 (*Insolvency*), paragraph 6 (*Insolvency Proceedings*) or paragraph 7 (*Analogous Proceedings*) in Part III (*Major Defaults*) of Schedule 5 (*Major Representations, Major Undertakings and Major Defaults*) has occurred and is continuing.

(d) Notwithstanding anything to the contrary in this Agreement, any assignment, transfer, participation or other syndication of any rights, benefits and/or obligations under the Interim Documents involving a person which is (or would be on becoming an Interim Lender) an Industrial Competitor shall require the prior written consent of Bidco.

For the purposes of this paragraph (d), **Industrial Competitor** means any competitor, supplier or sub-contractor of the Group in any of the material activities of the Group (or any person that it is an Affiliate of or is acting (in relation to this Agreement) on behalf of such person).

(e) An Interim Lender may sub-participate or enter into other back-to-back arrangements provided that:

- (i) no such sub-participation or other arrangement shall reduce the Interim Commitments or other obligations of any Interim Finance Party with respect to any of the Interim Facilities and each Interim Finance Party shall remain liable to fund the full amount of its commitments under the Interim Facilities;
- (ii) any such sub-participation or other arrangement may only be entered into with a person to whom the Interim Finance Party will be permitted to transfer commitments under the Debt Facilities after completion of the Acquisition in accordance with the terms of the Facilities Agreement (as defined in the Commitment Letter); and
- (iii) each Interim Finance Party retains exclusive control over all rights and obligations in relation to its Interim Commitments and the Interim Facilities, including all rights in relation to waivers, consents and amendments and confirmations as to satisfaction of conditions precedent (for the avoidance of doubt, free of any agreement or understanding pursuant to which it is required to or will consult with any other person in relation to the exercise of any such rights and/or obligations).

Bidco may require the Interim Finance Parties to provide information in reasonable detail regarding the identities and participations of each of the Interim Lenders and any sub-participants as soon as reasonably practicable after receipt of such request, provided that an Interim Lender shall not be required to disclose the identity of a sub-participant if that Lender retains exclusive control over all rights and obligations in relation to the commitments that are the subject of the relevant sub-participation, including all voting rights (for the avoidance of doubt, free of any agreement or understanding pursuant to which it is required to or will consult with any other person in relation to the exercise of any such rights and/or obligations).

- (d) Any reference in this Agreement to an Interim Lender includes a New Interim Lender but excludes an Interim Lender if no amount is or may become owed to it under this Agreement.
- (e) Without prejudice to any other provision of this Agreement relating to assignment or transfer by any Interim Lender of its rights and obligations under this Agreement, any Interim Lender which is a Fund may, without the consent of the Obligors or the Interim Facility Agent, pledge any of its Interim Loans to a trustee for the benefit of investors in or lenders to that Fund and in support of its obligations to those investors, lenders or that trustee. No such pledge will release the relevant Interim Lender from its obligations under the Interim Documents.
- (f) Without prejudice to any other provision of this Agreement relating to assignment or transfer by any Interim Lender of its rights and obligations under this Agreement, each Interim Lender may without consulting with or obtaining consent from Bidco, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Interim Document to secure obligations of that Interim Lender including, without limitation:
  - (i) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
  - (ii) in the case of any Interim Lender which is a fund, any charge, assignment or other

Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Interim Lender as security for those obligations or securities,

- (iii) except that no such charge, assignment or Security Interest shall:
  - (A) release an Interim Lender from any of its obligations under the Interim Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Interim Lender as a party to any of the Interim Documents; or
  - (B) require any payments to be made by Bidco or grant to any person any more extensive rights than those required to be made or granted to the relevant Interim Lender under the Interim Documents.

### 24.3 Method of Transfers

- (a) An Existing Interim Lender may, subject to Clause 24.2 (Transfers by Interim Lenders), transfer by novation all or any of its rights and obligations under the Interim Documents to a New Interim Lender by the Interim Facility Agent executing a Transfer Certificate which has been duly completed, executed and delivered by both the Existing Interim Lender and the New Interim Lender.
- (b) The Interim Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it once it has complied with all necessary and applicable “know-your-customer” requirements in relation to the proposed transfer.
- (c) On the date (the **Transfer Date**) which is the later of (A) the date specified in the Transfer Certificate as being the proposed Transfer Date and (B) the date on which the Interim Facility Agent executes the Transfer Certificate:
  - (i) the Existing Interim Lender shall be released from those obligations and cease to have those rights under the Interim Documents which are expressed to be transferred by novation to the New Interim Lender under the Transfer Certificate (such rights and obligations being referred to in this Clause 24.3 as Discharged Rights and Obligations);
  - (ii) the New Interim Lender and each of the other Parties shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the New Interim Lender has assumed and/or acquired the same in place of the Existing Interim Lender; and
  - (iii) the New Interim Lender will become a party to this Agreement as an Interim Lender with the rights and obligations referred to in sub-paragraph (ii) above.
- (d) An Existing Interim Lender may, subject to Clause 24.2 (Transfers by Interim Lenders), otherwise assign all or part of its rights under the Interim Documents to a New Interim Lender if the Existing Interim Lender, the New Interim Lender and the Interim Facility Agent enter into such agreements (in form and substance satisfactory to the Interim Facility Agent) as the Interim Facility Agent may reasonably require confirming such assignment

and that the New Interim Lender agrees to be bound by the Interim Documents as an Interim Lender.

- (e) An assignment will only be effective on performance by the Interim Facility Agent of all necessary and applicable “know-your-customer” requirements in relation to the proposed assignment.
- (f) Each of the Parties (other than the relevant Existing Interim Lender and New Interim Lender) irrevocably authorises the Interim Facility Agent to execute on its behalf any Transfer Certificate or other agreement referred to in paragraph (d) above delivered to the Interim Facility Agent which has been duly completed and executed by each of the Existing Interim Lender and the New Interim Lender.

#### 24.4 **Limitation of Responsibility of Existing Interim Lender**

- (a) An Existing Interim Lender makes no representation or warranty and assumes no responsibility to a New Interim Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of any of the Interim Documents or any other document;
  - (ii) the financial condition of any Obligor or of the Group or of the Target Group;
  - (iii) the performance and observance by any Group Company of its obligations under any of the Interim Documents or any other document; or
  - (iv) the accuracy or completeness of any statements (whether written or oral) made in or given in connection with any Interim Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Interim Lender confirms to the Existing Interim Lender and the other Interim Finance Parties that:
  - (i) it has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its Affiliates and the Target Group in connection with its participation in the Interim Facilities and has not relied exclusively on any information provided to it by the Existing Interim Lender (or any other Interim Finance Party) in connection with any Interim Document; and
  - (ii) if all or any part of the Interim Loans or other rights or obligations under the Interim Documents transferred are rescheduled or renegotiated, the New Interim Lender and not the Existing Interim Lender will be subject to the rescheduled or renegotiated terms.
- (c) Nothing in any Interim Document obliges an Existing Interim Lender to:
  - (i) accept a re-transfer from a New Interim Lender of any of the rights and obligations transferred under this Clause 24; or

- (ii) support any losses directly or indirectly incurred by the New Interim Lender by reason of the non-performance by any Group Company of its obligations under any of the Interim Documents or otherwise.

#### 24.5 **Transfer and Change of Facility Office**

If at any time:

- (a) an Interim Lender novates, assigns or transfers any of its rights, benefits or obligations under the Interim Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date the novation, assignment, transfer or change occurs, any Obligor would be obliged to make a payment to the New Interim Lender, or Interim Lender acting through its new Facility Office, under Clause 10 (Taxes) or Clause 11.1 (Increased Costs),

then the New Interim Lender, or Interim Lender acting through its new Facility Office, is only entitled to receive payment under those Clauses to the same extent as the Existing Interim Lender, or Interim Lender acting through its previous Facility Office, would have been entitled if the novation, assignment, transfer or change had not occurred.

#### 24.6 **Disclosure of Information**

An Interim Lender may disclose to any person:

- (a) to whom that Interim Lender will or proposes to assign, transfer or sub-participate all or any of its rights and obligations under the Interim Documents; and
- (b) for whose benefit that Interim Lender pledges any of its Interim Loans pursuant to paragraph (e) of Clause 24.2 (Transfers by Interim Lenders),

any Interim Document or other document or information in the possession of that Interim Lender relating to the Group which it (acting reasonably) shall consider appropriate, provided that such person has first entered into a confidentiality undertaking (in form and substance satisfactory to Bidco) on which Bidco is able to rely agreeing to keep such Interim Document or other document or information confidential.

#### 24.7 **[Not used]**

#### 24.8 **Affiliates**

- (a) Each Interim Lender may nominate an Affiliate to fulfil its obligations in respect of any Interim Loan if the relevant Affiliate is specified in this Agreement as an Interim Lender or becomes an Interim Lender by means of a Transfer Certificate in accordance with this Agreement. In this case, the Interim Lender and its Affiliate will be treated as having a single Interim Commitment and a single vote, but, for all other purposes, will be treated as separate Interim Lenders.
- (b) Each Interim Lender shall remain liable and responsible for the performance of all obligations by its Affiliate on its behalf and non-performance of an Interim Lender's



obligation by its Affiliate shall not relieve such Interim Lender from its obligations under the Interim Documents.

- (c) If an Interim Lender fulfils its obligations in respect of any Interim Loan through an Affiliate, no member of the Group shall be liable to pay any amount to such Affiliate under Clause 10 (Taxes) or Clause 11.1 (Increased Costs) (arising as a result of laws or regulations in force or known to be in force on the date the relevant Affiliate was nominated) in excess of the amount it would have been obliged to pay that Interim Lender had it not nominated such Affiliate to participate in the Interim Loan. Each Interim Lender shall promptly notify Bidco and the Interim Facility Agent of the Tax jurisdiction from which its Affiliate will participate in the relevant Interim Loan and such other information regarding that Affiliate as Bidco may reasonably request.

#### **24.9 Assignment and Transfer Fee**

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

#### **24.10 Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors, permitted assignees and permitted transferees.

### **25. CALCULATIONS AND CERTIFICATES**

#### **25.1 Accounts**

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

#### **25.2 Certificates**

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

### **26. PARTIAL INVALIDITY**

If any provision of the Interim Documents is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect the validity or enforceability in that jurisdiction of any other term of the Interim Documents or the validity or enforceability in other jurisdictions of that or any other term of the Interim Documents.

### **27. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

### **28. AMENDMENTS AND WAIVERS**

#### **28.1 Required Consents**

Any term of the Interim Documents may only be amended or waived with the consent of each Interim Lender and Bidco and any such amendment or waiver will be binding on all Parties.

## **28.2 Interim Facility Agent**

- (a) The Interim Facility Agent may effect, on behalf of any Interim Lender, any amendment or waiver to which that Interim Lender has provided its prior written consent to the Interim Facility Agent.
- (b) Any amendment or waiver which relates to the rights or obligations of the Interim Facility Agent or the Interim Security Agent (in each case acting in that capacity) may not be effected without the consent of the Interim Facility Agent or the Interim Security Agent, as the case may be, at such time.

## **28.3 Changes to Reference Rates**

- (a) If:
  - (i) a Published Rate Replacement Event has occurred in relation to any Published Rate for a currency which can be selected for an Interim Loan; or
  - (ii) Bidco otherwise requests any amendment or waiver to provide for an additional or alternative benchmark rate, base rate or reference rate to apply in respect of any Interim Facility (or any related, similar or equivalent matter), including, without limitation, any amendment or waiver in relation to (A) the definition of a Published Rate, (B) an alternative or additional page, service or method for the determination of a Published Rate, (C) aligning any term of an Interim Document to the use of an alternative or additional benchmark rate, base rate or reference rate, (D) adjustments in connection with the basis, duration, time and periodicity for determination of an alternative or additional benchmark rate, base rate or reference rate for any period and (E) any other consequential, related and/or incidental changes,

any amendment or waiver which relates to:

- (A) providing for the use of a Replacement Benchmark;
- (B) aligning any provision of any Interim Document to the use of a Replacement Benchmark;
- (C) enabling a Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable a Replacement Benchmark to be used for the purposes of this Agreement);
- (D) implementing market conventions applicable to a Replacement Benchmark;
- (E) providing for appropriate fallback (and market disruption) provisions for a Replacement Benchmark;

- (F) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of a Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall (if Bidco so elects in its sole discretion) be determined on the basis of that designation, nomination or recommendation);
- (G) aligning the means of calculation of interest on a Compounded Rate Loan in any currency under this Agreement to any recommendation of a Relevant Nominating Body which:
  - (1) relates to the use of an RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and
  - (2) is issued on or after the date of this Agreement; or
- (H) any other matter requested by Bidco pursuant to paragraph (ii) above (including, for the avoidance of doubt, any changes that Bidco proposes as necessary or desirable in connection with and/or to facilitate the implementation and use of any Replacement Benchmark),

may be made with the consent of the Interim Facility Agent (acting on the instructions of the Majority Interim Lenders or, where applicable, in accordance with paragraph (b) below) and Bidco.

- (b) In the case of any amendment or waiver requested by Bidco pursuant to paragraph (a) above, the Interim Facility Agent shall provide its consent to that amendment or waiver if:
  - (i) the Interim Facility Agent determines (acting reasonably) that the relevant Replacement Benchmark the subject of that amendment or waiver is generally accepted as a then-prevailing market convention for determining a rate of interest for syndicated loans of the type provided for under this Agreement in the European, London or any other domestic market in the relevant currency (provided that, for the avoidance of doubt, the relevant Replacement Benchmark shall automatically be considered a then-prevailing market convention if it is consistent in all material respects with the benchmark rate, base rate or reference rate used in any other substantially equivalent financing syndicated in the European, London or any other relevant domestic loan market or any Loan Market Association form of facilities agreement; or
  - (ii) the Majority Interim Lenders (acting reasonably) have consented to that amendment or waiver.
- (c) In this Clause 28.3:

**Published Rate** means an RFR.

**Published Rate Replacement Event** means, in relation to a Published Rate:

- (i) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Interim Facility Agent and Bidco, materially changed;
- (ii)
  - (A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent or information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent, provided that, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (B) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (C) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
  - (D) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (iii) in the opinion of the Interim Facility Agent and Bidco, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

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

**Replacement Benchmark** means a benchmark rate, base rate or reference rate which is:

- (i) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (A) the administrator of that Published Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Published Rate); or
  - (B) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (B) above;

- (ii) in the opinion of the Interim Facility Agent and Bidco, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate;
- (iii) in the opinion of the Interim Facility Agent and Bidco, an appropriate successor to a Published Rate; or
- (iv) proposed by Bidco and either:
  - (A) used in any other substantially equivalent financing syndicated in the European, London or any other relevant domestic loan market, any Loan Market Association form of facilities agreement, any facilities agreement of a portfolio company of the Sponsor or any facilities agreement under which the Interim Facility Agent is a facility or administrative agent (howsoever described); or
  - (B) otherwise practicable for the Interim Facility Agent to administer (as reasonably determined by the Interim Facility Agent).
- (d) The Interim Finance Parties shall be required to enter into any amendment to or replacement of the Interim Documents required by Bidco in order to facilitate or reflect any of the matters contemplated by this Clause 28.3. The Interim Facility Agent is irrevocably authorised and instructed by each Interim Finance Party to execute any such amended or replacement Interim Documents (and shall do so on the request of Bidco). Bidco shall, or shall procure that another member of the Group will, within 20 Business Days of demand, reimburse the Interim Facility Agent for all reasonable fees and disbursements of legal counsel (as appointed with the prior approval of Bidco) properly incurred by the Interim Facility Agent in connection with any amendment or waiver requested by Bidco pursuant to this Clause 28.3 (in each case subject always to limits as agreed from time to time). No member of the Group shall be required to pay any other fees, costs, expenses or other amounts relating to or arising in connection with any of the matters contemplated by this Clause 28.3.

## **29. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are, and any dispute or proceedings arising out of or relating to this Agreement shall be, governed by English law.

## **30. THIRD PARTY RIGHTS**

Unless expressly provided for to the contrary in an Interim Document a person who is not a party to an Interim Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

## **31. JURISDICTION**

### **31.1 Submission to Jurisdiction**

- (a) For the benefit of each Interim Finance Party, each of Bidco and Holdco agrees that the courts of England have jurisdiction to hear, decide and settle any dispute or proceedings

arising out of or relating to any Interim Document (including as to existence, validity or termination) (each a **Dispute**) and for the purpose of enforcement or any judgment against assets and each of Bidco and Holdco irrevocably submits to the jurisdiction of the English courts.

- (b) Nothing in paragraph (a) above limits or prevents any Interim Finance Party from taking proceedings against Bidco and/or Holdco in any other court nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

### 31.2 **Forum Convenience**

Each of Bidco and Holdco:

- (a) agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and waives any objection to the courts of England on grounds of inconvenient forum or otherwise; and
- (b) agrees that a judgment or order of an English court in connection with a Dispute is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

### 31.3 **[Reserved]**

### 31.4 **Specific Performance**

Each Interim Finance Party acknowledges and agrees that:

- (a) each of Bidco and Holdco may be irreparably harmed by a breach of any term of the Interim Documents and damages may not be an adequate remedy; and
- (b) each of Bidco and Holdco may be granted an injunction or specific performance for any threatened or actual breach of any term of the Interim Documents.

## 32. **CONTRACTUAL RECOGNITION OF BAIL-IN**

Notwithstanding any other term of any Interim Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Interim Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

- (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Interim Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

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

## SCHEDULE 1

### INTERPRETATION

#### 1 Definitions

In this Agreement:

**Acquisition** means an acquisition of the Target Shares by the Bidder pursuant to a Scheme and/or Offer and, if applicable, a Squeeze-out or any other acquisition of Target Shares by the Bidder related to or in lieu of such acquisition.

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

**Agent** means the Interim Facility Agent and/or the Interim Security Agent, in each case as the context requires.

**Agent's Spot Rate of Exchange** means the Interim Facility Agent'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.

**Announcement** means the press release made by or on behalf of the Bidder announcing a firm intention to make an Offer or, as the case may be, implement a Scheme, in each case in accordance with Rule 2.7 of the City Code.

**Announcement Date** means the date on which Bidco makes the Announcement.

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

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

**Bail-In Legislation** means

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

**Bank Lender** means, in relation to any Obligor, an Interim Lender that is beneficially entitled to interest payable to that Interim Lender in respect of an Interim Utilisation:

- (a) which is a bank (as defined for the purpose of section 879 of Income Tax Act 2007) making an advance under an Interim Document and is within the charge to UK corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of Corporation Tax Act 2009; or



- (b) in respect of an advance made under an Interim Document by a person that was a bank (as defined for the purpose of section 879 of Income Tax Act 2007) at the time that that advance was made and within the charge to UK corporation tax as respects any payments of interest made in respect of that advance.

**Bank Levy** means any amount payable by any Interim Lender or any of its Affiliates on the basis of or in relation to its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof (including the UK bank levy as set out in the Finance Act 2011, the French *taxe bancaire de risque systémique* as set out in the Finance Bill 2011, the German bank levy as set out in the German Restructuring Fund Act 2010 (as amended) and any tax in any jurisdiction levied on a similar basis or for a similar purpose or any financial activities taxes (or other taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011).

**Base Currency Amount** means, in relation to any Interim Utilisation, the amount specified in the Utilisation Request for that Interim Utilisation (or if the amount requested is not denominated in Sterling, that amount converted into Sterling at the Agent's Spot Rate of Exchange on the date which is 3 Business Days before the Utilisation Date or, if later, on the date the Interim Facility Agent receives the Utilisation Request), as adjusted to reflect any repayment or prepayment under this Agreement.

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

**Bidder** means Aqueduct Bidco Limited, a company incorporated under the laws of England and Wales with registered number 13355350.

**Capitalised Lease Obligations** means, with respect to any person, any rental obligation under any agreement (including any hire purchase payment agreement) which, under the applicable accounting principles, would be required to be treated as a finance lease or otherwise capitalised in the audited financial statements of that person, but only to the extent of that treatment.

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

**Central Bank Rate Adjustment** means, in relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Interim Facility Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which SONIA is available.

**Central Bank Rate Spread** means, in relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Interim Facility Agent between:

- (a) SONIA for the RFR Banking Day; and
- (b) the Central Bank Rate prevailing at the close of business on that RFR Banking Day. .

**Certain Funds Period** means the period from (and including) the date of this Agreement to (and including) 11:59 p.m., London time, on the earliest of:

- (a) if the Acquisition is intended to be completed pursuant to a Scheme, the date on which the

Scheme lapses (including, subject to exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or is withdrawn in writing in accordance with its terms (other than (i) where such lapse or withdrawal is as a result of the exercise of the Bidder's right to effect a switch from a Scheme to an Offer or (ii) it is otherwise to be followed within twenty (20) business days by an Announcement made by the Bidder to implement the Acquisition by a different offer or scheme (as applicable));

- (b) if the Acquisition is intended to be completed pursuant to an Offer, the date on which the Offer lapses, terminates or is withdrawn in writing in accordance with its terms (other than (i) where such lapse or withdrawal is as a result of the exercise of the Bidder's right to effect a switch from an Offer to a Scheme or (ii) it is otherwise to be followed within twenty (20) Business Days by an Announcement made by the Bidder to implement the Acquisition by a different offer or scheme (as applicable) in accordance with the terms of this Agreement);
- (c) if the first Announcement has not been released by such time, twenty (20) business days following the date of this Agreement;
- (d) the date on which the Interim Facilities have been utilized in full or the Interim Commitments have been cancelled in full;
- (e) the date on which Target has become a wholly owned subsidiary of the Bidder and all of the consideration payable under the Acquisition in respect of the Target Shares or proposals made or to be made under the Takeover Code in connection with the Acquisition, have in each case been paid in full; and
- (f) the day falling fourteen days after the date falling 9 months after the date of the first Announcement (the **Outside Date**), provided that (where the Acquisition is intended to be completed pursuant to an Offer) so long as the First Utilisation Date has occurred on or before the Outside Date, the Certain Funds Period shall end on the date falling 120 days after the First Utilisation Date,

or, in each case, such later time as agreed by the Arrangers.

**Change of Control Event** means any case where:

- (a) Equity Investors cease to directly or indirectly beneficially own more than 50 per cent. of the issued voting share capital of Holdco; or
- (b) Equity Investors cease to directly or indirectly have the right to determine the composition of a majority of the board of directors (or equivalent management body) of Holdco; or
- (c) Holdco ceases to own 100 per cent. of the issued share capital of Bidco.

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

**Commitment Documents** has the meaning given to it in the Commitment Letter.

**Commitment Letter** means the commitment letter(s) dated on or about the date of this Agreement and delivered by, among others, the Arrangers to Bidco (as amended from time to time).

**Compounded Rate Loan** means any Interim Loan or, if applicable, Unpaid Sum.

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

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

- (a) is designated in writing by Bidco as a Compounding Methodology Supplement in respect of that currency;
- (b) specifies for that currency the relevant terms which are expressed in this Agreement to be determined by reference to the Central Bank Rate or the RFR;
- (c) has been made available to the Interim Facility Agent and each existing Lender with an Interim Commitment denominated (or which may be utilised) in such currency; and
- (d) has not been rejected (by 5.00 p.m. London time on the date falling 5 Business Days (or any other period of time expressly notified for this purpose by Bidco, with the prior agreement of the Interim Facility Agent (acting reasonably) if the period for this provision to operate is less than 5 Business Days) after the date of such document being made available to the Interim Facility Agent) by an Interim Lender or Interim Lenders whose Interim Commitments aggregate 66.66 per cent. or more of the Interim Commitments denominated (or which may be utilised) in such currency at that time.

**Court** means the High Court of Justice of England and Wales.

**Court Order** means the order of the High Court of Justice of England and Wales sanctioning the Scheme.

**Daily Non-Cumulative Compounded RFR Rate** means, in relation to any RFR Banking Day during an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Interim Facility Agent (or any other person which is appointed to determine that rate in place of the Interim Facility Agent from time to time, in each case with the consent of that person and Bidco) in accordance with the methodology set out in Schedule 6 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

**Daily Rate** means, for any RFR Banking Day:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:

- (i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and
- (ii) the applicable Central Bank Rate Adjustment,

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

**Debt Facilities** means the secured credit facilities, loans, bonds, notes and/or other financial instruments which the Arrangers (and/or certain of their Affiliates) have agreed to make available to Bidco and others pursuant to the Commitment Letter (other than the Interim Facilities).

**Domestic Lender** means, in relation to any Obligor, an Interim Lender that is beneficially entitled to interest payable to that Interim Lender in respect of an Interim Utilisation and is:

- (a) a company resident in the UK for UK tax purposes;
- (b) a partnership each member of which is:
  - (i) a company so resident in the UK; or
  - (ii) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of Corporation Tax Act 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of Corporation Tax Act 2009; or
- (c) a company not so resident in the UK which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of Corporation Tax Act 2009) of that company.

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

**Equity Investment** means:

- (a) any subscription for shares issued by, or other capital contributions made to, Bidco; and/or
- (b) any loans, notes, bonds or like instruments made to or issued by Bidco with no right to prepayment, repayment or acceleration or cash return payable whilst any amount remains outstanding under the Interim Facilities.

**Equity Investors** means:

- (a) the Sponsor and the Sponsor Affiliates;
- (b) management and employees of the Group having a direct or indirect interest in the Group (whether pursuant to an incentive scheme or otherwise), together with any other persons having a direct or indirect interest in the Group pursuant to an incentive or similar scheme or arrangement; and

(c) other person approved by the Majority Interim Lenders (acting reasonably).

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

**Ether Bridge Shareholder Loan Agreement** means the loan note instrument executed by Aqueduct Midco Limited on or about the date of this Agreement and any notes issued thereunder.

**Existing Interim Lender** has the meaning given to it in Clause 24.2 (Transfers by Interim Lenders).

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

**FATCA** means any Tax imposed under or required by:

- (a) Sections 1471 through 1474 of the US Internal Revenue Code of 1986 or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**Fee Letter** means the letter dated on or about the date of this Agreement from the Arrangers to Bidco and countersigned by Bidco specifying certain fees to be paid in connection with the Interim Facilities.

**Financial Indebtedness** means, at any time without double counting, the outstanding principal or capital amount of any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or by a bill discounting or factoring credit facility or dematerialised equivalents thereof (other than to the extent the same is discounted or factored on a non-recourse basis);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (other than any performance or advance payment bond), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any Capitalised Lease Obligation;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) a deferred payment in respect of the acquisition cost of any asset where the deferred payment is arranged primarily as a method of raising finance and is treated as a borrowing in accordance with the applicable accounting principles and in circumstances where the deferred payment remains due more than 180 days after the expiry of the period customarily allowed by the relevant supplier for payment save where the payment deferral results from the delayed or non-satisfaction of contract terms by the supplier or from the contract terms establishing payment schedules tied to total or partial contract completion and/or to the results of operational testing procedures;
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument (each an “instrument”), in each case only to the extent issued by a bank or financial institution and provided that the underlying obligation in respect of which the instrument was issued would, under one or more of the other paragraphs of this definition, be treated as being Financial Indebtedness;
- (h) any shares which are expressed to be redeemable at the option of the owner (legal or beneficial) of such shares prior to the date six months after the Termination Date;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement) not of a type contemplated by the other paragraphs of this definition having the commercial effect of a borrowing and which is treated as such under the applicable accounting principles; and
- (j) the amount of any liability in respect of any guarantee or indemnity or similar assurance against financial loss for any of the items referred to in the preceding paragraphs of this definition,

but excluding for the avoidance of doubt all pension-related liabilities and so that, where the amount of Financial Indebtedness falls to be calculated or where the existence (or otherwise) of any Financial Indebtedness is to be established:

- (i) Financial Indebtedness owed by one member of the Group to another member of the Group shall not be taken into account; and
- (ii) no amount due or outstanding in respect of any Equity Investment shall be taken into account.

**First Utilisation Date** means the date of the first Interim Utilisation made under this Agreement.

**Fund** means a fund which is regularly engaged in, or established for the purpose of, making, purchasing or investing in loans, securities or other financial assets.

**General Meeting** means the general meeting of the shareholders of the Target (and any adjournment thereof) to be convened in connection with the Scheme for the purpose of considering, and, if thought fit, approving the shareholder resolutions necessary to enable the Target to implement the Acquisition by means of the Scheme.

**Group** means Bidco and its Subsidiaries from time to time.

**Group Company** means a member of the Group.

**Holding Company** means, in relation to any person, any other body corporate or other entity of which it is a Subsidiary.

**Interest Period** means, in relation to an Interim Loan, each period determined in accordance with Clause 8.2 (*Payment of Interest*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Interest on Overdue Amounts*).

**Interim Commitment** means, in relation to an Interim Lender, its Interim Term Commitment.

**Interim Documents** means each of this Agreement, the Fee Letter, each Security Document, any Compounding Methodology Supplement and any other document designated as such in writing by the Interim Facility Agent and Bidco.

**Interim Facilities** means the Interim Term Facility.

**Interim Finance Parties** means the Interim Lenders, the Arrangers, the Interim Facility Agent, and the Interim Security Agent.

**Interim Lender** means:

- (a) any Original Interim Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 24 (*Change to Parties*),

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

**Interim Loan** means an Interim Term Loan.

**Interim Term Commitment** means:

- (a) in relation to:
  - (i) Goldman Sachs Bank USA, £183,333,333.34 and the amount of any other Interim Term Commitment transferred to it under this Agreement;
  - (ii) Credit Agricole Corporate and Investment Bank, £183,333,333.33 and the amount of any other Interim Term Commitment transferred to it under this Agreement;
  - (iii) BNP Paribas, £88,333,333.33 and the amount of any other Interim Term Commitment transferred to it under this Agreement;
  - (iv) BNP Paribas Fortis S.A./N.V., £95,000,000.00 and the amount of any other Interim Term Commitment transferred to it under this Agreement; and
- (b) in relation to any other Interim Lender, the amount of any Interim Term Commitment transferred to it under this Agreement,

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

**Interim Term Facility** means the term credit facility made available under this Agreement as described in paragraph (a) of Clause 2 (*The Interim Facilities*).

**Interim Term Lender** means each Interim Lender with an Interim Term Commitment.

**Interim Term Loan** means the principal amount of a borrowing under the Interim Term Facility or the principal amount outstanding of that borrowing at any time.

**Interim Utilisation** means an Interim Term Loan.

**Investors** means the Sponsor and the Sponsor Affiliates.

**Kepler Interim Facility Agreement** means the interim facility agreement dated on or about the date of this deed between, amongst others, the Bidder and Lucid Agency Services Limited as interim facility agent.

**Kepler Midco** means Aqueduct Midco Limited, a company incorporated under the laws of Jersey with registered number 135137.

**Kepler Topco** means Aqueduct Topco Limited, a company incorporated under the laws of Jersey with registered number 135136.

**Lookback Period** means five RFR Banking Days.

**Major Default** means an event or circumstance set out in Part III of Schedule 5 (other than, during the Certain Funds Period, paragraph 8 (Change of Control) and further provided that, during the Certain Funds Period, a Major Default shall only occur in relation to paragraph 1 (Payment default) in so far as it relates to payment of principal and/or interest owing under this Agreement and/or fees specified in paragraph (a) of the Fee Letter).

**Major Representation** means a representation set out in Part I of Schedule 5 (other than, during the Certain Funds Period, paragraph 3(iii) (No conflict)).

**Major Undertaking** means an undertaking set out in Part II of Schedule 5.

**Majority Interim Lenders** means, at any time, Interim Lenders:

- (a) whose participation or share in the outstanding Interim Utilisations and undrawn Interim Commitments then aggregate  $66 \frac{2}{3}$  per cent. or more of the aggregate of the outstanding Interim Utilisations and undrawn Interim Commitments of all Interim Lenders; or
- (b) if the Total Interim Commitments have then been reduced to zero, whose Interim Commitments aggregated more than  $66 \frac{2}{3}$  per cent. of the Total Interim Commitments immediately before that reduction.

**Margin** means in relation to any Interim Term Loan, 3.14% per annum.

**Material Adverse Effect** means any event or circumstance which, taking into account all relevant circumstances, has a material adverse effect on:

- (a) the business, assets or financial condition of the Group taken as a whole;



- (b) the ability of the Group taken as a whole to perform its payment obligations under the Interim Documents; or
- (c) subject to the Reservations and Perfection Requirements, the validity or enforceability of the Security Document taken as a whole which is materially adverse to the interests of the Interim Lenders taken as a whole and, if capable of remedy, is not remedied within 20 Business Days of Bidco becoming aware of the issue or being given notice of the issue by the Interim Facility Agent.

**Minimum Acceptance Threshold** has the meaning given to it in the definition of Offer.

**New Interim Lender** has the meaning given to it in Clause 24.2 (Transfers by Interim Lenders).

**Obligor** means Bidco.

**Offer** means a contractual takeover offer within the meaning of Section 974 of the Companies Act 2006 made or to be made by the Bidder to effect the Acquisition with a minimum acceptance condition of not less than 75 per cent of the Target Shares on a fully diluted basis (assuming exercise in full of all options, warrants and other rights to require allotment or issue of any Target Shares, whether or not such rights are then exercisable) (the **Minimum Acceptance Threshold**) made or to be made by the Bidder pursuant to the terms of the Offer Documents as such contractual takeover offer may from time to time be amended, added to, revised, renewed or waived to the extent permitted in accordance with this Agreement.

**Offer Document** means an offer document dispatched to shareholders of the Target setting out the terms and conditions of an Offer.

**Panel** means The Panel on Takeovers and Mergers.

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

**Perfection Requirements** means the making or the procuring of registrations, filings, endorsements, notarisations, stampings and/or notifications of the Interim Documents (and/or the Security Interests created thereunder) necessary for the validity or enforceability thereof.

**Permitted Payment** means any payment:

- (a) to enable a Holding Company of Bidco to:
  - (i) pay Taxes, duties or similar amounts for which it is liable;
  - (ii) pay fees, expenses and other costs incurred in acting as, or maintaining its existence as, a holding company or arising by operation of law or in the ordinary course of administration of its business; and
  - (iii) meet substance requirements for Tax purposes;
- (b) [Reserved]
- (c) for the purpose of funding transaction costs incurred in connection with the Acquisition, the Interim Facilities and/or the Debt Facilities (including any such costs incurred by the Investors and recharged to a member of the Group); and/or

- (e) set out in or contemplated by the Tax Structure Memorandum.

**Qualifying Interim Lender** means, in relation to any Obligor, an Interim Lender that is:

- (a) a Domestic Lender;
- (b) a Treaty Lender; or
- (c) a Bank Lender,

provided that, in each case, such Interim Lender has complied and continues to comply with any procedural requirements required to be taken by that Interim Lender in order to obtain the full benefit of all applicable Taxation treaties and legislation or otherwise to establish its status as a Qualifying Interim Lender.

**Relevant Market** means the Sterling wholesale market.

**Reservations** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of the court, the limitation on enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and similar principles, rights, defences and limitations under the laws of any applicable jurisdiction;
- (b) the time barring of claims under any applicable limitation laws, the possibility that a court may strike out provisions of a contract as being invalid for reasons of oppression, undue influence or similar reasons, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void, defenses of set-off or counterclaim and similar principles, rights, defences and limitations under the laws of any applicable jurisdiction; and
- (c) any other general principles, reservations or qualifications, in each case as to matters of law, as set out in any legal opinion delivered to or accepted by the Interim Facility Agent under any provision of or otherwise in connection with any Interim Document.

**Reporting Day** means the day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

**Receivables Agreement** means an inter-company loan agreement to be entered into by Holdco and Bidco pursuant to which Holdco will advance such amounts as set out therein to Bidco.

**Receivables Pledge** means a Guernsey law governed security interest agreement between Holdco and the Interim Security Agent in relation to contract rights owing to Holdco by Bidco in or pursuant to inter-company loan agreements.

**RFR** means the SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor thereof.

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

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

**Restructuring Agreement** means the restructuring agreement dated on or about the date of this agreement and entered into between, among others, Bidco, the Bidder and Kepler Midco.

**Scheme** means a scheme of arrangement effected pursuant to Part 26 of the Companies Act 2006 under which the Target Shares will be transferred and the Bidder will become the holder of such transferred Target Shares.

**Scheme Circular** means a circular dispatched by the Target to holders of the Target Shares setting out the terms and conditions of a Scheme and convening a General Meeting and a Court Meeting.

**Scheme Effective Date** means the date of which the Court Order sanctioning the Scheme is duly delivered on behalf of the Target to the Registrar of Companies in England and Wales.

**Security Documents** means:

- (a) a Guernsey law governed security interest agreement between Holdco and the Interim Security Agent in relation to the shares held by it in Bidco;
- (b) (upon execution of the Receivables Pledge) the Receivables Pledge;
- (d) an English law governed security deed executed by Bidco in relation to bank accounts and an assignment of the Restructuring Agreement; and
- (e) a Jersey law governed security interest agreement executed by Bidco in relation to the Ether Bridge Shareholder Loan Agreement and over the rights of Bidco under the Topco Pledge.

**Security Interest** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, right of set-off, security trust, assignment, reservation of title or other secured interest, security interest and any other agreement or procedure entered into or followed for the purpose and having the commercial effect of conferring or creating security.

**Sponsor** means Equitix Holdings Limited.

**Sponsor Affiliates** means any funds and/or other entities managed, advised, owned or controlled by the Sponsor or any of its Affiliates.

**Squeeze-out** means an acquisition of the outstanding shares in the Target that the Bidder has not acquired pursuant to the procedures contained in sections 979 to 982 of the Act.

**Sterling** means the lawful currency for the time being of the United Kingdom.

**Subsidiary** means in relation to a company or corporation a company or corporation:

- (a) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first-mentioned company or corporation, and, for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of a majority of its board of directors or equivalent body.

**Super Majority Interim Lenders** means, at any time, Interim Lenders:

- (a) whose participation or share in the outstanding Interim Utilisations and undrawn Interim Commitments then aggregate 85 per cent. or more of the aggregate of the outstanding Interim Utilisations and undrawn Interim Commitments of all Interim Lenders; or
- (b) if the Total Interim Commitments have then been reduced to zero, whose Interim Commitments aggregated more than 85 per cent. of the Total Interim Commitments immediately before that reduction.

**Target** means John Laing Group plc.

**Target Group** means the Target and its Subsidiaries for the time being.

**Target Shares** means the issued share capital of the Target.

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

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

**Tax Deduction** means a deduction or withholding for or on account of Tax from any payment under an Interim Document.

**Tax Structure Memorandum** means the tax structure memorandum prepared by Alvarez & Marsal Tax UK LLP and supplied to the Arrangers on or before the date of this Agreement.

**Termination Date** has the meaning given to it in Clause 7 (*Repayment and Cancellation*).

**Topco Pledge** means the Jersey law security interest agreement granted by Kepler Topco in respect of the shares it holds in Kepler Midco and intercompany receivables owing to it from Kepler Midco in favour of Bidco, to secure Kepler Midco's obligations under the Ether Bridge Shareholder Loan Agreement.

**Total Interim Commitments** means at any time the aggregate of the Total Interim Term Commitments.

**Total Interim Term Commitments** means at any time the aggregate of all the Interim Term Commitments, being £550,000,000 at the date of this Agreement.

**Transaction Documents** means the Interim Documents, the Ether Bridge Shareholder Loan Agreement, the Topco Pledge and/or the Restructuring Agreement (as applicable).

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 3 to this Agreement (Form of Transfer Certificate) or in such other form as the Interim Facility Agent and Bidco may agree.

**Treaty Lender** means an Interim Lender in respect of an Interim Utilisation:

- (a) which is (i) treated as resident (for the purposes of the appropriate double Taxation agreement) in a jurisdiction having a double Taxation agreement with the UK which makes provision for full exemption from Tax imposed by the UK on any payment under an Interim Document and (ii) entitled to the benefit of such double Taxation agreement and such full exemption; and
- (b) which does not carry on business in the UK through a permanent establishment with which that Interim Lender's participation in that Interim Utilisation is effectively connected.

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

**Utilisation Date** means the date of or proposed date for the making of an Interim Loan.

**Utilisation Request** means a signed notice requesting an Interim Loan substantially in the form set out in Part I of Schedule 2 to this Agreement (*Form of Requests*).

**VAT** means value added tax imposed in any member state of the European Union pursuant to EC Council Directive 2006/112 on the common system of value added tax and national legislation implementing that Directive or any predecessor to it or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is not a member of the European Union together with all penalties or interest thereon or any tax of a similar nature which may be substituted for or levied in addition to it.

**Write-Down and Conversion Powers** means:

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

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

## 2 Other References

- (a) In this Agreement, unless a contrary intention appears, a reference to:
  - (i) an **agreement** includes any legally binding arrangement, contract, deed or instrument (in each case whether oral or written);
  - (ii) an **amendment** includes any amendment, supplement, variation, novation, modification, replacement or restatement (however fundamental) and **amend** and **amended** shall be construed accordingly;
  - (iii) **assets** includes properties, assets, businesses, undertakings, revenues and rights of every description and whether present or future, actual or contingent;
  - (iv) a **consent** includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
  - (v) a **disposal** includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary and dispose will be construed accordingly;
  - (vi) a **guarantee** includes:
    - (A) an indemnity, counter-indemnity, guarantee or similar assurance against loss in respect of any indebtedness of any person; and
    - (B) any other obligation of any person, whether actual or contingent, to pay, purchase, provide funds (whether by the advance of money to, the purchase of or subscription for shares or other investments in any person, the purchase of assets or services, the making of payments under an agreement or otherwise) for the payment of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person,
 and **guaranteed** and **guarantor** shall be construed accordingly;

- (vii) **including** means including without limitation and includes and included shall be construed accordingly;
- (viii) **indebtedness** includes any obligation (whether incurred as principal, guarantor or surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (ix) a **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) other than where sub-paragraph (B) applies:
    - (aa) (subject to sub-paragraph (cc) below) if any such period would otherwise end on a day which is not a Business Day, it shall end on the next Business Day in the same calendar month or, if there is none, on the preceding Business Day;
    - (bb) if there is no numerically corresponding day in the month in which that period is to end, that period shall end on the last Business Day in that later month; and
    - (cc) 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; and
  - (B) in relation to an Interest Period for any Interim Loan (or any other period for the accrual of commission or fees), the provisions set out in paragraph (c) of Clause 12.5 (*Business Days*) shall apply.

and references to **months** shall be construed accordingly (provided that the above rules will only apply to the last month of any period);

- (x) to a Major Default being **continuing** means that such Major Default has occurred or arisen and has not been remedied or waived;
- (xi) an Interim Lender's **participation** or **share** in an Interim Loan means the amount of such Interim Loan which such Interim Lender has made or is to make available and thereafter that part of the Interim Loan which is owed to such Interim Lender;
- (xii) a **person** includes any individual, trust, firm, fund, company, corporation, partnership, joint venture, government, state or agency of a state or any undertaking or other association (whether or not having separate legal personality) or any two or more of the foregoing; and
- (xiii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law compliance with which is customary) of any governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

- (b) In this Agreement, unless a contrary intention appears:

- (i) a reference to a Party includes a reference to that Party's successors and permitted assignees or permitted transferees but does not include that Party if it has ceased to be a party under this Agreement;
  - (ii) references to paragraphs, clauses, subclauses, schedules and appendices are references to, respectively, paragraphs, clauses and subclauses of and schedules and appendices to this Agreement and references to this Agreement include its schedules;
  - (iii) a reference to (or to any specified provision of) any agreement (including any of the Interim Documents) is to that agreement (or that provision) as amended or novated (however fundamentally) and includes any increase in, extension of or change to any facility made available under any such agreement;
  - (iv) a reference to a statute, statutory instrument or provision of law is to that statute, statutory instrument or provision of law, as it may be applied, amended or re-enacted from time to time;
  - (v) a reference to a time of day is to London (England) time;
  - (vi) the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement; and
  - (vii) words imparting the singular include the plural and vice versa.
- (c) [Reserved]
  - (d) [Reserved]
  - (e) [Reserved].
  - (f) Notwithstanding any other term of the Interim Documents, in this Agreement:
    - (i) a reference to the assets of an Obligor shall exclude the assets of the Target Group;
    - (ii) no matter or circumstance in respect of, or breach by, the Target Group shall relate to an Obligor or otherwise be deemed to constitute, or result in, a breach of any representation, warranty, undertaking or other term in the Interim Documents, a Material Adverse Effect or a Major Default; and
    - (iii) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
      - (A) any replacement page of that information service which displays that rate; and
      - (B) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
 and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Interim Facility Agent after consultation with Bidco.



- (iv) a reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (v) A Compounding Methodology Supplement relating to a currency and the Daily Non-Cumulative Compounded RFR Rate overrides anything relating to that currency and rate in:
  - (A) Schedule 6 (*Daily Non-Cumulative Compounded RFR Rate*); or
  - (B) any earlier Compounding Methodology Supplement.

**SCHEDULE 2**  
**FORM OF REQUESTS**

**Part I**

**Utilisation Request**

To: [•] as Interim Facility Agent

From: [Bidco]

Date: [•]

**Interim Facilities Agreement dated [•] (the Interim Facilities Agreement)**

1. We refer to the Interim Facilities Agreement. This is a Utilisation Request. Words and expressions defined in the Interim Facilities Agreement shall have the same meanings when used in this Utilisation Request.
2. We wish to borrow an Interim Loan on the following terms:  
  
Interim Facility: [•]  
  
Utilisation Date: [•]  
  
Amount/Currency: [•]  
  
Interest Period: [•]
3. Our payment instructions are: [•]
4. We confirm that each applicable condition specified in Clause 3 (Conditions Precedent to the Interim Facilities) of the Interim Facilities Agreement will be satisfied on the Utilisation Date.
5. This Utilisation Request is irrevocable.

By:

[Bidco]

### SCHEDULE 3

#### FORM OF TRANSFER CERTIFICATE

To: [•] as Interim Facility Agent

From: [•] (the Existing Interim Lender) and [•] (the New Interim Lender)

Date: [•]

#### **Interim Facilities Agreement dated [•] (the Interim Facilities Agreement)**

1. We refer to the Interim Facilities Agreement. This is a Transfer Certificate. Words and expressions defined in the Interim Facilities Agreement shall have the same meanings when used in this Transfer Certificate.
2. The New Interim Lender confirms that it is a Qualifying Interim Lender, and undertakes to notify the Interim Facility Agent and each Obligor promptly if it ceases to be a Qualifying Interim Lender in the terms set out in Clause 10 (Taxes).
3. The Existing Interim Lender transfers by novation to the New Interim Lender all the rights and obligations of the Existing Interim Lender which correspond to that portion of the Existing Interim Lender's Interim Commitments and participations in the Interim Loans under the Interim Documents specified in the schedule to this Transfer Certificate (the Schedule) in accordance with the terms of the Interim Documents.
4. The proposed Transfer Date is [•].
5. On the Transfer Date the New Interim Lender becomes party to the Interim Documents as an Interim Lender.
6. The New Interim Lender confirms that it is a [Domestic Lender] [Treaty Lender] [Bank Lender].<sup>1</sup>
7. [The New Interim Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Interim Facility Agent notifies the relevant Obligor that it wishes that scheme to apply to the Interim Facilities Agreement.]<sup>2</sup>

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

<sup>2</sup> Delete if not applicable. If applicable, retain and include scheme reference number and jurisdiction of tax residence.

8. The administrative details of the New Interim Lender for the purposes of the Interim Documents are set out in the Schedule.
9. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate and is governed by English law. Clause 27 (Counterparts) and Clause 31 (Jurisdiction) of the Interim Facilities Agreement are hereby incorporated into this Transfer Certificate mutatis mutandis.

**SCHEDULE**

**Rights and obligations to be transferred by novation**

**PART 1**

**INTERIM COMMITMENT**

*[Insert details of applicable Interim Commitments]*

**PART 2**

**PARTICIPATION IN INTERIM UTILISATIONS**

*[Insert details of applicable participations in Interim Utilisations]*

**Administrative details of the New Interim Lender**

*[Insert details of Facility Office, address for notices and payment details etc.]*

By:

*[Existing Interim Lender]*

By:

*[New Interim Lender]*

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

By:

*[Interim Facility Agent]*

As Interim Facility Agent and for and on behalf of each of the parties to the Interim Facilities Agreement (other than the Existing Interim Lender and the New Interim Lender)

## SCHEDULE 4

### CONDITIONS PRECEDENT

1. A copy of the constitutional documents of each of Bidco, Holdco and Kepler Topco.
2. A copy of a resolution of the board of directors and/or the shareholders of each of Bidco and Holdco and of Kepler Topco (in each case to the extent required by law) approving the terms of, and the transactions contemplated by, the Interim Documents to which it is a party, or in the case of Kepler Topco, the Topco Pledge.
3. A specimen of the signature of each person authorised on behalf of each of Bidco, Holdco and of Kepler Topco to (and which will) execute any Interim Document to which it is a party and/or to sign and send any document or notice in connection with the Interim Documents to which it is a party, or in the case of Kepler Topco, the Topco Pledge.
4. A certificate of an authorised signatory of each of Bidco, Holdco and of Kepler Topco certifying on behalf of that entity that:
  - (a) each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; and
  - (b) (in respect of Bidco and Holdco) utilisation, securing and/or guarantee by each of Bidco and Holdco of the Interim Facilities would not breach any borrowing, guarantee or similar limit binding on it.
5. A legal opinion of:
  - (a) Carey Olsen (Guernsey) LLP, counsel to the Interim Finance Parties as to Guernsey law, in relation to the enforceability of the Interim Documents governed by Guernsey law and the due authorisations and capacity of Bidco and Holdco to enter into the Interim Documents to which it is party; and
  - (b) Carey Olsen Jersey LLP, counsel to the Interim Finance Parties as to Jersey law, in relation to the enforceability of the Topco Pledge and the due authorisation and capacity of Kepler Topco to enter into the Topco Pledge; and
  - (c) Linklaters LLP, counsel to the Interim Finance Parties as to English law, in relation to the enforceability of the Interim Documents and the due authorisation and capacity of Bidco to enter into the Interim Documents to which it is party,

in each case to be in substantially the form distributed to the Arrangers prior to the date of this Agreement.
6. A copy of:
  - (a) this Agreement;
  - (b) the Fee Letter;
  - (c) the Security Documents (other than the Receivables Pledge);

- (d) the Topco Pledge; and
- (e) the reports proceeds side letter entered into by, amongst others, Bidco and Equitix Investment Management Limited and Equitix GP 6 Limited in connection with any proceeds received from any claims in respect of the Tax Structure Memorandum and the reports referred to in paragraph 8 of this Schedule 4 (*Conditions Precedent*) (the **Reports Proceeds Letter**),

duly executed by Holdco and/or, as the case may be, Bidco.

7. A copy of the executed:

- (a) Restructuring Agreement; and
- (b) Ether Bridge Shareholder Loan Agreement.

8. A copy of each of the following due diligence reports commissioned by the Sponsor in connection with the Acquisition (together with customary reliance letters where available unless otherwise specified):

- (a) a legal due diligence report prepared by Simpson Thacher & Bartlett LLP and Herbert Smith Freehills LLP;
- (b) a technical due diligence report prepared by Arup;
- (c) a commercial (asset overview) due diligence report prepared by Arup (on a non-reliance basis); and
- (d) a tax and financial due diligence report prepared by Alvarez & Marsal,

together the **Reports** (provided that it is confirmed that the draft or final Reports which have been supplied to the Arrangers on or before the date of this Agreement are in form and substance satisfactory to the Interim Facility Agent and Reports in all material respects in that form (updated as needed to reflect information made available by the Target Group following the Announcement Date) will be satisfactory to the Interim Facility Agent).

9. A copy of the Tax Structure Memorandum (provided that it is confirmed that the draft or final Tax Structure Memorandum which has been supplied to the Arrangers on or before the date of this Agreement is in form and substance satisfactory to the Interim Facility Agent and a Tax Structure Memorandum in all material respects in that form tendered in satisfaction of this condition precedent will be satisfactory to the Interim Facility Agent).

10. A structure chart showing the anticipated structure of the Group as at the First Utilisation Date (only if not included in the Tax Structure Memorandum and provided that such structure chart shall not be required to be in a form and substance satisfactory to the Interim Facility Agent).

11. A summary of the shareholders' agreement to be entered into between Aqueduct NewCo 2 Limited and Bidco relating to Jupiter Investments Limited and its subsidiaries prepared by Linklaters LLP.

12. A financial model relating to agreed members of the Group (provided that it is confirmed that the draft or final financial model which has been supplied to the Arrangers on or before the date of this



Agreement is in form and substance satisfactory to the Interim Facility Agent and a financial model in all material respects in that form tendered in satisfaction of this condition precedent will be satisfactory to the Interim Facility Agent).

13. Any requested information and evidence reasonably required by any entity which is an Interim Finance Party at the date of this Agreement and notified to Bidco prior to the date of this Agreement in order to comply with “know your client” procedures under applicable laws.

## SCHEDULE 5

### MAJOR REPRESENTATIONS, MAJOR UNDERTAKINGS AND MAJOR DEFAULTS

#### PART I

#### MAJOR REPRESENTATIONS

Holdco and Bidco each make the representations and warranties in this Part 1 to the Interim Finance Parties:

- (a) in the case of the representations and warranties set out in paragraphs 1 to 4 below, on the date of this Agreement, on each Utilisation Date and on the first day of each Interest Period; and
- (b) in the case of the representation and warranty set out in paragraph 5 below, on the date of this Agreement,

by reference to the facts and circumstances existing at such time. Holdco and Bidco acknowledges that each Interim Finance Party is relying on such representations and warranties.

#### **1 Incorporation and Status**

It is duly incorporated or, as the case may be, organised and validly existing under the laws of the place of its jurisdiction of incorporation or organisation.

#### **2 Power and Authority**

- (i) It has the power to enter into and perform its obligations under each of the Transaction Documents to which it is a party.
- (ii) It has taken all necessary corporate action to authorise its entry into and the performance by it of its obligations under each Transaction Document to which it is party.
- (iii) It has the power to own its assets and carry on its business in all material respects as it is being conducted.

#### **3 No Conflict**

Subject to the Reservations and the Perfection Requirements, the entry into and delivery by it of, and the performance by it of its obligations under, the Transaction Documents to which it is a party do not conflict with:

- (i) any law or regulation applicable to it to an extent which has a Material Adverse Effect;
- (ii) its constitutional documents in any material respect; or
- (iii) any agreement or instrument binding on it or any of its assets to an extent which has a Material Adverse Effect.

#### **4 Binding Obligations**

Subject to the Reservations and the Perfection Requirements, the obligations expressed to be assumed by it under each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

## **5 Holding Company**

It has not traded or carried on any business, acquired any material assets or incurred any material liabilities or commitments other than:

- (i) by entering into or under the Transaction Documents or otherwise in connection with the Transaction Documents and the transactions contemplated therein;
- (ii) in connection with any arrangements entered into (or proposed to be entered into) for the purpose of financing the Acquisition and/or refinancing amounts outstanding under the Interim Documents;
- (iii) establishment and administration costs;
- (iv) liabilities for Tax and other customary liabilities for a holding company; and
- (v) pursuant to the steps and matters set out in or contemplated by the Tax Structure Memorandum.

**PART II**  
**MAJOR UNDERTAKINGS**

**1 Negative Pledge**

Neither Holdco nor Bidco will create or permit to subsist any Security Interest over any of its assets, other than:

- (i) any Security Interest created or evidenced by any Security Document;
- (ii) any Security Interest arising under the Transaction Documents;
- (iii) any Security Interest arising under or in connection with the Debt Facilities;
- (iv) any netting or set-off arrangement entered into in the ordinary course of its banking arrangements (including in connection with any hedging arrangements) for the purpose of netting debit and credit balances; and
- (v) any Security Interest arising by operation of law (or by contract to substantially the same effect) or under general business conditions, provided that if arising by reason of default on the part of an Obligor, such default does not subsist for a period of more than 90 days.

**2 Indebtedness**

Neither Holdco nor Bidco will incur or allow to remain outstanding any Financial Indebtedness, other than:

- (i) any Financial Indebtedness which is incurred under the Transaction Documents;
- (ii) any Financial Indebtedness referred to in or incurred as a result of the implementation or completion of any step or other matter contemplated by the Tax Structure Memorandum;
- (iii) any Financial Indebtedness arising under or in connection with the Debt Facilities;
- (iv) [Reserved]; and
- (iv) any Financial Indebtedness arising under or in connection with any hedging transaction.

**3 [Reserved]**

**4 Acquisitions & Mergers**

Bidco will not acquire or subscribe for any shares or securities convertible into share capital in any person, acquire any business or enter into any merger, other than as set out in or contemplated by the Transaction Documents and/or the Tax Structure Memorandum.

**5 Distributions**

- (i) Bidco will not:

- (a) declare, make or pay, or pay any interest of any unpaid amount of, any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
  - (b) repay or distribute any share premium reserve;
  - (c) redeem, purchase, defease, retire or repay any of its shares or share capital; or
  - (d) pay any management, advisory or other similar fee to the Investors; or
  - (e) repay, prepay or discharge any amount outstanding (whether of principal, interest, premium or other charge) in respect of any Equity Investment.
- (iii) Paragraph (i) above shall not apply to any payment or transaction which is a Permitted Payment or to any payment made or transaction entered into to facilitate a Permitted Payment.

## **6 Guarantees**

Bidco will not grant any guarantee in respect of Financial Indebtedness, other than:

- (i) any guarantee contained in or granted pursuant to any of the Transaction Documents;
- (ii) any guarantee referred to in or arising as a result of the implementation or completion of any step or other matter contemplated by the Tax Structure Memorandum;
- (iii) any guarantee contemplated by the Commitment Documents or the Interim Documents;
- (iv) any guarantee in respect of Financial Indebtedness of another member of the Group; and
- (v) any guarantee arising under or in connection with any hedging transaction.

In the case of any such guarantee Bidco hereby irrevocably waives and abandons:

- (i) any right which it has, or may at any time have, under the existing or future laws of the Island of Guernsey pursuant to the principle of "droit de discussion" (or otherwise) to require that recourse be had to the assets of any other person before any action is taken thereunder against it; and
- (ii) any right it has or may have at any time under the existing or future laws of the Island of Guernsey pursuant to the principle of "droit de division" (or otherwise) to require that any person be made a party to any proceedings or that its liability be divided or apportioned with any person or reduced in any manner whatsoever

## **7 Loans**

Bidco will not make or permit to remain outstanding any loan, other than:

- (i) any loan referred to in or arising as a result of the implementation or completion of any step or other matter contemplated by the Tax Structure Memorandum;
- (ii) any loan to another member of the Group;

- (iii) any credit balance held with any bank or financial institution;
- (iv) any loan contemplated by the Commitment Documents or the Interim Documents;
- (v) any loan arising under or in connection with the Ether Bridge Shareholder Loan Agreement; and
- (v) any loan made for the purpose of, or to facilitate the making of, a Permitted Payment.

**PART III**  
**MAJOR DEFAULTS**

**1 Payment Default**

Bidco does not pay on the due date any amount payable by it under the Interim Documents at the place at and in the currency in which it is expressed to be payable unless:

- (i) in the case of principal or interest, payment is made within three Business Days of the due date; and
- (ii) in the case of any amount not constituting principal or interest, payment is made within five Business Days of the due date.

**2 Breach of Other Obligations**

- (i) Bidco or Holdco does not comply with any Major Undertaking.
- (ii) No Major Default under paragraph (i) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of the Interim Facility Agent giving notice of the breach to the relevant Obligor requesting it to be remedied and the relevant Obligor becoming aware of the failure to comply.

**3 Misrepresentation**

- (i) A Major Representation is incorrect or misleading in any material respect when made or deemed to be repeated by Bidco or Holdco (as applicable).
- (ii) No Major Default under paragraph (i) above will occur if the circumstances giving rise to that misrepresentation are capable of remedy and are remedied within 20 Business Days of the earlier of the Interim Facility Agent giving notice of the breach to Bidco and/or Holdco (as applicable) requesting it to be remedied and Bidco and/or Holdco (as applicable) becoming aware of the misrepresentation.

**4 Invalidity, Unlawfulness and Repudiation**

- (i) Subject to the Reservations and the Perfection Requirements, any material obligation of Bidco and/or Holdco under any Interim Document becomes invalid or unenforceable to an extent which is materially prejudicial to the interests of the Interim Lenders taken as a whole under the Interim Documents.
- (ii) Subject to the Reservations, it is or becomes unlawful in any applicable jurisdiction for Bidco or Holdco to perform any of its material obligations under the Interim Documents to an extent which is materially prejudicial to the interests of the Interim Lenders taken as a whole under the Interim Documents.
- (iii) Bidco or Holdco repudiates or rescinds an Interim Document and such repudiation or rescission is materially prejudicial to the interests of the Interim Lenders taken as a whole under the Interim Documents.

**5 Insolvency**

- (i) Bidco or Holdco is unable or admits in writing its inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally (other than the Interim Finance Parties) for the rescheduling of any of its Financial Indebtedness.
- (ii) A moratorium is declared in respect of any Financial Indebtedness of Bidco or Holdco.

## **6 Insolvency Proceedings**

- (i) Any corporate action, legal proceedings or other formal procedure is taken for:
  - (a) the winding-up, dissolution or administration of Bidco or Holdco;
  - (b) a composition, compromise or assignment with any creditor of Bidco or Holdco for reasons of financial difficulty; or
  - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of Bidco or Holdco or any of its material assets.
- (ii) Paragraph (i) above shall not apply to:
  - (a) any proceedings or actions which are contested in good faith and discharged, stayed or dismissed within 28 days of commencement;
  - (b) any petition or similar presented by a creditor which (A) is being contested in good faith and due diligence and the relevant entity has demonstrated to the Interim Facility Agent (acting reasonably and in good faith) that it has sufficient financial means to meet the amount of the claim requested by the creditor, (B) is, in the opinion of the Interim Facility Agent (acting reasonably and in good faith), frivolous and vexatious or (C) is discharged within 30 days; or
  - (c) any step or other matter set out in or contemplated by the Tax Structure Memorandum.

## **7 Analogous Proceedings**

There occurs in relation to Bidco or Holdco in any jurisdiction to which it or any of its assets are subject, any event which corresponds to any of those referred to in paragraph 5 (Insolvency) or 6 (Insolvency Proceedings).

## **8 Change of Control**

Following the end of the Certain Funds Period, the occurrence of a Change of Control Event.



## SCHEDULE 6

The “**Daily Non-Cumulative Compounded RFR Rate**” for any RFR Banking Day “**i**” during an Interest Period for a Compounded Rate Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

**UCCDR<sub>i</sub>** means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day “**i**”;

**UCCDR<sub>i-1</sub>** means, in relation to that RFR Banking Day “**i**”, the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

“**dcc**” means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

“**n<sub>i</sub>**” means the number of calendar days from, and including, that RFR Banking Day “**i**” up to, but excluding, the following RFR Banking Day; and

the “**Unannualised Cumulative Compounded Daily Rate**” for any RFR Banking Day (the “**Cumulated RFR Banking Day**”) during that Interest Period is (without rounding, to the extent reasonably practicable) calculated as set out below:

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

“**ACCDR**” means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

“**tn<sub>i</sub>**” means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

“**Cumulation Period**” means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, the Cumulated RFR Banking Day;

“**dcc**” has the meaning given to that term above; and

the “**Annualised Cumulative Compounded Daily Rate**” for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to four decimal places) calculated as set out below:

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

where:

“**d<sub>0</sub>**” means the number of RFR Banking Days in the Cumulation Period;

“**Cumulation Period**” has the meaning given to that term above;

“**i**” means a series of whole numbers from one to  $d_0$ , each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

“**DailyRate<sub>i-LP</sub>**” means, for any RFR Banking Day “**i**” during the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “**i**”;

“**n<sub>i</sub>**” means, for any RFR Banking Day “**i**” during the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day “**i**” up to, but excluding, the following RFR Banking Day;

“**dcc**” has the meaning given to that term above; and

“**tn<sub>i</sub>**” has the meaning given to that term above.

## Schedule 7

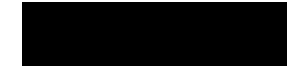
### The Original Interim Lenders

<b>Name of Original Interim Lender</b>	<b>Qualifying Interim Lender Confirmation</b>	<b>Treaty passport scheme reference number and jurisdiction of tax residence (if applicable)</b>
Credit Agricole Corporate and Investment Bank	Domestic Lender	United Kingdom
BNP Paribas	Treaty Lender	5/B/255139/DTTP France
BNP Paribas Fortis S.A./N.V.	Treaty Lender	18/B/359080/DTTP Belgium
Goldman Sachs Bank USA	Treaty Lender	13/G/351779/DTTP USA

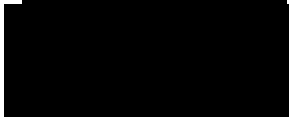
**The Arrangers**

**BNP PARIBAS**

By:



Name:



Title:

By:



Name:



Title:

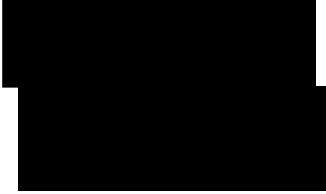
**The Arrangers**

**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

By:

Name:

Title:



By:

Name:

Title:



**The Arrangers**

**GOLDMAN SACHS BANK USA**

By: 

Name: 

Title: 

**The Original Interim Lenders**

**BNP PARIBAS**

By:

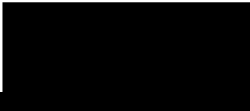


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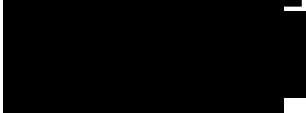


Title:

By:



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Title:

**The Original Interim Lenders**

**BNP PARIBAS FORTIS S.A./N.V.**

By:   
Name:   
Title: 

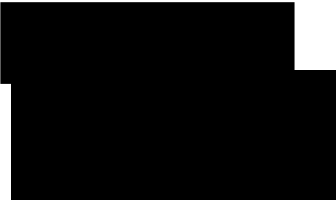
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Title: 



**The Original Interim Lenders**

**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

By:



Name:

Title:

By:



Name:

Title:

**The Original Interim Lenders**

**GOLDMAN SACHS BANK USA**

By: 

Name:

Title:

**The Interim Facility Agent**

**LUCID AGENCY SERVICES LIMITED**

By:

Name:

Title:



**The Interim Security Agent**

**LUCID TRUSTEE SERVICES LIMITED**

By:

Name:

Title:



**Holdco**

**EQUITIX ETHER MIDCO LIMITED**

By:

Name:

Date: 13 May 2021

**Bidco**

**EQUITIX ETHER BIDCO LIMITED**

By:

Name:

Date: 13 May 2021