

U.S.\$1,500,000,000
Bridge Facility Agreement

Dated 5 March 2024

for

HARBOUR ENERGY PLC

arranged by

BANK OF AMERICA EUROPE DESIGNATED ACTIVITY COMPANY

BARCLAYS BANK PLC

CITIBANK N.A., LONDON BRANCH

DEUTSCHE BANK AG, LONDON BRANCH

DNB (UK) LIMITED

HSBC BANK PLC

ING BANK N.V.

J.P. MORGAN SECURITIES PLC

LLOYDS BANK PLC

NATIONAL WESTMINSTER BANK PLC

NATIXIS, LONDON BRANCH

STANDARD CHARTERED BANK

SUMITOMO MITSUI BANKING CORPORATION, LONDON BRANCH

WELLS FARGO BANK N.A., LONDON BRANCH

with

DNB BANK ASA, LONDON BRANCH

acting as Agent

Ref: L-342639

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THIS AGREEMENT is dated 5 March 2024 and made between:

- (1) HARBOUR ENERGY PLC, a company incorporated in Scotland with registration number SC234781 (the "**Company**");
- (2) CHRYSAOR E&P FINANCE LIMITED, a company incorporated in England & Wales with registration number 10537889 (the "**Borrower**");
- (3) THE SUBSIDIARIES of the Company listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with the Company, the "**Original Guarantors**");
- (4) BANK OF AMERICA EUROPE DESIGNATED ACTIVITY COMPANY, BARCLAYS BANK PLC, DEUTSCHE BANK AG, LONDON BRANCH, DNB (UK) LIMITED, HSBC BANK PLC, ING BANK N.V., J.P. MORGAN SECURITIES PLC, LLOYDS BANK PLC, NATIONAL WESTMINSTER BANK PLC, NATIXIS, LONDON BRANCH, STANDARD CHARTERED BANK, SUMITOMO MITSUI BANKING CORPORATION, LONDON BRANCH and WELLS FARGO BANK N.A., LONDON BRANCH as mandated lead arrangers (whether acting individually or together, the "**Mandated Lead Arranger**") and CITIBANK N.A., LONDON BRANCH as lead arranger (whether acting individually or together, the "**Lead Arranger**", and together with the Mandated Lead Arranger, whether acting individually or together, the "**Arranger**");
- (5) THE FINANCIAL INSTITUTIONS listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**"); and
- (6) DNB BANK ASA, LONDON BRANCH as agent of the other Finance Parties (the "**Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceptable Bank" means a bank or financial institution which has at least one rating for its long-term unsecured and non-credit enhanced debt obligations of BBB or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa2 or higher by Moody's Investors Services Limited or a comparable rating from an internationally recognised credit rating agency.

"Accession Letter" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

"Acquisition" means the acquisition by the Purchaser of the Target Shares on the terms of the Acquisition Documents.

"Acquisition Agreement" means the business combination agreement dated 21 December 2023 relating to the sale and purchase of the Target Shares and made between the Purchaser and the Vendors.

"Acquisition Closing Date" means the "Completion Date" as that term is defined in the Acquisition Agreement.

"Acquisition Costs" means any fees, costs and expenses, stamp, registration and other Taxes incurred by or on behalf of the Purchaser or any other member of the Group in connection with the Acquisition or the Transaction Documents.

"Acquisition Documents" means the Acquisition Agreement and any other document designated as an "Acquisition Document" by the Agent and the Company.

"Additional Business Day" means any day specified as such in the Reference Rate Terms.

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

"Affiliate" means:

- (a) in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company; and
- (b) in relation to Natixis, any member of the Banque Populaire and Caisse d'Epargne networks and any other entity affiliated within the meaning of articles L.512-11, L.512-86 and L.512-106 of the French *Code Monétaire et Financier*.

"Agent's Spot Rate of Exchange" means:

- (a) the Agent's spot rate of exchange; or
- (b) (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

for the purchase of the relevant currency with U.S. Dollars in the London foreign exchange market at or about 11:00 a.m. on a particular day.

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

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

"Availability Period" means the period from and including the date of this Agreement to and including the earlier of:

- (a) the Acquisition Closing Date;
- (b) the date on which the Company notifies the Agent that the Purchaser is no longer proceeding with the Acquisition;
- (c) the date on which the Acquisition Agreement is terminated, rescinded or repudiated; and
- (d) the date falling 18 Months after the date of this Agreement.

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

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

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

"Blocking Law" means:

- (a) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the European Union);
- (b) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996, as it forms part of domestic law of the United Kingdom; or
- (c) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*).

"Break Costs" means any amount specified as such in the Reference Rate Terms.

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

- (a) London and New York City and (in relation to:
 - (i) any date for payment or purchase of an amount relating to a Loan or Unpaid Sum; or
 - (ii) the determination of the first day or the last day of an Interest Period for a Loan, or Unpaid Sum, or otherwise in relation to the determination of the length of such an Interest Period),

which is an Additional Business Day relating to that Loan or Unpaid Sum; and

- (b) in relation to the first Utilisation Date only, Frankfurt am Main, Germany.

"Central Bank Rate" has the meaning given to that term in the Reference Rate Terms.

"Central Bank Rate Adjustment" has the meaning given to that term in the Reference Rate Terms.

"Certain Funds Period" means the period commencing on the date of this Agreement and ending on the last day of the Availability Period.

"Certain Funds Utilisation" means any Loan made or to be made during the Certain Funds Period.

"Class 1 Transaction" means any transaction entered into by the Company or any of its Subsidiaries which would be classified as a Class 1 Transaction under and as defined in the Listing Rules of the UK Listing Authority (if such rules were applicable to that company or any of its Holding Companies) provided that, to the extent that the Listing Rules are amended following the date of this Agreement (as a result of the proposed reforms contemplated by the Financial Conduct Authority in the Consultation Paper CP23/10) to remove the requirement to seek shareholder approval for Class 1 Transactions, a Class 1 Transaction shall mean any acquisition of a company, business or undertaking, the consideration for which (when aggregated with any Financial Indebtedness or other assumed actual or contingent liability, in each case, remaining in the acquired company, business or undertaking at the date of acquisition) exceeds 25 per cent. of the market capitalisation of the Company (as at the close of business on the last Business Day before

the announcement of that acquisition) or which would require approval of the Company's shareholders.

"Clean Up Date" means the date falling 120 days from and including the Acquisition Closing Date.

"Code" means the U.S. Internal Revenue Code of 1986.

"Commitment" means:

- (a) in relation to an Original Lender, the amount in U.S. Dollars set opposite its name under the heading "Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in U.S. Dollars of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

"Commitment Letter" means the commitment letter dated 23 January 2024 between, among others, the Company and the Underwriters as named therein in relation to this Agreement and the RCF.

"Competitor" means any person whose primary business in the ordinary course is in competition with the primary business of the Group, save where such person is a bank, financial institution, trust, fund or other entity which is administered by persons operating behind appropriate information barriers implemented or maintained as required by law, regulation or internal policy and in any event to the extent required to ensure that such bank, financial institution, trust, fund or other entity, as the case may be, is independent from such person's interests under the Finance Documents.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

"Compounded Reference Rate" means, in relation to any RFR Banking Day during an Interest Period of a 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 or the Cumulative Compounded RFR Rate, a document which:

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

"Confidential Information" means all information relating to the Company, any Obligor, the Group or any member of the Group, the Target Group or any member of the Target Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

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

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 36 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or the Target Group or any of their respective advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group or the Target Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

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

"CTA" means the Corporation Tax Act 2009.

"Cumulative Compounded RFR Rate" means, in relation to an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 12 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

"Daily Non-Cumulative Compounded RFR Rate" means, in relation to any RFR Banking Day during an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

"Daily Rate" means the rate specified as such in the Reference Rate Terms.

"Debt Purchase Transaction" means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;

- (b) enters into any sub-participation in respect of; or
 - (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,
- any Commitment or amount outstanding under this Agreement.

"Default" means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender:

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

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

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

"Disruption Event" means either or both of:

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

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

"Distressed Fund" means a fund or other entity whose principal investment strategy or material activity is:

- (a) investing in distressed debt or the purchase of loans or other debt securities with the intention of (or view to) owning the equity or gaining control of a business (directly or indirectly); and/or
- (b) exploiting holdout or blocking positions.

"Drilling Arrangements" means any contract, agreement, charterparty, lease or other arrangement in relation to either: (i) the provision of an offshore drilling rig or unit; and/or (ii) the provision of offshore drilling services, in each case entered into by any Obligor or other member of the Group.

"EBITDA" has the meaning given to it in Clause 20 (*Financial covenants*).

"EBITDAX" has the meaning given to it in Clause 20 (*Financial covenants*).

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company and which, in each case, is not a member of the Group.

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

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

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

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

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

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

"Event of Default" means any event or circumstance specified as such in Clause 22 (*Events of Default*).

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

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

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

"FATCA Application Date" means:

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

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

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

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

"Finance Charges" has the meaning given to it in Clause 20 (*Financial covenants*).

"Finance Document" means this Agreement, any Fee Letter, any Accession Letter, any Resignation Letter, any Reference Rate Supplement, any Compounding Methodology Supplement and any other document designated as such by the Agent and the Company.

"Finance Party" means the Agent, the Arranger or a Lender.

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

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit facility or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a lease (excluding any FPSO Arrangements and Drilling Arrangements);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount paid up or credited as paid up on any redeemable share capital;
- (i) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Information" means the outputs of the financial model shared by the Company with the Arrangers prior to the date of the Commitment Letter.

"First Extended Termination Date" has the meaning given to it in Clause 6.2 (*Extension option*).

"First Extension Request" has the meaning given to it in Clause 6.2 (*Extension option*).

"FPSO Arrangements" means any contract, agreement, charterparty, lease or other arrangement for the provision of a floating production, storage and offloading facility entered into by any Obligor or other member of the Group.

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.3 (*Cost of funds*).

"German Non-Cooperative Tax Jurisdiction" means a "non-cooperative tax jurisdiction" (*nicht kooperatives Steuerhoheitsgebiet*) as set out from time to time in the German Act to Avert Tax Evasion and Unfair Tax Competition (*Gesetz zur Abwehr von Steuervermeidung und unfairem Steuerwettbewerb*) or in the underlying legislative decree (*Steuerparadies-Abwehrverordnung*), as may be amended or substituted from time to time.

"Germany" means the Federal Republic of Germany.

"Ghasha Disposal" means the sale of either:

- (a) a 10 per cent. interest in the Ghasha concession (the **"Ghasha Interest"**); or
- (b) all of the shares in any entity that owns all of the rights to the Ghasha Interest.

"Group" means the Company and its Subsidiaries for the time being.

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

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

"Hedging Agreement" means any interest, currency, carbon emission allowance or commodity swap, option, cap, collar, floor or similar arrangement or other hedging arrangement (excluding, for the avoidance of doubt, a foreign exchange spot trade), in each case not for speculative purposes.

"High Yield Note Documentation" means the High Yield Notes, each indenture or other debt instrument pursuant to which any High Yield Notes are issued, each guarantee granted by a member of the Group in connection with any High Yield Notes, the Guarantee Subordination Agreement (as defined in the High Yield Note Documentation) and any other document entered into in connection with any High Yield Notes and designated as a High Yield Note Documentation by the Company.

"High Yield Note Issuer" means any company or corporation which is the issuer of the High Yield Notes under and in accordance with the High Yield Note Documentation, provided that such company or corporation is the Company or a directly owned subsidiary of the Company (other than Chrysaor E&P Limited or any of its Subsidiaries).

"High Yield Notes" means the U.S.\$500,000,000 5.50% senior unsecured notes maturing on 15 October 2026 issued by any High Yield Note Issuer in accordance with the High Yield Note Documentation.

"Historic RFR" means, in relation to an RFR Banking Day, the most recent RFR for a day which is no more than two RFR Banking Days before that RFR Banking Day.

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

"IFRS" means International Accounting Standards, International Financial Reporting Standards and related Interpretations, together with any future standards and related interpretations issued or adopted by the International Accounting Standards Board, in each case as amended and to the extent applicable to the relevant financial statements.

"IG Notes" means any investment grade rated senior unsecured notes issued by the Company or a directly owned Subsidiary of the Company for the purpose of refinancing or replacing the High Yield Notes in full.

"Impaired Agent" means the Agent at any time when:

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

(d) an Insolvency Event has occurred and is continuing with respect to the Agent; unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

payment is made within 5 Business Days of its due date; or

(ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 13 (*Form of Increase Confirmation*).

"Increase Lender" has the meaning given to that term in Clause 2.2 (*Increase*).

"Information Package" means any written information provided to the Finance Parties by or on behalf of a member of the Group in connection with the Transaction Documents, including the Financial Information, the Reports, the RES/RAS Paper and the Target Bond Porting Presentation.

"Insolvency Event" in relation to an entity means that the entity:

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

(b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(d) institutes or has instituted against it, by a regulator, supervisor, restructuring officer or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, restructuring or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up, provisional liquidation or liquidation by it or such regulator, supervisor, restructuring officer or other official;

(e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, restructuring or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up, provisional liquidation or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

(i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up, provisional liquidation or liquidation; or

- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management, provisional liquidation or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, restructuring officer, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence, in any of the foregoing acts.

"Interest Payment" means the aggregate amount of interest that is, or is scheduled to become, payable under any Finance Document.

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

"ITA" means the Income Tax Act 2007.

"Legal DD Report" means the legal due diligence report titled "*Project Warwick – Legal Review Report*" dated 4 December 2023 prepared by Clifford Chance LLP in connection with the Acquisition.

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

- (d) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (e) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (f) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered pursuant to this Agreement.

"Lender" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.2 (*Increase*) or Clause 23 (*Changes to the Lenders*),

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

"Limitation Acts" means The Limitation Act 1980, The Foreign Limitation Periods Act 1984 and The Prescription and Limitation (Scotland) Act 1973.

"LMA" means the Loan Market Association.

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

"Lookback Period" means the number of days specified as such in the Reference Rate Terms.

"Major Default" means any circumstances constituting a Default arising under any of:

- (a) Clause 22.1 (*Non-payment*) insofar as it relates to a failure to pay an amount of principal, interest or fees under the Finance Documents;
- (b) Clause 22.2 (*Financial covenants and Sanctions*);
- (c) Clause 22.3 (*Other obligations*) insofar as it relates to:
 - (i) Clause 21.2 (*Compliance with laws*);
 - (ii) Clause 21.3 (*Negative pledge*);
 - (iii) Clause 21.4 (*Disposals*);
 - (iv) Clause 21.6 (*Dividends and share redemption*);
 - (v) Clause 21.7 (*Financial Indebtedness*);
 - (vi) Clause 21.8 (*Merger*);
 - (vii) Clause 21.9 (*Change of business*);
 - (viii) Clause 21.11 (*Acquisitions*);
 - (ix) Clause 21.14 (*Anti-bribery, anti-corruption and anti-money laundering laws*);
 - (x) Clause 21.15 (*Pari passu ranking*);
 - (xi) Clause 21.16 (*Guarantors*);
 - (xii) Clause 21.17 (*Sanctions*); or

- (xiii) paragraph (a), (b) or (c) of Clause 21.18 (*Compliance with the Acquisition Documents*);
- (d) Clause 22.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation;
- (e) Clause 22.6 (*Insolvency*), Clause 22.7 (*Insolvency proceedings*) or Clause 22.8 (*Creditors' process*); or
- (f) Clause 22.10 (*Unlawfulness*) or Clause 22.11 (*Repudiation*),

provided that such Default relates to any member of the Group other than a member of the Target Group.

"Major Representation" means a representation or warranty under any of:

- (a) Clause 18.1 (*Status*);
- (b) Clause 18.2 (*Binding obligations*);
- (c) Clause 18.3 (*Non-conflict with other obligations*);
- (d) Clause 18.4 (*Power and authority*);
- (e) Clause 18.5 (*Validity and admissibility in evidence*);
- (f) Clause 18.12 (*Pari passu ranking*);
- (g) Clause 18.17 (*Anti-bribery, anti-corruption and anti-money laundering laws*);
- (h) Clause 18.20 (*Sanctions*); or
- (i) Clause 18.21 (*The Acquisition Documents*),

in each case, with respect to any member of the Group other than a member of the Target Group.

"Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than 66²/₃ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66²/₃ per cent. of the Total Commitments immediately prior to the reduction).

"Margin" means the rate per annum determined by reference to the following table:

Time Period	Margin (per cent. p.a.)
From (and including) the date of the Agreement to (and excluding) the date falling 3 Months after the date of the Agreement	1.00
From (and including) the date falling 3 Months after the date of the Agreement to (and excluding) the date falling 6 Months after the date of the Agreement	1.25
From (and including) the date falling 6 Months after the date of the Agreement to (and excluding) the date falling 9 Months after the date of the Agreement	1.50

Time Period	Margin (per cent. p.a.)
From (and including) the date falling 9 Months after the date of the Agreement to (and excluding) the date falling 12 Months after the date of the Agreement	1.75
From (and including) the date falling 12 Months after the date of the Agreement to (and excluding) the date falling 15 Months after the date of the Agreement	2.10
From (and including) the date falling 15 Months after the date of the Agreement to (and excluding) the date falling 18 Months after the date of the Agreement	2.45
From (and including) the date falling 18 Months after the date of the Agreement to (and excluding) the date falling 21 Months after the date of the Agreement	2.95
From (and including) the date falling 21 Months after the date of the Agreement to (and including) the Termination Date	3.45

"Market Disruption Rate" means the rate (if any) specified as such in the Reference Rate Terms.

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

- (a) the financial condition or business of the Company or the consolidated financial condition or business of the Group taken as a whole;
- (b) the ability of any Obligor to perform and comply with its payment or other material obligations under any Finance Document to which it is a party; or
- (c) the validity, legality or enforceability of any Finance Document.

"Material Subsidiary" means a Subsidiary of the Company:

- (a) which has gross assets or turnover (excluding intra-Group items) representing 2 per cent. or more of the gross assets or revenue of the Group, calculated on a consolidated basis; or
- (b) to which has been transferred (whether in a single transaction or a series of transactions (whether related or not) and whether by way of sale, lease, loan or other disposal) assets representing 2 per cent. or more of the gross assets or revenue of the Group, calculated on a consolidated basis.

For the purposes of this definition:

- (i) compliance with the conditions set out in paragraph (a) above shall be determined by reference to the latest audited financial statements of the relevant Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the relevant audited consolidated accounts of the Company;

- (ii) if a Subsidiary is acquired after the end of the financial period to which the latest audited consolidated financial statements of the Company relate, those financial statements shall be adjusted as if that Subsidiary had been shown in them by reference to its then latest audited financial statements until audited consolidated financial statements of the Group for the financial period in which the acquisition is made have been prepared.

"Month" means, in relation to an Interest Period (or any other period for the accrual of commission or fees), a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as Business Day Conventions in the Reference Rate Terms.

"Net Debt" has the meaning given to it in Clause 20 (*Financial covenants*).

"Net Finance Charges" has the meaning given to it in Clause 20 (*Financial covenants*).

"New Lender" has the meaning given to that term in Clause 23 (*Changes to the Lenders*).

"Obligor" means the Borrower or a Guarantor.

"Original Financial Statements" means:

- (a) in relation to the Company, the audited consolidated financial statements of the Group for the financial year ended 31 December 2022; and
- (b) in relation to each Original Obligor other than the Company, its audited financial statements for its financial year ended 31 December 2022.

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

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

"Original Termination Date" has the meaning given to it in Clause 6.2 (*Extension option*).

"Participating Member State" means any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Pension Scheme" means the Premier Oil PLC Retirement & Death Benefits Plan which is run by the trustee board, Premier Pension Plan Trustee Limited.

"Petroleum" means any mineral, oil or relative hydrocarbon (including condensate and natural gas liquids) and natural gas existing in its natural condition in strata but excluding (a) coal or bituminous shale oil or other stratified deposits from which oil can be extracted by destructive distillation and (b) any substance unavoidably lost in the production thereof or used in conformity with good oilfield practice for drilling and the production operations (including gas injection, fuel, secondary recovery pressure maintenance, re-pressuring or re-cycling operations) conducted for the purpose of winning and saving such substances but only for the duration of such use.

"Petroleum Asset" means (a) any Petroleum field, pipeline transmission system or other Petroleum project, (b) the facilities relating to such field, system or project and/or (iii) the interests in such field, system, project or facilities.

"Project Asset" means each of:

- (a) the Petroleum Assets owned by an Obligor on the date of this Agreement; and
- (b) any other Petroleum Asset acquired by an Obligor from time to time.

"Project Document" means each of:

- (a) in relation to each Project Asset:
 - (i) each joint operating agreement and/ or unitisation and unit operating agreement relating to a Project Asset and/or the Petroleum field comprised therein;
 - (ii) each agreement relating to the transportation, processing and/or storage of production from a Project Asset or a Petroleum field;
 - (iii) each agreement for the sale or marketing of production from a Project Asset or a Petroleum field;
 - (iv) each other agreement relating to a Project Asset, a Petroleum field and/or any Petroleum produced from a Project Asset or a Petroleum field;
 - (v) any Authorisation required for the lawful exploitation, development or operation of a Project Asset, the Petroleum field comprised therein or the production, transportation or sale of Petroleum from a Project Asset or Petroleum field (and including any Petroleum development or production licence);
 - (vi) any field development plan approved by any relevant operating committee and/or any appropriate governmental or other regulatory authority relating to a Project Asset or the Petroleum field comprised therein;
- (b) any documents relating to the acquisition by any member of the Group of any interests in any Project Asset or of any entity holding the interest in such Project Asset; and
- (c) any other document designated as such by the Company and the Agent.

"Purchaser" means the Company.

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

"RBL Facility Agreement" means the senior secured revolving borrowing base facility agreement originally dated 30 January 2017 (as amended and restated from time to time) and made between, among others, the Company, certain subsidiaries of the Company as borrowers and guarantors, the lenders named therein and DNB Bank ASA, London Branch as agent and security trustee.

"RCF" means the revolving credit facility agreement to be entered into by, among others, the Company, certain lenders and the agent for the purposes of refinancing the RBL Facility Agreement.

"Reference Rate Supplement" means a document which:

- (a) is agreed in writing by the Company, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders or, in the case of any Reference Rate Supplement which has the effect of a reduction in the Margin, all the Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Company and each Finance Party.

"Reference Rate Terms" means the terms set out in Schedule 10 (*Reference Rate Terms*) or in any relevant Reference Rate Supplement.

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

"Relevant Cash Balance" has the meaning given to it in Clause 20 (*Financial covenants*).

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

- (a) its Original Jurisdiction; and
- (b) any jurisdiction where it conducts its business.

"Relevant Market" means the market specified as such in the Reference Rate Terms.

"Relevant Period" has the meaning given to it in Clause 20 (*Financial covenants*).

"Repeating Representations" means each of the representations set out in Clauses 18.1 (*Status*), 18.2 (*Binding obligations*), 18.3 (*Non-conflict with other obligations*), 18.4 (*Power and authority*), 18.6 (*Governing law and enforcement*), 18.9 (*No Default*), paragraph (c) of 18.11 (*Financial statements*), 18.12 (*Pari passu ranking*), 18.15 (*Environmental laws*), 18.17 (*Anti-bribery, anti-corruption and anti-money laundering laws*), 18.19 (*Insurances*), 18.20 (*Sanctions*) and 18.23 (*Pensions*).

"Reporting Day" means the day (if any) specified as such in the Reference Rate Terms.

"Reporting Time" means the relevant time (if any) specified as such in the Reference Rate Terms.

"Reports" means:

- (a) the Tax Structure Memorandum;
- (b) the Legal DD Report; and
- (c) the Sanctions Report.

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

"Resignation Letter" means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

"RES/RAS Paper" means the rating agency presentation titled "*Harbour Energy's acquisition of Wintershall DEA asset portfolio*" dated November 2023.

"**RFR**" means the rate specified as such in the Reference Rate Terms.

"**RFR Banking Day**" means any day specified as such in the Reference Rate Terms.

"**Sanctioned Country**" has the meaning given to it in Clause 18.20 (*Sanctions*).

"**Sanctioned Person**" has the meaning given to it in Clause 18.20 (*Sanctions*).

"**Sanctions**" means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, and/or the European Union and/or Kingdom of the Netherlands and/or the Kingdom of Belgium and/or the French Republic and/or the Kingdom of Norway and/or His Majesty's Treasury (including as applicable to the Cayman Islands) and/or the Commonwealth of Australia or any other relevant sanctions authority.

"**Sanctions Report**" means the report entitled "*UK, EU and US Sanctions – Project Warwick*" dated 4 January 2024 prepared by Clifford Chance LLP.

"**Second Extension Request**" has the meaning given to it in Clause 6.2 (*Extension option*).

"**Security**" means a mortgage, standard security, floating charge, assignment in security, assignment by way of security, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

"**Specified Time**" means a day or time determined in accordance with Schedule 9 (*Timetables*).

"**Subsidiary**" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

"**Super Majority Lenders**" means a Lender or Lenders whose Commitments aggregate more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 per cent. of the Total Commitments immediately prior to that reduction).

"**Syndication Date**" means the date falling 60 days after the date of this Agreement or such earlier date specified by the Arranger.

"**Target**" means NewCo 2 as defined in the Acquisition Agreement.

"**Target Bond Porting Presentation**" means the presentation titled "*Project Warwick – Bond Porting Process (Updated Post-Signing of BCA)*" dated January 2024 prepared by Clifford Chance LLP in the agreed form.

"**Target Group**" means the Target and its Subsidiaries.

"**Target Hybrid Bonds**" means the EUR 650,000,000 hybrid resettable fixed rate notes and EUR 850,000,000 hybrid resettable fixed rate notes issued by Wintershall Dea Finance 2 B.V.

"**Target Senior Bonds**" means the EUR 3,900,000,000 fixed rate senior notes due 2023, 2025, 2028 and 2031 issued by Wintershall Dea Finance B.V.

"Target Shares" means the entire issued share capital of the Target to be acquired pursuant to the Acquisition Agreement.

"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).

"Tax Structure Memorandum" means the document entitled "*Project Warwick – Tax Acquisition Structure Report*" dated 17 January 2024 prepared by Deloitte LLP in connection with the Acquisition.

"Termination Date" means, subject to Clause 6.2 (*Extension option*), the date falling 12 Months after the earlier of:

- (a) the Acquisition Closing Date; and
- (b) the date falling 6 Months after the date of this Agreement.

"Total Commitments" means the aggregate of the Commitments, being U.S.\$1,500,000,000 at the date of this Agreement.

"Transaction Documents" means each Finance Document and each Acquisition Document.

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

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

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

"U.S." means the United States of America.

"Utilisation" means a utilisation of the Facility.

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

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

"VAT" means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) or (b) above or imposed elsewhere.

"Vendor" means each of:

- (a) BASF SE;
- (b) BASF Handels- Und Exportgesellschaft Mit Beschränkter Haftung;
- (c) LetterOne Holdings S.A.; and
- (d) L1 Energy Capital Management Services S. à r. l.

"Vietnam Disposal" means the sale of either:

- (a) all the shares in each of Premier Oil (Vietnam) Limited and Premier Oil Vietnam Offshore B.V. (the **"Vietnam Companies"**); or
- (b) all or substantially all of the assets of the Vietnam Companies.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the **"Arranger"** includes the Arranger acting as a documentation agent;
 - (ii) the **"Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Lead Arranger"**, any **"Lender"**, any **"Mandated Lead Arranger"**, any **"Obligor"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) a Lender's **"cost of funds"** in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan;
 - (v) the Agent's **"cost of funds"** is a reference to the average cost (determined either on an actual or a notional basis) which the Agent would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount referred to in paragraph (b) of Clause 29.4 (*Clawback and pre-funding*);
 - (vi) a **"Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document or a Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or Transaction Document or other agreement or instrument;
 - (vii) a **"group of Lenders"** includes all the Lenders;
 - (viii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (x) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xi) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Company and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (xii) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xiii) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.
- (e) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
 - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Company.
- (f) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (g) Any Reference Rate Supplement overrides anything in:
- (i) Schedule 10 (*Reference Rate Terms*); or
 - (ii) any earlier Reference Rate Supplement.
- (h) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 12 (*Cumulative Compounded RFR Rate*), as the case may be; or
 - (ii) any earlier Compounding Methodology Supplement.

- (i) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

1.3 Dutch Terms

In relation to an Obligor incorporated in the Netherlands:

- (a) "**constitutional documents**" includes an up-to-date extract from the Dutch trade register (*handeslregister*) relating to it dated no earlier than 5 Business Days prior to the date of this Agreement or the relevant Accession Letter (as applicable);
- (b) an "**administrator**" includes a *curator*, a *beoogd curator*, a *bewindvoerder* or a *beoogd bewindvoerder*;
- (c) "**all necessary action to authorise**" includes, where applicable, any action required to comply with the Works Council Act of the Netherlands (*Wet op de ondernemingsraden*) and obtaining unconditional positive advice (*advies*) from the competent works council;
- (d) a "**receiver**" or an "**administrative receiver**" does not include a *curator* or a *bewindvoerder*;
- (e) an "**attachment**" includes a *beslag*;
- (f) the "**suspension of payments**" or a "**moratorium**" includes *surséance van betaling*;
- (g) a "**winding up**", "**administration**" or "**dissolution**" includes *failliet verklaard* and *ontbonden*;
- (h) "**admits inability to pay its debts**" includes giving notice to the Dutch tax authorities under Section 36(2) of the Dutch 1990 Tax Collection Act (*Invorderingswet 1990*);
- (i) a "**security interest**" includes a retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), a right of retention (*recht van retentie*), a right to reclaim goods (*recht van reclame*) and in general any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijke zekerheid*); and
- (j) "**The Netherlands**" or "**Dutch**" refers to the European part of the Netherlands only.

1.4 German Terms

Unless a contrary indication appears, any reference in this Agreement, where it relates to an entity incorporated or established in Germany or an entity having its centre of main interest (as defined in Article 3(1) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (as amended, replaced or superseded from time to time (in particular, pursuant to Regulation No. 2015/848 of the European Parliament and of the Council on Insolvency Proceedings))), a reference to:

- (a) a "**director**" or "**officer**" includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of a person, including but not limited to, a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*) or an authorised representative (*Prokurist*);

- (b) constitutional documents means its articles of association (*Satzung*) or shareholders' agreement (*Gesellschaftsvertrag*) as the case may be, if applicable any by-laws and rules of procedure (*Geschäftsordnung*) and an up to date extract from the commercial register (*Handelsregisterauszug*) and, if applicable a list of shareholders (*Gesellschafterliste*);
- (c) a person being unable to pay its debts includes that person being illiquid (*zahlungsunfähig*) in the meaning of section 17 of the German Insolvency Law or overindebted (*überschuldet*) in the meaning of section 19 of the German Insolvency Law, however excluding the impending illiquidity (*drohende Zahlungsunfähigkeit*) in the meaning of section 18 of the German Insolvency Law;
- (d) a "**receiver**", "**liquidator**", "**administrator**" or "**administrative receiver**" includes an insolvency administrator (*Insolvenzverwalter*), a preliminary insolvency administrator (*Vorläufiger Insolvenzverwalter*), a sequestrator (*Zwangsverwalter*), a custodian or creditor's trustee (*Sachwalter*) or a preliminary custodian or creditor's trustee (*vorläufiger Sachwalter*);
- (e) a "**winding-up**", "**administration**" or "**dissolution**" (and each of these terms) includes any action taken by a competent court set out in section 21 of the German Insolvency Code (*Insolvenzordnung*) or where a competent court institutes or rejects (for reasons of insufficiency of its funds to implement such proceedings (*Abweisung mangels Masse*)) insolvency proceedings against it (*Eröffnung des Insolvenzverfahrens*);
- (f) a person being bankrupt or insolvent means that person being in a state of illiquidity (*Zahlungsunfähigkeit*) within the meaning of section 17 of the German Insolvency Law or being over-indebted (*überschuldet*) within the meaning of section 19 of the German Insolvency Law;
- (g) seeking/commencement/institution of bankruptcy or insolvency (proceedings) includes the opening of insolvency proceedings (*Eröffnung des Insolvenzverfahrens*), taking of preliminary measures under section 21 of the German Insolvency Law, protective scheme proceedings (*Schutzschirmverfahren*) and the dismissal of insolvency proceedings due to lack of funds (*Abweisung mangels Masse*);
- (h) seeking/making (other than on a solvent basis) an arrangement, composition, moratorium, restructuring, reorganization, relief or general assignment for the benefit of creditors includes the taking of preliminary measures under Section 21 of the German Insolvency Law, protective scheme proceedings (*Schutzschirmverfahren*), commencement of insolvency proceedings (*Eröffnung des Insolvenzverfahrens*) and debtor in possession proceedings (*Eigenverwaltung*);
- (i) a "**moratorium**" includes, without limitation, protective shield proceedings (*Schutzschirmverfahren*) and insolvency plan proceedings (*Insolvenzplanverfahren*);
- (j) in relation to any transaction security or other security rights or security assets governed by German law or located in Germany "**trust**", "**trustee**" or "**on trust**" shall be construed as *Treuhand*, *Treuhänder* or *treuhänderisch*;
- (k) gross negligence means *grobe Fahrlässigkeit* and wilful misconduct means *Vorsatz*;
- (l) jointly and severally means *gesamtschuldnerisch*;
- (m) to guarantee means *garantiert im Wege eines selbstständigen Zahlungsversprechens*; and
- (n) to indemnify means *schadlos halten*.

1.5 Currency symbols and definitions

"U.S.\$", "USD" and "U.S. Dollars" denote the lawful currency of the United States of America and "€", "EUR" and "euro" denote the single currency of the Participating Member States.

1.6 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 or the Contract (Third Party Rights) (Scotland) Act 2017 (the "**Third Parties Acts**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2
THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in U.S. Dollars in an aggregate amount equal to the Total Commitments with an extension option.

2.2 Increase

(a) The Company may by giving prior notice to the Agent by no later than the date falling 15 Business Days after the effective date of a cancellation of:

- (i) the Available Commitments of a Defaulting Lender in accordance with paragraph (g) of Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*); or
- (ii) the Commitments of a Lender in accordance with:
 - (A) Clause 7.1 (*Illegality*); or
 - (B) paragraph (a) of Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount in U.S. Dollars of up to the amount of the Available Commitments or Commitments so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
- (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
- (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
- (vii) any increase in the Commitments relating to the Facility shall take effect on the date specified by the Company in the notice referred to above or any later date on which the

Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.

- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
- (d) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (e) The Company shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.
- (f) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 23.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 23.6 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (g) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a letter between the Company and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (g).
- (h) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (i) Clause 23.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
 - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.4 Obligors' Agent

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.
- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.
- (c) Each Obligor (other than the Company) hereby relieves the Company from the restrictions of self-dealing and representation of more than one party with respect to one and the same transaction under any applicable laws (including, but not limited to, any restrictions pursuant to Section 181

of the German Civil Code (*Bürgerliches Gesetzbuch*)) regarding the powers and authorities conferred upon the Company under this Clause 2.4.

3. **PURPOSE**

3.1 **Purpose**

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

- (a) on-lending to AcquisitionCo (as such entity is described in the Tax Structure Memorandum) in order to effect payment of the purchase price of the Target Shares under the Acquisition Agreement as set out in the Tax Structure Memorandum; and
- (b) payment of Acquisition Costs.

3.2 **Monitoring**

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

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if, on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I and Part II of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation other than one to which Clause 4.3 (*Utilisations during the Certain Funds Period*) applies, if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 **Utilisations during the Certain Funds Period**

- (a) Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Major Default is continuing or would result from the proposed Utilisation; and
 - (ii) all the Major Representations are true in all material respects.
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*)) and subject as provided

in Clause 7.1 (*Illegality*), Clause 7.3 (*Change of Control*) and Clause 7.4 (*Acquisition, Capital Raising, Debt Issuance, Disposal and Insurance Proceeds*)), no Finance Party shall be entitled to:

- (i) cancel any of its Commitments to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation;
- (ii) rescind, terminate or cancel this Agreement or the Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents that it may have to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation;
- (iii) refuse to participate in the making of a Certain Funds Utilisation;
- (iv) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation; or
- (v) cancel, accelerate or cause the repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent that to do so would prevent or limit the making of a Certain Funds Utilisation,

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

4.4 Maximum number of Loans

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than 10 Loans would be outstanding.
- (b) The Borrower may not request that a Loan be divided if, as a result of the proposed division, more than 10 Loans would be outstanding.

SECTION 3
UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

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

5.2 Completion of a Utilisation Request

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

- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
- (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*); and
- (iv) it specifies the account and bank to which the proceeds of the Utilisation are to be credited.

(b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

(a) The currency specified in a Utilisation Request must be U.S. Dollars.

(b) The amount of the proposed Loan must be:

- (i) a minimum of U.S.\$10,000,000 and an integral multiple of U.S.\$1,000,000, or, if less, the Available Facility; or
- (ii) in any event such that it is less than or equal to the Available Facility.

5.4 Lenders' participation

(a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

(c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Commitment

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

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) The Borrower shall repay each Loan in full on the Termination Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

6.2 Extension option

- (a) The Company may request that the Termination Date be extended subject to the terms of this Clause 6.2:
 - (i) by giving notice to the Agent (the "**First Extension Request**") not less than 15 days but not more than 30 days before the Original Termination Date requesting that the Termination Date shall be extended to the date falling six Months after the Original Termination Date (the "**First Extended Termination Date**"); or
 - (ii) by giving notice to the Agent (the "**Second Extension Request**") not less than 15 days but not more than 30 days before the First Extended Termination Date requesting that the First Extended Termination Date be further extended to the date falling six Months after the First Extended Termination Date.
- (b) A notice served by the Company pursuant to paragraph (a) above is irrevocable.
- (c) The Agent shall promptly notify each Lender of any notice received pursuant to paragraph (a) above.
- (d) An extension to the Termination Date will only be effective if, on the date of the relevant extension request:
 - (i) no Default is continuing or would result from the extension to the then Termination Date;
 - (ii) the Repeating Representations to be made by each Obligor are true in all material respects;
 - (iii) the applicable extension fee is or has been paid to the Agent (for the account of each Lender) in accordance with paragraph (e) below; and
 - (iv) in respect of the Second Extension Request, the Sanctions Condition (as defined in the Acquisition Agreement) has, at the date of the Second Extension Request, been satisfied in accordance with the Acquisition Agreement and paragraph (c) of Clause 21.18 (*Compliance with the Acquisition Documents*) and the Company has complied with paragraph (d) of Clause 21.18 (*Compliance with the Acquisition Documents*) in all respects.
- (e) The Company shall pay to the Agent (for the account of each Lender) a fee in U.S. Dollars:
 - (i) in the case of the First Extension Request, equal to 0.25 per cent. of each Lender's Commitment (as at the date of the First Extension Request), and such fee shall be payable by no later than the Original Termination Date; and

- (ii) in the case of the Second Extension Request, equal to 0.30 per cent. of each Lender's Commitment (as at the date of the Second Extension Request), and such fee shall be payable by no later than the First Extended Termination Date.
- (f) For the purposes of this Clause 6.2 (*Extension option*), "**Original Termination Date**" means the date falling 12 Months after the earlier of:
- (i) the Acquisition Closing Date; and
 - (ii) the date falling 6 Months after the date of this Agreement.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, each Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

7.2 Automatic cancellation

If the Acquisition Closing Date does not occur on or before the last day of the Certain Funds Period, the Available Commitment of each Lender shall be cancelled and reduced to zero at 11:59 p.m. on that date, whereupon the Facility shall immediately cease to be available for further utilisation and all amounts accrued or outstanding under the Finance Documents shall be immediately due and payable.

7.3 Change of Control

- (a) If a Change of Control occurs:
- (i) the Company shall promptly notify the Agent upon becoming aware of that event;
 - (ii) a Lender shall not be obliged to fund a Utilisation; and
 - (iii) if a Lender so requires and notifies the Agent within 14 days of the Company notifying the Agent of the event, the Agent shall, by not less than 10 Business Days' notice to the Company, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that

Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.

(b) Notwithstanding paragraph (a) above, a Change of Control will not occur solely as a result of a Holding Company being interposed between the Company and its then current shareholder(s) if the following conditions are satisfied:

- (i) the Company is a wholly-owned Subsidiary of the Holding Company;
- (ii) the Company delivers to the Agent a tax opinion or report (from a reputable tax consultant) in form and substance satisfactory to the Agent (acting reasonably) (if the Agent so reasonably requests); and
- (iii) all "know-your-customer" checks in respect of that Holding Company have been completed by the Finance Parties.

(c) For the purpose of this Clause 7.3:

"Change of Control" means any person or group of persons acting in concert gains direct or indirect control of the Company.

For the purposes of the definition of "Change of Control":

"control" of the Company means:

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

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

7.4 Acquisition, Capital Raising, Debt Issuance, Disposal and Insurance Proceeds

(a) For the purposes of this Clause 7.4:

"Acquisition Proceeds" means the proceeds of a claim (a **"Recovery Claim"**) against any of the Vendors or any of its Affiliates (or any employee, officer or adviser) in relation to the Acquisition

Documents or against the provider of any Report (in its capacity as provider of that Report), except for Excluded Acquisition Proceeds, after deducting:

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

in each case, in relation to that Recovery Claim.

"Capital Raising" means the issue or sale (whether by way of flotation on any recognised stock exchange, rights issue, public offer, private placement or otherwise) by any member of the Group of:

- (i) any share or stock (whether ordinary or preference and whether or not redeemable) or other equity securities or membership interests; or
- (ii) any other instrument convertible into any share or stock (whether ordinary or preference and whether or not redeemable) or other equity securities or membership interests,

in each case, to persons who are not members of the Group.

"Capital Raising Proceeds" means the amount received by (or on behalf of) any member of the Group in respect of any Capital Raising, except for Excluded Capital Raising Proceeds, after deducting:

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

"Debt Issuance" means:

- (i) any private placement, bond, note, debt security or other debt capital markets instrument or security issued in the international or domestic debt capital markets after the date of this Agreement; or
- (ii) any loan facilities entered into after the date of this Agreement,

in each case, by the Company or any other member of the Group to any person outside the Group.

"Debt Issuance Proceeds" means the amount received by (or on behalf of) any member of the Group in respect of any Debt Issuance, except for Excluded Debt Proceeds, after deducting:

- (i) any reasonable fees, costs and expenses that are incurred by any member of the Group in connection with that Debt Issuance; and

- (ii) any Tax paid or reasonably estimated by the Company or any member of the Group to be payable in connection with that Debt Issuance.

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

"Disposal Proceeds" means the consideration receivable by (or on behalf of) any member of the Group for any Disposal made by any member of the Group to persons who are not member of the Group, except for Excluded Disposal Proceeds, after deducting:

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

"Excluded Acquisition Proceeds" means any proceeds of a Recovery Claim:

- (i) where the proceeds from an individual Recovery Claim are in an amount less than U.S.\$1,000,000 (or its equivalent in other currency or currencies), provided that, if the proceeds of Recovery Claims falling within this paragraph (i) during the same financial year of the Company exceeds U.S.\$5,000,000 (or its equivalent in other currency or currencies), the first U.S.\$5,000,000 (or its equivalent in other currency or currencies) of such proceeds in any financial year of the Company shall constitute "Excluded Acquisition Proceeds"; or
- (ii) which the Company notifies the Agent are, or are to be applied:
 - (A) in prepayment of amounts payable to any of the Vendors pursuant to the Acquisition Agreement by way of adjustment to the purchase price in respect of the Acquisition (except to the extent relating to a working capital adjustment);
 - (B) to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim upon a member of the Group by a person which is not a member of the Group; or
 - (C) in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible and, in any event, within, in respect of paragraphs (a) and (b) above, 14 days and, in respect of paragraph (c), 12 months (or, in each case, such longer period as the Majority Lenders may agree) after receipt;

"Excluded Capital Raising Proceeds" means:

- (i) any equity issue where the equity securities are issued to employees or officers of any member of the Group pursuant to an employee share option scheme;

- (ii) any equity issue to one or more Vendors pursuant to the terms of the Acquisition Agreement; or
- (iii) any equity issue where the proceeds, when aggregated with any other proceeds falling within this paragraph (iii), are less than U.S.\$60,000,000 (or its equivalent in other currency or currencies).

"Excluded Debt Proceeds" means:

- (i) any Debt Issuance Proceeds arising under the Facility or the other Finance Documents;
- (ii) any Debt Issuance Proceeds raised for the purpose of refinancing existing Financial Indebtedness of the Group incurred prior to the date of this Agreement (excluding the Target Senior Bonds and the Target Hybrid Bonds), provided that, in each case, that existing Financial Indebtedness is refinanced for the same or a lower total principal amount;
- (iii) the proceeds of any bilateral loan facilities entered into after the date of this Agreement, provided that the aggregate commitments under all such bilateral loan facilities does not exceed U.S.\$60,000,000 (or its equivalent in other currency or currencies); and
- (iv) any Debt Issuance Proceeds not being Excluded Debt Issuance Proceeds under subparagraphs (i) to (iii) above which are in aggregate less than U.S.\$60,000,000 (or its equivalent in other currency or currencies).

"Excluded Disposal Proceeds" means:

- (i) any Disposal Proceeds received in the ordinary course of trading;
- (ii) any Disposal Proceeds (or part thereof) which is required to be applied in mandatory prepayment in accordance with the RBL Facility Agreement;
- (iii) the Ghasha Disposal;
- (iv) the Vietnam Disposal; and
- (v) the proceeds of any Disposal not constituting Excluded Disposal Proceeds under paragraphs (i) to (iv) above which are in aggregate less than U.S.\$60,000,000 (or its equivalent in other currency or currencies).

"Excluded Insurance Proceeds" means:

- (i) any proceeds of an insurance claim which the Company notifies the Agent are, or are to be, applied:
 - (A) to meet a third party claim;
 - (B) to cover operating losses in respect of which the relevant insurance claim was made; or
 - (C) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case, as soon as possible but in any event within, in respect of paragraphs (A) and (B), 45 days and, in respect of paragraph (C), 12 months (or, in each case, such longer period as the Majority Lenders may agree) after receipt; or

- (ii) any proceeds (or part thereof) of an insurance claim which is required to be applied in mandatory prepayment in accordance with the RBL Facility Agreement;
- (iii) where the proceeds from any individual insurance claim are in an amount less than U.S.\$1,000,000 (or its equivalent in other currency or currencies), provided that, if the proceeds of all insurance claims falling within this paragraph (iii) in any financial year of the Company exceeds U.S.\$5,000,000 (or its equivalent in other currency or currencies), the first U.S.\$5,000,000 (or its equivalent in other currency or currencies) of such proceeds shall constitute "Excluded Insurance Proceeds".

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

- (b) The Company shall ensure that the Borrower shall prepay Loans, and/or cancel Available Commitments, in amounts equal to the following amounts, at the times and in the order of application specified in paragraphs (c) and (d) below:
 - (i) the amount of Acquisition Proceeds;
 - (ii) the amount of Capital Raising Proceeds;
 - (iii) the amount of Debt Issuance Proceeds;
 - (iv) the amount of Disposal Proceeds; and
 - (v) the amount of Insurance Proceeds.
- (c) A prepayment of Loans and/or cancellation of Available Commitments made under Clause 7.4 (*Acquisition, Capital Raising, Debt Issuance, Disposal and Insurance Proceeds*) shall be applied in the following order:
 - (i) **first**, in cancellation of Available Commitments under the Facility (and the Available Commitments of the Lenders under the Facility shall be cancelled rateably);
 - (ii) **secondly**, in prepayment of Loans such that outstanding Loans shall be prepaid on a *pro rata* basis, and cancellation of the corresponding Commitments.
- (d) The Borrower shall cancel the Available Commitments and/or prepay Loans, as applicable, as soon as reasonably practicable and in any event within 15 Business Days of the date of receipt of the Acquisition Proceeds, Capital Raising Proceeds, Debt Issuance Proceeds, Disposal Proceeds or Insurance Proceeds (as applicable) by (or on behalf of) the relevant member of the Group.

7.5 Voluntary cancellation

The Company may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum

amount of U.S.\$10,000,000 and an integral multiple of U.S.\$1,000,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lenders rateably.

7.6 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Agent not less than 5 RFR Banking Days' (or such shorter period as the Majority Lenders and the Agent may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the Loan by a minimum amount of U.S.\$10,000,000 and an integral multiple of U.S.\$1,000,000).
- (b) A Loan may only be voluntarily prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

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

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*);
 - (ii) any Lender claims indemnification from the Company under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased Costs*), or
 - (iii) any amount payable to any Lender by a German Guarantor under a Finance Document is not, or will not be (when the relevant corporate income tax is calculated), treated as a deductible charge or expense for German (corporate) income tax purposes for that German Guarantor by reason of that amount being paid or accrued to a Lender established in or acting through a Facility Office situated in a German Non-Cooperative Tax Jurisdiction or otherwise acting in connection to a German Non-Cooperative Tax Jurisdiction in relation to that Lender's participation in any Loan,

the Company may, whilst the circumstance giving rise to the requirement for that increase, indemnification or non-deductibility, as applicable, continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), the Borrower shall repay that Lender's participation in each Loan and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) an Obligor becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Company may, on 10 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.
- (g)
 - (i) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 10 Business Days' notice of cancellation of the Available Commitment of that Lender.
 - (ii) On the notice referred to in paragraph (i) above becoming effective, the Available Commitment of the Defaulting Lender shall be immediately reduced to zero.
 - (iii) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (i) above, notify all the Lenders.

7.8 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.

- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in a Loan under the Facility is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

7.9 Application of prepayments

Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*), Clause 7.3 (*Change of Control*) or Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.

SECTION 5
COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

- (a) The rate of interest on each Loan for any day during each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
- (i) Margin; and
 - (ii) Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for a Loan is not an RFR Banking Day, the rate of interest on that Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period.

8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is the sum of 2 per cent. per annum and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notifications

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

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.3 (*Cost of funds*).

- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

- (c) The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest relating to a Loan to which Clause 10.3 (*Cost of funds*) applies.
- (d) This Clause 8.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be the period specified in the Reference Rate Terms.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of any period specified in the Reference Rate Terms or of any other period agreed between the Company, the Agent and all the Lenders in relation to the relevant Loan.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) No Interest Period shall be longer than six Months.
- (h) Prior to the Syndication Date, Interest Periods shall be one Month or such other period as the Agent and the Company may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

9.2 Non-Business Days

Any rules specified as "Business Day Conventions" in the Reference Rate Terms shall apply to each Interest Period.

9.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:

- (i) relate to Loans; and
- (ii) end on the same date,

those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

- (b) Subject to Clause 4.4 (*Maximum number of Loans*) and Clause 5.3 (*Currency and amount*), if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Interest calculation if no RFR or Central Bank Rate

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Loan; and
- (b) "**Cost of funds will apply as a fallback**" is specified in the Reference Rate Terms, Clause 10.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Market disruption

If

- (a) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (b) before the Reporting Time, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of that Market Disruption Rate, then Clause 10.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.3 Cost of funds

- (a) If this Clause 10.3 applies to a Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the applicable Margin; and
 - (ii) the weighted average of the rates notified to the Agent by each Lender as soon as practicable and in any event by the Reporting Time for that Loan, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this Clause 10.3 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 10.3 applies pursuant to Clause 10.2 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
 - (ii) a Lender does not notify a rate to the Agent by the Reporting Time,that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate.
- (e) If this Clause 10.3 applies, the Agent shall, as soon as is practicable, notify the Company.

10.4 Break Costs

- (a) If an amount is specified as Break Costs in the Reference Rate Terms, the Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of that Loan or Unpaid Sum being paid by the Borrower on a day prior to the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become, payable.

11. FEES

11.1 Commitment fee

- (a) The Company shall pay to the Agent (for the account of each Lender) a fee in U.S. Dollars computed at the rate set out in the table below on that Lender's Available Commitment for the Availability Period:

Time Period	Commitment Fee Rate
From (and including) the date of this Agreement to (and excluding) the date falling 2 Months after the date of this Agreement	0 per cent. of the applicable Margin
From (and including) the date falling 2 Months after the date of this Agreement to (and excluding) the date falling 3 Months after the date of this Agreement	10 per cent. of the applicable Margin
From (and including) the date falling 3 Months after the date of this Agreement to (and excluding) the date falling 4 Months after the date of this Agreement	15 per cent. of the applicable Margin
From (and including) the date falling 4 Months after the date of this Agreement	30 per cent. of the applicable Margin

- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on the Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

11.2 Upfront fee

The Company shall pay to the Agent (for the account of each Lender specified in that Fee Letter) an upfront fee in the amount and at the times agreed in a Fee Letter.

11.3 Funding fee

The Company shall pay to the Agent (for the account of each Lender specified in that Fee Letter) a funding fee in the amount and at the times agreed in a Fee Letter.

11.4 Agency fee

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

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

In this Agreement:

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

- (a) where it relates to a UK Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (*The Original Parties*) and is filed with H.M. Revenue & Customs within 30 days of the date of this Agreement, or
- (b) where it relates to a UK Treaty Lender that is a New Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party or Increase Confirmation and is filed with H.M. Revenue & Customs within 30 days of that date or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect.

"Dutch Qualifying Lender" means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

- (a) able (otherwise than by reason of being a Dutch Treaty Lender) to receive such interest payments in respect of that advance from the relevant Obligor without any Tax Deduction being imposed under the laws of the Netherlands (including, for the avoidance of doubt, by virtue of any applicable relief or exemption); or
- (b) a Dutch Treaty Lender.

"Dutch Treaty Lender" means a Lender which:

- (a) is treated as a resident of a Dutch Treaty State for the purposes of the Dutch Treaty;
- (b) does not carry on a business in the Netherlands through a permanent establishment with which that Lender's participation in the Loans is effectively connected; and
- (c) fulfils any conditions which must be fulfilled under the double taxation agreement for residents of that Dutch Treaty State to obtain full exemption from taxation imposed by the Netherlands on interest payable to that Lender in respect of an advance under a Finance Document.

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

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

"Qualifying Lender" means, in respect of an Obligor tax resident in the United Kingdom, a UK Qualifying Lender and, in respect of an Obligor tax resident in the Netherlands, a Dutch Qualifying Lender.

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

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

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

"Treaty Lender" means, in respect of an Obligor tax resident in the United Kingdom, a UK Treaty Lender and, in respect of an Obligor tax resident in the Netherlands, a Dutch Treaty Lender.

"UK Non-Bank Lender" means (i) DNB (UK) Limited and (ii) a Lender which is not an Original Lender which gives a UK Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.

"UK Qualifying Lender" means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
 - (i) a Lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
 - (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

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

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

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

"UK Treaty Lender" means a Lender which:

- (a) is treated as a resident of a UK Treaty State for the purposes of the UK Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loans is effectively connected; and
- (c) fulfils any conditions which must be fulfilled under the double taxation agreement for residents of that UK Treaty State to obtain full exemption from United Kingdom taxation on interest payable to that Lender in respect of an advance under a Finance Document, subject to the completion of any necessary procedural formalities.

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

Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

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

- (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Dutch Qualifying Lender, but on that date that Lender is not or has ceased to be a Dutch Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Dutch Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a Dutch Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (i) below.
 - (f) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Germany if on the date on which the payment falls due such Tax Deduction is imposed solely because this payment is made to a Lender incorporated, resident, established or acting through a Facility Office situated in a German Non-Cooperative Tax Jurisdiction.
 - (g) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (h) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (i)
 - (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
 - (ii)
 - (A) A UK Treaty Lender which is an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and
 - (B) A UK Treaty Lender which is not an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender,
- and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

- (iii) Each Lender that includes the confirmation described in paragraph (ii)(A) above in Part II of Schedule 1 (*The Original Parties*) or the confirmation described in paragraph (ii)(B) above in the documentation which it executes on becoming a Party as a Lender thereby notifies the Borrower that, to the extent that that Lender is a Lender under the Facility made available to the Borrower and the HMRC DT Treaty Passport scheme is to apply in respect of that Lender's Commitment(s) or its participation in any Loan to the Borrower, the Borrower must file a Borrower DTTP Filing.
- (j) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (i)(ii) above and:
 - (i) the Borrower has not made a Borrower DTTP Filing in respect of that Lender; or
 - (ii) the Borrower has made a Borrower DTTP Filing in respect of that Lender but:
 - (A) that Borrower DTTP Filing has been rejected by H.M. Revenue & Customs;
 - (B) H.M. Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing, or
 - (C) H.M. Revenue & Customs has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.
- (k) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (i)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
- (l) The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (m) A UK Non-Bank Lender which is an Original Lender gives a UK Tax Confirmation to the Company by entering into this Agreement.
- (n) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the UK Tax Confirmation.

12.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:

- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes;
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction; or
- (C) under the law of any jurisdiction in which that Finance Party has a permanent establishment (within the meaning of the OECD Model Tax Convention), branch or agency in respect of amounts attributable to that permanent establishment, branch or agency,

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

- (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);
 - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by a Party.

- (c) Paragraph (a) above shall not apply with respect to any Tax assessed on a Finance Party under the German Act to Avert Tax Evasion and Unfair Tax Competition (*Gesetz zur Abwehr von Steuervermeidung und unfairem Steuerwettbewerb*) because such Finance Party is incorporated, resident, established or acting through a Facility Office situated in a German Non-Cooperative Tax Jurisdiction.
- (d) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
- (e) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Agent.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

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

12.5 Lender status confirmation

Each Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Agent and without liability to any Obligor, whether or not it is incorporated, resident, established or acting through a Facility Office in a German Non-Cooperative Tax Jurisdiction and in which of the following categories it falls in:

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

If such a Lender fails to indicate its status in accordance with this Clause 12.5 then that Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 Stamp taxes

- (a) The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, except for:
 - (i) any such stamp duty, registration and other similar Taxes payable in respect of an assignment, transfer or sub-participation of a Loan (or part thereof) by that Finance Party unless such assignment, transfer or sub-participation takes place at the request of an Obligor; or
 - (ii) when an Event of Default is continuing.
- (b) Without prejudice to the generality of paragraph (a) above, stamp duty shall, to the extent it relates to assets located in Scotland or otherwise governed by Scots law, be construed to refer to any analogous Tax in Scotland (including land and buildings transaction tax).

12.7 VAT

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

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

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in the Value Added Tax Act 1994, Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction other than the United Kingdom or a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

12.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;

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

12.9 FATCA Deduction

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

13. INCREASED COSTS

13.1 Increased Costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement or (iii) the implementation or application of or compliance with Basel III, CRD IV or CRD V or any law or regulation that implements or applies Basel III, CRD IV or CRD V.

(b) In this Agreement:

"Bank Levy" means any Tax payable by any Finance Party or any Affiliate on the basis of its balance sheet or any part of it or its liabilities or minimum regulatory capital or any combination (including the UK bank levy as set out in Finance Act 2011) and any Tax in any jurisdiction levied on a similar basis or for a similar purpose imposed in any jurisdiction as in force at the date of this Agreement.

"Basel III" means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"CRD IV" means EU CRD IV and UK CRD IV.

"CRD V" means EU CRD V and UK CRD V.

"EU CRD IV" means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("**CRR**"); and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("**CRD4**").

"EU CRD V" means:

- (i) Regulation (EU) No 2019/876 of the European Parliament and of the Council of 20 May 2019 amending CRR and Regulation (EU) No 648/2012 ("**CRR2**"); and
- (ii) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending CRD4 ("**CRD5**").

"Increased Costs" means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

"UK CRD IV" means:

- (i) CRR as it forms part of domestic law of the United Kingdom;
- (ii) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the WAA) implemented CRD4 and its implementing measures;
- (iii) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the WAA) implemented EU CRD IV as it forms part of domestic law of the United Kingdom; and
- (iv) any law or regulation which amends, replaces or restates any law or regulation specified in paragraphs (i) to (iii) above.

"UK CRD V" means:

- (i) CRR2 as it forms part of domestic law of the United Kingdom;
- (ii) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the WAA) implemented CRD5 and its implementing measures;
- (iii) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the WAA) implemented EU CRD V as it forms part of domestic law of the United Kingdom; and
- (iv) any law or regulation which amends, replaces or restates any law or regulation specified in paragraphs (i) to (iii) above or which otherwise implements Basel III in the United Kingdom.

"WAA" means the European Union (Withdrawal Agreement) Act 2020.

"Withdrawal Act" means the European Union (Withdrawal) Act 2018.

13.2 Increased Cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;

- (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
 - (iv) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy); or
 - (v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "Tax Deduction" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

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

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

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

14.2 Other indemnities

The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

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

14.3 Indemnity to the Agent

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

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

14.4 Transaction indemnity

- (a) The Company shall, within three Business Days of demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each an "**Indemnified Person**"), against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the funding of the Acquisition, unless such loss or liability is caused by fraud, the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate).
- (b) If any event occurs in respect of which indemnification may be sought from the Company, the relevant Indemnified Person shall only be indemnified if (where legally permissible to do so and without being under any obligation if compliance would prejudice legal privilege or obligations of confidentiality applicable to the relevant Indemnified Person or to the extent that it is not lawfully permitted to do so) it notifies the Company in writing as soon as reasonably practicable after the relevant Indemnified Person becomes aware of such event, provided that a failure to notify the Company shall not relieve the Company from any liability that it might have under this Clause 14.4.
- (c) Any Indemnified Person may rely on this Clause 14.4 subject to Clause 1.6 (*Third party rights*) and any provision of the Third Parties Acts.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) or any amount payable under a Finance Document by a German Guarantor not being treated as a deductible charge or expense for German (corporate) income tax purposes for that German Guarantor by reason of that amount being paid or accrued to a Finance Party established in or acting through a Facility Office situated in a German Non-Cooperative Tax Jurisdiction or otherwise acting in connection to a German Non-Cooperative Tax Jurisdiction in relation to that Finance Party's participation under the Finance

Documents including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

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

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent;
- (b) an amendment is required pursuant to Clause 29.10 (*Change of currency*); or
- (c) an amendment or waiver is contemplated by Clause 35.8 (*Changes to reference rates*),

the Company shall, within three Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement costs

The Company shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7
GUARANTEE

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

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

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, provisional liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 17 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor

or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 17.

17.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:

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

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

- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 29 (*Payment mechanics*).

17.8 Release of Guarantors' right of contribution

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

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

17.9 Additional security

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

17.10 Guarantee effective date

Notwithstanding the terms of this Agreement, the obligations of Chrysaor E&P Finance Limited under Clause 17.1 (*Guarantee and indemnity*) shall only become effective on and from the earlier of (i) the Acquisition Closing Date and (ii) the date on which the RBL Facility Agreement is refinanced in full, but shall extend to all obligations and liabilities whenever incurred.

17.11 Limitation on enforcement – Dutch Guarantor

Notwithstanding any contrary indication in this Agreement, in relation to a Guarantor incorporated in the Netherlands and any of its subsidiaries and in relation to Guarantors that are subsidiaries of a Dutch company in which shares have been or will be acquired, this guarantee shall be limited to the extent required to comply with restrictions on financial assistance in Section 2:98c of the

Dutch Civil Code (Burgerlijk Wetboek) or any other applicable law. For the purpose of this Clause 17.11, subsidiaries shall have the meaning as provided in Section 2:24a of the Dutch Civil Code (Burgerlijk Wetboek).

17.12 Limitation on enforcement – German Guarantor (GmbH and GmbH and Co. KG)

- (a) To the extent that the guarantee created under this Clause 17 (the "**Guarantee**") is granted by a Guarantor incorporated in Germany as a limited liability company (*GmbH*) (each a "**German Guarantor**") and the Guarantee of the German Guarantor guarantees amounts which are owed by direct or indirect shareholders of the German Guarantor or Subsidiaries of such shareholders (with the exception of Subsidiaries which are also Subsidiaries of the German Guarantor), the Guarantee of the German Guarantor shall be subject to certain limitations as set out in the following paragraphs of this clause. In relation to any other amounts guaranteed, the Guarantee of the German Guarantor remains unlimited.
- (b) Subject to sub-paragraphs (ii) and (iii) below, the Agent shall not be entitled to enforce the Guarantee to the extent that the German Guarantor demonstrates that such enforcement has the effect of
- (A) reducing the German Guarantor's net assets (*Nettovermögen*) (the "**Net Assets**") to an amount less than its stated share capital (*Stammkapital*), or
- (B) (if its Net Assets are already lower than its stated share capital) causing such amount to be further reduced,

and thereby affects its assets which are required for the obligatory preservation of its stated share capital according to sections 30, 31 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) (the "**GmbH-Act**") ("**Limitation on Enforcement**" or "**Limitation Event**"). For the purpose of determining whether a Limitation Event has occurred, any recourse claim (*Rückgriffsanspruch*) which the German Guarantor has, or would acquire against a shareholder or another member of the Group as a result of the enforcement of the Guarantee, shall be taken into account to the extent that such recourse claim is valuable (*werthaltig*) ("**Recourse Claim**"). To the extent that there is such Recourse Claim, no Limitation on Enforcement applies.

- (i) The value of the Net Assets shall be determined in accordance with provisions of the German Commercial Code (*Handelsgesetzbuch*) consistently applied by the German Guarantor in preparing its unconsolidated balance sheets (*Jahresabschluss*) according to section 42 GmbH-Act, sections 242, 264 HGB) in the previous years, save that
- (A) the amount of any increase of the stated share capital (*Stammkapital*) of the German Guarantor registered after the date of this Agreement without the prior written consent of the Agent shall be deducted from the relevant stated share capital;
- (B) loans provided to the relevant German Guarantor by a member of the Group shall be disregarded if they are subordinated by an agreement in the sense of section 19 para. 2 German Insolvency Code (*Insolvenzordnung*); and

- (C) loans and other liabilities incurred in violation of the provisions of any Finance Document shall be disregarded.
- (ii) The Limitation on Enforcement shall only apply if and to the extent that the managing director(s) (*Geschäftsführer*) on behalf of the respective German Guarantor have confirmed in writing to the Agent within 5 Business Days following the Agent's demand under the Guarantee (i) the amount of the German Guarantor's Net Assets and (ii) that and to what extent the demanded payment would lead to the occurrence of a Limitation Event (the "**Management Determination**").
- (iii) If the Agent disagrees with the Management Determination, the Agent shall nevertheless be entitled to enforce the Guarantee up to such amount, which is undisputed between itself and the relevant German Guarantor in accordance with the provisions of paragraph (ii) above. In relation to the amount which is disputed, the Limitation on Enforcement shall only apply if a firm of auditors of international standing and reputation has, to the satisfaction of the Agent, determined within 30 calendar days (or such longer period as has been agreed between the German Guarantor and the Agent) from the date the Agent has contested the Management Determination (i) the amount of the German Guarantor's Net Assets and (ii) to what extent the demanded payment would lead to the occurrence of a Limitation Event (the "**Auditor's Determination**"). The German Guarantor shall be entitled to appoint an auditor of international standing and reputation in consultation with the Agent. The amounts determined in the Auditor's Determination shall be (except for manifest error) binding for all Parties. The costs of the Auditor's Determination shall be borne by the German Guarantor.

If pursuant to the Auditor's Determination the amount payable under the Guarantee is higher than set out in the Management Determination the relevant German Guarantor shall pay the difference to the Finance Parties within 5 Business Days after receipt of the Auditor's Determination.

- (iv) If, and to the extent that, the Guarantee has been enforced without regard to the Limitation on Enforcement because (A) the Management Determination was not delivered within the relevant time frame or (B) the amount payable under the Guarantee resulting from the Auditor's Determination is lower than the respective amount resulting from the Management Determination, the Finance Parties shall upon written demand of the relevant German Guarantor to the Agent (on behalf of the Finance Parties) repay any amount (if and to the extent already paid to the Finance Parties) in the case of (A) above, which the Agent would not have been entitled to enforce had the Management Determination been delivered in time, and in the case of (B) the difference between the amount paid and the amount payable resulting from the Auditor's Determination calculated as of the date the demand under the Guarantee was made and in accordance with paragraph (b) and sub-paragraph (ii) above, provided such demand for repayment is made to the Agent within 6 months (*Ausschlussfrist*) from the date the Guarantee has been enforced.
- (v) If the German Guarantor intends to demonstrate that the enforcement of the Guarantee would lead to the occurrence of a Limitation Event, then the German Guarantor shall

realise at market value any and all of its assets that are shown in its balance sheet with a book value (*Buchwert*) which is (in the opinion of the Agent) significantly lower than their market value and to the extent that such assets are not necessary for the relevant German Guarantor's business (*nicht betriebsnotwendig*), to the extent necessary to satisfy the amounts demanded under this Guarantee.

- (vi) The Limitation on Enforcement does not affect the right of the Finance Parties to claim again any outstanding amount at a later point in time if and to the extent that this paragraph (b) would allow this at that later point.
- (vii) The Limitation on Enforcement does not apply in relation to amounts that correspond to funds that have been borrowed under this Agreement and have been on-lent to, or otherwise been passed on to, the relevant German Guarantor or any of its Subsidiaries. The burden of demonstrating that no amounts have been passed on is on the German Guarantor.
- (viii) The Limitation on Enforcement does not apply to any amounts payable under the Guarantee if and as long as a domination and/or profit and loss transfer agreement in accordance with section 291 of the German Stock Corporation Act (*Aktiengesetz*) (the "**AktG**") between the German Guarantor (as dominated entity) and the relevant primary obligor or a Holding Company of the relevant primary obligor (as dominating entity) is in existence.

However, the Finance Parties agree to repay any amount received from the German Guarantor due to the preceding sentence if and to the extent the German Guarantor is not able to recover the annual loss (*Jahresfehlbetrag*) which the dominating entity (herrschendes Unternehmen, the "Dominating Entity") is obliged to pay pursuant to section 302 AktG, due to the fact that the Dominating Entity is unable to fulfil its obligations pursuant to section 302 AktG when they fall due (*zahlungsunfähig*) or the Dominating Entity is over-indebted (*überschuldet*).

If the German Guarantor intends to claim back any amounts pursuant to the preceding sentence, such demand must be made in writing addressed to the Agent within one month after the settlement of the annual financial statements (*Feststellung des Jahresabschlusses*), however no later than six months after the end of the relevant financial year (*Ausschlussfrist*). Together with the demand for repayment, the German Guarantor is obliged to provide evidence satisfactory to the Agent that the Dominating Entity is unable to fulfil its obligations pursuant to section 302 AktG, in particular by submission of audited financial statements and/or of an excerpt from the commercial register proving that the Dominating Entity has filed for insolvency. Upon receipt of such demand together with such evidence, the Finance Parties are obliged to repay any amount required to cover the annual loss (*Jahresfehlbetrag*) within 20 Business Days if and to the extent this amount is not paid by the Dominating Entity, provided however that the Finance Parties shall in no event be obliged to pay an amount exceeding the amount received by them under sentence 1 of this sub-paragraph.

- (ix) For the avoidance of doubt, no Limitation on Enforcement applies if and to the extent for any reason (including as a result of a change in the relevant rules of law or their application or construction) the relevant situation referred to in paragraph (b) sentence 1 above does not constitute a breach of the German Guarantor's obligations to preserve its stated share capital pursuant to sections 30, 31 GmbH-Act (as amended, supplemented and/or replaced from time to time). Equally, no repayment of amounts pursuant to sub-paragraph (viii) applies if and to the extent for any reason (including as a result of a change in the relevant rules of law or their application or construction) the relevant situation referred to in paragraph (b) sentence 1 above does not constitute a breach of the German Guarantor's obligations to preserve its stated share capital pursuant to sections 30, 31 GmbH-Act (as amended, supplemented and/or replaced from time to time) as a result of the domination and/or profit and loss transfer agreement.
- (c) This Clause 17.12 (*Limitation on Enforcement – German Guarantor (GmbH and GmbH & Co. KG)*) shall apply *mutatis mutandis* if the Guarantee is granted by a Guarantor incorporated as a limited liability partnership (GmbH & Co. KG) in relation to the limited liability company as general partner (*Komplementär*) of such Guarantor.

17.13 Limitation on enforcement – German Guarantor (AG and AG & Co. KG)

To the extent that (x) the Guarantee is granted by a Guarantor incorporated or established in Germany in the legal form of a stock corporation (*Aktiengesellschaft*) (a "**Restricted Guarantor**") or by a limited partnership (*Kommanditgesellschaft*) with a Restricted Guarantor as its general partner (AG & Co. KG) or by any of a Restricted Guarantor's Subsidiaries, and (y) the Guarantee secures liabilities which are owed by the direct or indirect shareholder of that Restricted Guarantor or Subsidiaries of such shareholders (such Subsidiaries not to include that Restricted Guarantor, a limited partnership (*Kommanditgesellschaft*) with that Restricted Guarantor as its general partner (AG & Co. KG) and the Restricted Guarantor's Subsidiaries (together the "**Restricted Guarantor Group**")), no Guarantee shall be granted or created by any member of the Restricted Guarantor Group. The limitations set out in the preceding sentence shall not apply (or, as the case may be, shall cease to apply) if (i) a domination agreement (*Beherrschungsvertrag*) is in force between the Restricted Guarantor (as dominated entity) and any of its direct or indirect shareholders (as dominating entity) which liabilities are expressed to be secured other than if such domination agreement (*Beherrschungsvertrag*) has been cancelled or terminated and other than where despite the existence of such domination agreement (*Beherrschungsvertrag*) there would be a violation of section 57 para. 1 sub-para. 1 of the German Stock Corporation Act (*Aktiengesetz*) ("**AktG**") and/or 71a AktG in case of creating or enforcing security interests or (ii) the Restricted Guarantor is not any longer incorporated in the legal form of a stock corporation (*Aktiengesellschaft*). For the avoidance of doubt, the validity and enforcement of any Guarantee in respect of any liabilities which are owed by a member of the Restricted Guarantor Group which is not a direct or indirect shareholder of any Restricted Guarantor shall not be limited under the preceding sentence. The limitations set out in this clause do not affect the rights of the Agent to enforce the security interest at a later point in time if and to the extent that the preceding sentences would allow this at that later point.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement and on the Acquisition Closing Date.

18.1 Status

- (a) It and each of its Material Subsidiaries is a limited liability corporation or an exempted company or partnership with limited liability, duly incorporated or, in the case of a partnership, established, and validly existing under the laws of its jurisdiction of incorporation.
- (b) It and each of its Material Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

18.2 Binding obligations

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

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with:

- (a) subject to the Legal Reservations, any law or regulation applicable to it;
- (b) its or any of its Material Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Material Subsidiaries or any of its or its Material Subsidiaries' assets or constitute a default or termination event (however described) under any such agreement or instrument in any material respect.

18.4 Power and authority

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

18.5 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

in each case, have been obtained or effected and are in full force and effect, or will, when required, be obtained or effected and are in full force and effect to the extent required at the date the representation and warranty in this Clause 18.5 is made or deemed to be repeated.

- (b) All Authorisations required to enable it and its Material Subsidiaries to carry out its business and operations have been obtained or effected, or will, when required, be obtained or effected and are in full force and effect, where the failure to obtain those Authorisations has or might have a Material Adverse Effect .

18.6 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of English law as the governing law of the Finance Documents to which it is a party will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

18.7 Deduction of Tax

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

- (a) a Dutch Qualifying Lender;
- (b) a UK Qualifying Lender:
- (i) falling within paragraph 12.1(a)(i) (a)(i) of the definition of "UK Qualifying Lender"; or
 - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of UK Qualifying Lender; or
 - (iii) falling within paragraph (b) of the definition of "UK Qualifying Lender"; or
- (c) a UK Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488),

provided that, in the case of payments by a German Guarantor, none of the Lenders is resident in a German Non-Cooperative Tax Jurisdiction.

18.8 No filing or stamp taxes

Except as referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 25 (*Changes to the Obligors*), it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents. Cayman Islands stamp duty may be payable if the original Finance Documents are brought to or executed in the Cayman Islands.

18.9 No Default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Material Subsidiaries or to which its (or any of its Material Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

18.10 No misleading information

- (a) Any written factual information contained in the Information Package and provided by a member of the Group relating to any member of the Group or the Target Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it was stated.
- (b) Any financial projections contained in the Financial Information and/or the RES/RAS Paper have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the Information Package and no information has been given or withheld that results in the information contained in the Information Package being untrue or misleading in any material respect.
- (d) Any information provided in relation to the Target Group and any related representation in this Clause 18.10 are made only subject to the best of the Company's management's knowledge (having made due and careful enquiry).

18.11 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) Its Original Financial Statements fairly present its financial condition as at the end of the relevant financial year and its results of operations during the relevant financial year (consolidated in the case of the Company).
- (c) There has been no change in its business, assets or financial condition which would, or would be reasonably likely to, have a Material Adverse Effect since the date of the Original Financial Statements.

18.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.13 No proceedings

- (a) No litigation, arbitration or administrative proceedings of, or before, any court, arbitral body or agency which, if adversely determined, would, or would be reasonably likely to, have a Material Adverse Effect have been started or (to the best of its knowledge and belief (having made due and careful enquiry)) threatened against it or any of its Material Subsidiaries in writing.
- (b) No judgement or order of a court, arbitral tribunal or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any of its Material Subsidiaries.

18.14 No breach of laws

- (a) It has not (and none of its Material Subsidiaries has) breached any applicable law or regulation which breach has or is reasonably likely to have a material impact on its ability to perform its obligations under the Finance Documents.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against it or any of its Material Subsidiaries which have or are reasonably likely to have a material impact on its ability to perform its obligations under the Finance Documents.

18.15 Environmental laws

- (a) It and each of its Material Subsidiaries is in compliance with Clause 21.12 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it or any of its Material Subsidiaries where that claim has or is reasonably likely if determined against it or the relevant Material Subsidiary, to have a Material Adverse Effect.

18.16 Taxation

- (a) Neither it nor any of its Material Subsidiaries is materially overdue in the filing of any Tax returns and neither it nor any of its Material Subsidiaries is overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or to its knowledge, are reasonably likely to be, made or conducted against it or any of its Material Subsidiaries with respect to Taxes which are reasonably likely to have a Material Adverse Effect.
- (c) Other than:
 - (i) Chrysaor Holdings Limited, which is incorporated in the Cayman Islands and resident for tax purposes in, and only in, the United Kingdom; and
 - (ii) as disclosed in an Accession Letter in respect of any Additional Guarantor which is resident for Tax purposes in a jurisdiction other than its jurisdiction of incorporation, it is resident for Tax purposes only in its jurisdiction of incorporation.

18.17 Anti-bribery, anti-corruption and anti-money laundering laws

Neither it nor any of its Subsidiaries, directors or officers, or, to the best of its knowledge, any affiliate, agent or employee of it, has engaged in any activity or conduct which would violate any anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules that are applicable in any applicable jurisdiction and the Company has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

18.18 Group Structure Chart

The Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions Precedent*) is true, complete and accurate in all material respects.

18.19 Insurances

- (a) The insurances required by Clause 21.10 (*Insurance*) are in full force and effect as required by this Agreement.
- (b) To the best of its knowledge and belief (having made due and careful enquiry), no event or circumstance has occurred, and there has been no failure to disclose a material fact, which would entitle any insurer to reduce or avoid its liability under any such insurance.

18.20 Sanctions

- (a) Neither it nor any of its Subsidiaries, directors or officers, or, to the best of its knowledge, any affiliate, agent or employee of it, is an individual or entity, that is, or is owned or controlled by any person or persons that is or are:
 - (i) the target of any Sanctions (a "**Sanctioned Person**"); or
 - (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (a "**Sanctioned Country**").
- (b) No provision of this Clause 18.20 shall apply to or in favour of any person if and to the extent that it would result in a breach, by or in respect of that person, of any applicable Blocking Law.

18.21 The Acquisition Documents

- (a) The Acquisition Documents contain all material terms relating to the Acquisition.
- (b) No member of the Group that is a party to any Acquisition Document is in default of its material obligations under that Acquisition Document.
- (c) No disclosures have been made by or on behalf of any of the Vendors against any representation or warranty (howsoever described) under the Acquisition Agreement.
- (d) No member of the Group which is party to any Acquisition Document has exercised any of its termination rights (howsoever expressed) or otherwise declined to complete the Acquisition under the terms of the Acquisition Documents.

18.22 Legal and beneficial ownership of Target Shares

- (a) All the Target Shares are:
 - (i) on the Acquisition Closing Date, owned by the Purchaser until such time they are transferred to AcquisitionCo (as such entity is described in the Tax Structure Memorandum); and
 - (ii) thereafter owned by AcquisitionCo (as such entity is described in the Tax Structure Memorandum),in each case, free from any claims, third party rights or competing interests.
- (b) The Target Shares comprise, and on the Acquisition Closing Date will comprise, all of the issued shares in the capital of the Target.
- (c) There are no warrants or options, and on the Acquisition Closing Date there will be no warrants or options, in issue or outstanding in respect of the Target Shares.

18.23 Pensions

- (a) The Pension Scheme is closed to new members and fully funded based on the statutory funding objective under sections 221 and 222 of the Pensions Act 2004.
- (b) Except for the Pension Scheme, it has not nor has at any time been:
 - (i) an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of a UK occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); or
 - (ii) "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such employer referred to in paragraph (i) above.

18.24 Dutch works council

In the event that a works council (ondernemingsraad) has been established in respect of an Obligor and which has the right to advise in relation to the entry into and performance of this Agreement, such Obligor has obtained neutral or positive advice from such works council and the relevant Obligor has complied with such advice.

18.25 Repetition

The Repeating Representations (and, in the case of paragraph (b) below, the representations set out in Clauses 18.5 (*Validity and admissibility in evidence*), 18.7 (*Deduction of Tax*), 18.8 (*No filing or stamp taxes*) and, in respect of an Additional Guarantor incorporated in the Netherlands, 18.24 (*Dutch works council*)) are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (a) the date of each Utilisation Request and the first day of each Interest Period;
- (b) in the case of an Additional Guarantor, the day on which the company becomes (and on which it is proposed that the company becomes) an Additional Guarantor; and
- (c) in relation to any extension request made pursuant to Clause 6.2 (*Extension option*), on the date of such extension request.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial statements

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

- (a) as soon as the same become available, but in any event within 120 days after the end of each of the Company's financial years the Company's audited consolidated financial statements for that financial year;
- (b) as soon as the same become available, but in any event within 9 months after the end of the relevant Obligor's financial years, the audited financial statements of each Obligor for that financial year; and

- (c) as soon as the same become available, but in any event within 90 days after the end of the first half of each of the Company's financial years, the Company's unaudited consolidated financial statements for that financial half year.

19.2 Compliance Certificate

- (a) The Company shall supply to the Agent, with each set of financial statements delivered pursuant to paragraphs (a) and (c) of Clause 19.1 (*Financial statements*), a Compliance Certificate:
 - (i) setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial covenants*) as at the date as at which those financial statements were drawn up;
 - (ii) in respect of each Compliance Certificate which accompanies a set of financial statements delivered pursuant to paragraph (a) of Clause 19.1 (*Financial statements*), setting out the list of Material Subsidiaries as at the date at which those financial statements were drawn up; and
 - (iii) confirming that the requirements of Clause 21.16 (*Guarantors*) were satisfied as at the date of the Compliance Certificate.
- (b) Each Compliance Certificate shall be signed by one senior officer or director of the Company.

19.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Company pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as giving a true and fair view or fairly representing (as the case may be) its financial condition (or consolidated financial position) as at the date as at which those financial statements were drawn up.
- (b) The Company shall procure that each set of financial statements of any company delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that company unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the relevant company) deliver to the Agent:
 - (i) a description of any change necessary for those financial statements to reflect IFRS, accounting practices and reference periods upon which that company's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 20 (*Financial covenants*) has been complied with and the amount of any prepayments to be made under Clause 7.4 (*Acquisition, Capital Raising, Debt Issuance, Disposal and Insurance Proceeds*) and to make an accurate comparison between the financial position indicated in those financial statements and that company's Original Financial Statements.

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

19.4 Information: miscellaneous

Each Obligor shall promptly supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) all documents (other than in relation to any future acquisition or joint venture prospects) dispatched by it to its shareholders generally (in that capacity) (or any class of them) or to its creditors generally (including, without limitation, the holders of the High Yield Notes and, on and from the Acquisition Closing Date, the holders of the Target Senior Bonds and the Target Hybrid Bonds) that, in each case, would (in the reasonable determination of the Company) be material to the interests of the Lenders at the same time as they are dispatched, unless the Company has notified the Agent that such documents are available on the website of the Company (<https://www.harbourenergy.com>) or any other website notified by the Company to the Agent from time to time;
- (b) promptly upon becoming aware of them, the details of any material claims, litigation, arbitration or administrative proceedings which are current, threatened or pending against any Obligor which, if adversely determined, may have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which is reasonably likely to have a Material Adverse Effect;
- (d) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against any Vendor or any other person in respect of the Acquisition Documents and details of any equity or debt capital raising, disposal or insurance claim which will require a prepayment under Clause 7.4 (*Acquisition, Capital Raising, Debt Issuance, Disposal and Insurance Proceeds*);
- (e) promptly upon the same being effected, details of any Class 1 Transaction or disposal of assets for net consideration in excess of U.S.\$60,000,000 (or its equivalent in any other currency or currencies); and
- (f) promptly such further information regarding the financial condition, business and operations of any Obligor as any Finance Party (through the Agent) may reasonably request.

19.5 Notification of Default

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

19.6 Direct electronic delivery by Company

Each Obligor may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly in accordance with Clause 31.6 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

19.7 "Know your customer" checks

(a) If:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor (other than the Company)), after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 25 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

19.8 DAC6

- (a) In this Clause 19.8, "**DAC6**" means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU.
- (b) The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):
 - (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Transaction Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Transaction Documents contains a hallmark as set out in Annex IV of DAC6; and
 - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

20. FINANCIAL COVENANTS

20.1 Financial condition

The Company shall ensure that, in respect of each Relevant Period ending on 30 June and 31 December in each year:

- (a) *Leverage Ratio*: the ratio of Net Debt as at that date to EBITDAX for the Relevant Period shall be less than 3.5 to1; and
- (b) *Interest Cover Ratio*: the ratio of EBITDA to Net Finance Charges for any Relevant Period will not be less than 3.5 to 1,

provided that for the purposes of calculating the ratios in paragraphs (a) and (b) above, if any part of a Relevant Period relates to any period prior to the completion date for any acquisition or investment (including by way of merger) by any member of the Group where the Agent (acting on the instructions of the Majority Lenders) agrees that this consideration shall apply following a request by the Company (such agreement not to be unreasonably withheld or delayed), then the Company may request that pro-forma accounts, and any appropriate adjustments, are used in connection with such acquisition or investment and the Agent (acting on the instructions of the Majority Lenders) shall confirm whether such pro-forma accounts and/or appropriate adjustments are agreed (such agreement not to be unreasonably withheld or delayed).

20.2 Definitions

In this Clause 20:

"**EBITDA**" means, in relation to any Relevant Period, the profit of the Group on ordinary activities for such period:

- (a) before deduction of any corporation tax on such activities during such period;
- (b) before any extraordinary or Exceptional Items during such period;

- (c) before deduction of any Finance Charges during such period;
- (d) not including any accrued interest owing to any member of the Group;
- (e) before any amount attributable to amortisation of intangible assets and depreciation of tangible assets;
- (f) after deducting the minority proportion of any profits of any non-wholly owned Subsidiary;
- (g) after deducting any gain over book value and after adding back any loss on book value arising on the disposal of any fixed asset of any member of the Group (other than the sale of trading stock) during such period; and
- (h) after deducting any gain and adding back any loss on movements in foreign exchange by the Group during such period.

"EBITDAX" means the EBITDA of the Group in relation to any Relevant Period and after adding back any exploration and evaluation write-off expense incurred during such period.

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

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations or impairment of non-current assets; and
- (c) disposals of assets associated with discontinued operations.

"Finance Charges" means in relation to any Relevant Period the aggregate of interest and finance charges paid or payable by any member of the Group in respect of Financial Indebtedness during such period.

"Net Debt" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Financial Indebtedness at that time but:

- (a) excluding any Financial Indebtedness incurred under any Hedging Agreement, other than Financial Indebtedness due under any Hedging Agreement arising solely as a result of the termination or close-out of such Hedging Agreement;
- (b) excluding any Financial Indebtedness made available by an Obligor to another member of the Group that is not an Obligor and any Financial Indebtedness owed by one Obligor to another Obligor;
- (c) including, in the case of finance leases only, their capitalised value; and
- (d) deducting the Relevant Cash Balance,

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

"Net Finance Charges" means the Finance Charges in respect of any Relevant Period, adjusted by:

- (a) adding back the net amount payable (or deducting the net amount receivable) by members of the Group in respect of that Relevant Period under any interest rate hedging arrangements; and
- (b) deducting any interest payable in that Relevant Period to any member of the Group (other than by another member of the Group) on any Relevant Cash Balance.

"Relevant Cash Balance" means, at any time, the aggregate amount of cash and cash equivalents of the Group (that is freely and immediately available to be applied in repayment or prepayment of the Facility, the High Yield Notes, the IG Notes, the Target Senior Bonds or the Target Hybrid Bonds) at that time (including any accrued interest and translating any amount not in U.S. Dollars into U.S. Dollars at the Agent's Spot Rate of Exchange on the date of the calculation).

"Relevant Period" means each 12 Month period ending on 30 June or 31 December in each year.

20.3 Financial covenant calculations

- (a) Each calculation for the purposes of this Clause 20 shall be made on the following basis:
 - (i) figures shall be expressed in U.S. Dollars and, where any currency has to be converted into U.S. Dollars for this purpose, such conversion shall be made at the rate of exchange applied in the relevant financial statements most recently delivered to the Agent pursuant to Clause 19.1 (*Financial statements*);
 - (ii) save in the case of calculation of EBITDA, EBITDAX, Finance Charges and Net Finance Charges, figures shall be taken from the relevant financial statements most recently delivered to the Agent pursuant to Clause 19.1 (*Financial statements*); and
 - (iii) if there is a dispute as to any interpretation of or computation for this Clause 20, the interpretation or computation of an independent auditor shall prevail. Reference shall be made to such auditor (at the cost of the Company) in terms approved by the Agent within 5 Business Days of the Agent requesting the same.
- (b) Each calculation of EBITDA, EBITDAX, Finance Charges and Net Finance Charges for the purposes of this Clause 20 shall be made on the following basis:
 - (i) in the case of a calculation as at each 31 December, EBITDA, EBITDAX, Finance Charges and Net Finance Charges for the Relevant Period ending on such date, figures shall be taken from the financial statements delivered to the Agent pursuant to paragraph (a) of Clause 19.1 (*Financial statements*) in respect of such Relevant Period; and
 - (ii) in the case of a calculation as at the 30 June, EBITDA, EBITDAX, Finance Charges and Net Finance Charges for the Relevant Period ending on such date, the EBITDA, EBITDAX, Finance Charges and Net Finance Charges figures shall be calculated by:
 - (A) deducting from the EBITDA, EBITDAX, Finance Charges and Net Finance Charges figures, as the case may be, derived from the annual financial statements delivered to the Agent pursuant to paragraph (a) of Clause 19.1 (*Financial statements*) for the previous financial year the EBITDA, EBITDAX, Finance Charges and Net Finance Charges figures, as the case may be, derived from the

half year financial statements delivered to the Agent pursuant to Clause 19.1 (*Financial statements*) in respect of the financial half year occurring prior to that Relevant Period; and

- (B) adding the EBITDA, EBITDAX, Finance Charges and Net Finance Charges figures, as the case may be, derived from the half year financial statements in the current financial year delivered to the Agent pursuant to Clause 19.1 (*Financial statements*) in respect of the financial half year ending on the last day of the Relevant Period.
- (c) Any figures taken in accordance with this Clause 20.3 shall be adjusted to remove any inconsistencies between the figures contained in those financial statements and the figures that would have been contained in those financial statements if they had been drawn up using the accounting standard principles, policies and practices applied in the preparation of the Original Financial Statements.

21. GENERAL UNDERTAKINGS

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

21.1 Authorisations

- (a) Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document to which it is a party.
- (b) Each Obligor shall (and the Company shall procure that each other member of the Group will) promptly obtain, comply with and do all that is necessary to maintain in full force and effect each material Authorisation required, at the requisite time, under any law or regulation to enable it to carry out its business and operations where the absence of that Authorisation has or might have a Material Adverse Effect.

21.2 Compliance with laws

Each Obligor shall (and the Company shall procure that each other member of the Group will) comply with all applicable laws and regulations to the extent that failure to do so would have a material impact on its ability to perform its obligations under the Finance Documents.

21.3 Negative pledge

In this Clause 21.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall, and the Company shall procure that no Material Subsidiary will, create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall, and the Company shall procure that no Material Subsidiary will:

- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
- (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

- (i) any Security existing on the date of this Agreement securing Financial Indebtedness (including any later refinancing of that Financial Indebtedness and any renewal or retaking of such Security in connection with such refinancing), **provided that** the aggregate amount of Financial Indebtedness (including commitments) secured by such Security is not increased and **provided further that** the Security securing Financial Indebtedness outstanding under the RBL Facility Agreement is released upon the refinancing of that facility;
- (ii) any Security or Quasi-Security constituted by cash collateral **provided that** the aggregate amount of Financial Indebtedness which that cash collateral secures does not exceed U.S.\$75,000,000 (or its equivalent in another currency or currencies);
- (iii) any netting or set-off arrangement entered into by an Obligor or Material Subsidiary in the ordinary course of its banking and trading arrangements for the purpose of netting debit and credit balances (including, for the avoidance of doubt, the arrangement set out in a zero balancing account system agreement entered into between, among others, the Borrower and DNB Bank ASA and any participation agreement referred to therein) and any lien or pledge arising under the general terms and conditions of banks or savings banks (*Allgemeine Geschäftsbedingungen der Banken oder Sparkassen*) with whom any member of the Group maintains a banking relationship in the ordinary course of business;
- (iv) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by an Obligor or a Material Subsidiary for the purpose of:
 - (A) hedging any risk to which any Obligor or Material Subsidiary is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only, excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

- (v) any lien arising by operation of law (including any statutory lien (*Gesetzliches Pfandrecht*) arising by operation of law under the German Civil Code (*Bürgerliches Gesetzbuch*) or the German Commercial Code (*Handelsgesetzbuch*)) and in the ordinary course of trading;
- (vi) any Security or Quasi-Security arising under any retention of title, extended retention of title (*verlängerter Eigentumsvorbehalt*), hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods or, in the case of an extended retention of title arrangement, receivables resulting from the sale of such goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (vii) any Security or Quasi-Security arising under articles 24 or 25 of the General Terms and Conditions (*Algemene Bankvoorwaarden*) of any member of the Dutch Bankers' Association (*Nederlandse Vereniging van Banken*) or any similar term applied by a financial institution in the Netherlands pursuant to general terms and conditions;
- (viii) any Security:
 - (A) granted by any Obligor or a Material Subsidiary under or pursuant to any Project Document or any other joint operating agreement and/or similar analogous agreement and/or any agreement of the type described in the definition of Project Document (whether or not termed a joint operating agreement) (each, a "**relevant agreement**") in favour of any counterparty to such relevant agreement over that Obligor or Material Subsidiary's interest in the relevant agreement; and
 - (B) which only secures obligations owing under the relevant agreement to such counterparty and does not secure any Financial Indebtedness;
- (ix) any Security or Quasi-Security over or affecting any asset acquired by an Obligor or a Material Subsidiary after the date of this Agreement if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by that Obligor or Material Subsidiary;
 - (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by that Obligor or Material Subsidiary; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (x) any Security or Quasi-Security given in order to comply with the requirements of section 8a of the German Act on Partial Retirement (*Altersteilzeitgesetz*) or of section 7e of the German Social Security Code Part IV (*Sozialgesetzbuch IV*);
- (xi) any Security or Quasi-Security entered into pursuant to any Finance Document;

- (xii) any Security constituted with the prior approval of the Majority Lenders; and
- (xiii) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than as permitted under paragraphs (i) to (xii) above) does not exceed 2.5 per cent. of the total consolidated assets of the Group in any financial year.

21.4 Disposals

- (a) No Obligor shall, and the Company shall procure that no Material Subsidiary will, enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash) provided that the assets disposed of do not comprise or include an interest in a Petroleum licence, lease, concession or production sharing contract (or any similar Petroleum Assets);
 - (iii) of obsolete or redundant vehicles, plant and equipment;
 - (iv) of Petroleum on arms' length terms for cash-only consideration in the ordinary course of trading;
 - (v) of assets arising as a result of Security that is permitted pursuant to Clause 21.3 (*Negative pledge*);
 - (vi) of assets by an Obligor to another Obligor (other than Premier Oil Group Holdings Limited or Chrysaor E&P Limited);
 - (vii) of assets in order to comply with the requirements of section 7f of the German Social Security Code Part IV (*Sozialgesetzbuch IV*) or section 4 of the German Act for the Improvement of Occupational Pension Schemes (*Gesetz zur Verbesserung der betrieblichen Altersversorgung*);
 - (viii) which is the Ghasha Disposal or the Vietnam Disposal;
 - (ix) made with the prior approval of the Majority Lenders; or
 - (x) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal (other than as permitted under paragraphs (i) to (ix) above) does not exceed:
 - (A) 10 per cent. of the total consolidated assets of the Group in any financial year; and/or
 - (B) 20 per cent. of the total consolidated assets of the Group,
 in each case, as determined on the basis of the Company's consolidated financial statements for the last preceding financial year.

21.5 Arm's length basis

- (a) No Obligor shall enter into any transaction with any person except on arm's length terms and on normal commercial terms at market value.
- (b) Paragraph (a) above shall not apply to:
 - (i) any intra-Group loans made available by an Obligor to another Obligor or another member of the Group;
 - (ii) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent); and
 - (iii) any other transaction permitted under this Agreement.

21.6 Dividends and share redemption

If an Event of Default has occurred and for as long as it is continuing, or an Event of Default would occur as a result of the payment of such dividend or other distribution, no Obligor shall:

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee (except on arm's length terms for services actually delivered); or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so, in each case, to (or to the order of) or from (or on behalf of), as the case may be, any shareholder which is not a member of the Group.

21.7 Financial Indebtedness

- (a) No member of the Group which is not an Obligor (a "**Non-Obligor**") shall incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) any Financial Indebtedness in respect of intra-Group loans made available by an Obligor to another member of the Group that is not an Obligor;
 - (ii) subject to Clause 21.16 (*Guarantors*), any Financial Indebtedness incurred pursuant to the RBL Facility Agreement, the RCF, the High Yield Notes, the IG Notes, the Target Senior Bonds and or Target Hybrid Bonds;
 - (iii) any Financial Indebtedness in relation to cash collateralised letters of credit and performance bonds issued on behalf of any Non-Obligor, not exceeding U.S.\$100,000,000 (or its equivalent in any other currency or currencies) in aggregate;
 - (iv) any Financial Indebtedness incurred under any Hedging Agreement;

- (v) any Financial Indebtedness incurred under commercial payment card facilities entered into by members of the Group, subject to an aggregate cap of U.S.\$3,000,000 (or its equivalent in any other currency or currencies);
- (vi) any Financial Indebtedness incurred under any financing in relation to an acquisition permitted under this Agreement, in an amount not exceeding U.S.\$500,000,000 (or its equivalent in other currency or currencies) in aggregate, subject to intercreditor or other subordination agreements being put in place between the Lenders and the providers of such Financial Indebtedness which are satisfactory to the Majority Lenders (acting reasonably);
- (vii) any Financial Indebtedness incurred pursuant to section 8a of the German Partial Retirement Act (*Altersteilzeitgesetz*) or section 7e of the Fourth Book of the German Social Code (*Sozialgesetzbuch IV*);
- (viii) any other Financial Indebtedness which has been incurred with the prior approval of the Majority Lenders; and
- (ix) any other Financial Indebtedness of the Group not falling within paragraphs (i) to (viii) above not exceeding U.S.\$100,000,000 (or its equivalent in any other currency or currencies) in aggregate.

21.8 Merger

- (a) No Obligor shall enter into any amalgamation, demerger, merger, winding up or corporate reconstruction.
- (b) Paragraph (a) above does not apply to:
 - (i) a solvent reorganisation of an Obligor provided that an Obligor shall be the surviving entity, subject to an Obligor providing the Agent with prior notification of such reorganisation; or
 - (ii) any sale, lease, transfer or other disposal permitted pursuant to Clause 21.4 (*Disposals*).

21.9 Change of business

Each Obligor shall procure that no substantial change is made to the general nature of its business, and the Company shall procure that no substantial change is made to the general nature of business of the Group, from that carried on at the date of this Agreement.

21.10 Insurance

Each Obligor shall, and the Company shall procure that each Material Subsidiary will, maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks, and to the extent, usually insured against by prudent companies located in the same or a similar location and carrying on a similar business.

21.11 Acquisitions

- (a) No Obligor shall (and the Company shall procure that no other member of the Group will):
 - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company.

- (b) Paragraph (a) above does not apply to an acquisition of a company, of shares or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is not a Class 1 Transaction, provided that such acquisition or the incorporation of such company is not in, nor does it relate to, a Sanctioned Country or a jurisdiction which has imposed restrictions on upstreaming funds by way of loans, dividend or other distribution (unless such company, business or undertaking will, nevertheless, be able to upstream funds to a Holding Company which is not subject to such restrictions).

21.12 Environmental compliance

Each Obligor shall (and the Company shall procure that each Material Subsidiary will):

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

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

21.13 Environmental Claims

Each Obligor shall (and the Company shall procure that each Material Subsidiary will), promptly upon becoming aware of the same, inform the Agent in writing of:

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

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

21.14 Anti-bribery, anti-corruption and anti-money laundering laws

- (a) No Obligor shall (and the Company shall procure that no other member of the Group will) engage in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction.
- (b) Each Obligor shall (and the Company shall procure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable anti-corruption laws, anti-bribery or anti-money laundering laws, regulations or rules in any applicable jurisdiction; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with any such laws.

21.15 Pari passu ranking

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

21.16 Guarantors

- (a) The Company shall ensure that each member of the Group which is an issuer, a borrower or a guarantor (howsoever defined) under the RBL Facility Agreement, the RCF, the High Yield Notes, the Target Senior Bonds or the Target Hybrid Bonds as at the date of this Agreement but is not a Guarantor under this Agreement shall accede as an Additional Guarantor to this Agreement in accordance with Clause 25.2 (*Additional Guarantors*) by:
- (i) in respect of an issuer, borrower or guarantor under the RBL Facility Agreement, the RCF or the High Yield Notes, the date falling no later than the earlier of (A) 60 days after the date of this Agreement and (B) the first Utilisation Date, provided that, in each case, the obligations of each such Additional Guarantor under Clause 17.1 (*Guarantee and indemnity*) shall only become effective on and from the earlier of (A) the Acquisition Closing Date and (B) the date on which the RBL Facility Agreement is refinanced in full (but shall extend to all obligations and liabilities whenever incurred) if that Additional Guarantor has acceded to this Agreement prior to the earlier of (X) the Acquisition Closing Date and (Y) the date on which the RBL Facility Agreement is refinanced in full; and
 - (ii) in respect of an issuer, borrower or guarantor under the Target Senior Bonds or the Target Hybrid Bonds, the date falling no later than 60 days after the Acquisition Closing Date.
- (b) Notwithstanding paragraph (a) above, upon an accession of a member of the Group as an issuer, borrower or guarantor (howsoever defined) (a "**New Obligor**") under the RBL Facility Agreement, the RCF, the High Yield Notes, the IG Notes, the Target Senior Bonds or the Target Hybrid Bonds which occurs after the date of this Agreement, and if the New Obligor is not already a Guarantor under this Agreement, the Company shall promptly, and in any event within 5 Business Days of the accession becoming effective under the RBL Facility Agreement, the RCF, the High Yield Notes, the IG Notes, the Target Senior Bonds or the Target Hybrid Bonds notify the Agent of the accession of the New Obligor to the RBL Facility Agreement, the RCF, the High Yield Notes, the IG Note, the Target Senior Bonds or the Target Hybrid Bonds, as the case may be, and procure that the New Obligor accedes as an Additional Guarantor to this Agreement in accordance with Clause 25.2 (*Additional Guarantors*) by that date, provided that, in respect of any accession of New Obligor as an Additional Guarantor, its obligations under Clause 17.1 (*Guarantee and indemnity*) shall only become effective on and from the earlier of (A) the Acquisition Closing Date and (B) the date on which the RBL Facility Agreement is refinanced in full (but shall extend to all obligations and liabilities whenever incurred) if that New Obligor has acceded to this Agreement as an Additional Guarantor prior to the earlier of (X) the Acquisition Closing Date and (Y) the date on which the RBL Facility Agreement is refinanced in full.
- (c) The Company shall ensure that each of AcquisitionCo and HoldCo (each as described in the Tax Structure Memorandum) will accede as an Additional Guarantor to this Agreement in accordance with Clause 25.2 (*Additional Guarantors*) by no later than the Acquisition Closing Date.
- (d) The Company need only perform its obligations under paragraphs (a), (b) and (c) above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor shall use, and shall procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on

the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

21.17 Sanctions

- (a) None of the Obligors shall (and the Company shall procure that no other member of the Group will) directly or indirectly, use the proceeds of any Utilisation hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or any other person:
 - (i) to fund any activities or business of or with any person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person (as such term is defined in Clause 18.20 (*Sanctions*)) or Sanctioned Country (as such term is defined in Clause 18.20 (*Sanctions*)); or
 - (ii) in any other manner that would result in a violation of Sanctions by any person (including any person participating in any Utilisation hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or otherwise).
- (b) None of the Obligors shall (and the Company shall procure that no other member of the Group will) fund any payment under the Finance Documents from proceeds derived, directly or indirectly, from any activity or transaction with a Sanctioned Person or in a Sanctioned Country or in any other manner that would result in a violation of Sanctions by any person (including any person participating in any Utilisation hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or otherwise).
- (c) No provision of this Clause 21.17 shall apply to or in favour of any person if and to the extent that it would result in a breach, by or in respect of that person, of any applicable Blocking Law.

21.18 Compliance with the Acquisition Documents

- (a) Each Obligor shall (and the Company shall procure that each other member of the Group will) comply with all its obligations under the Acquisition Documents to which it is a party where failure to do so would, or could reasonably be expected to, have a material adverse effect on the interests of the Finance Parties.
- (b) Subject to paragraph (c) below, no Obligor shall (and the Company shall procure that no other member of the Group will):
 - (i) agree to any variation or amendment in respect of an Acquisition Document without the consent of the Agent (acting on the instructions of the Majority Lenders); or
 - (ii) waive, or agree to waive, any term of an Acquisition Document without the prior written consent of the Agent (acting on the instructions of the Majority Lenders),in each case in any manner which would, or could reasonably be expected to, have a material adverse effect on or be detrimental in any material respect to the interests of the Finance Parties.
- (c) No Obligor shall (and the Company shall procure that no other member of the Group will) amend or waive, or agree to amend or waive, any condition or requirement in relation to the Sanctions Condition (as defined in the Acquisition Agreement) without the prior consent of the Agent (acting on the instructions of all the Lenders).

- (d) The Company shall as soon as reasonably practicable, and in any event within 2 Business Days of becoming aware, notify the Lenders in writing:
- (i) if a Sanctions Notice (as defined in the Acquisition Agreement) has been served in accordance with the Acquisition Agreement and provide the Lenders with a copy of that Sanctions Notice, together with reasonable details of the circumstances giving rise to the service of that Sanctions Notice;
 - (ii) if a Relevant Licence (as defined in the Acquisition Agreement) has been received by any party to the Acquisition Agreement and provide the Lenders with a copy of such Relevant Licence;
 - (iii) if a Sanctions Authority (as defined in the Acquisition Agreement) has rejected the application for, or is not willing to grant, a Relevant Licence (as defined in the Acquisition Agreement); and/or
 - (iv) if Deemed Satisfaction (as defined in the Acquisition Agreement) in respect of the Sanctions Condition has occurred in accordance with the Acquisition Agreement,
- provided that, in each case, the Company shall only be required to comply with this paragraph (d) to the extent permitted by law.
- (e) Without prejudice to paragraph (d) above, the Company shall upon request by the Agent (acting reasonably) keep the Agent informed (in reasonable detail) as to the status and progress of the Acquisition.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.14 (*Acceleration*) and Clause 22.15 (*Clean-up period*)).

22.1 Non-payment

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

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 5 Business Days of its due date.

22.2 Financial covenants and Sanctions

- (a) Any requirement of Clause 20 (*Financial covenants*) is not satisfied.
- (b) An Obligor does not comply with Clause 21.17 (*Sanctions*).

22.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 20 (*Financial covenants and Sanctions*)).

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (i) the Agent giving notice to the Company and (ii) the Company becoming aware of the failure to comply.

22.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the misrepresentation or misstatement, or the circumstances giving rise to it, is capable of remedy and is remedied within 15 Business Days of the earlier of (i) the Agent giving notice to the Company and (ii) the Company becoming aware of the misrepresentation or misstatement.

22.5 Cross-default

- (a) Any Financial Indebtedness of any Obligor or Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor or Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor or Material Subsidiary is cancelled or suspended by a creditor of that Obligor or Material Subsidiary as a result of an event of default (however described).
- (d) Any creditor of any Obligor or Material Subsidiary becomes entitled to declare any Financial Indebtedness of that Obligor or Material Subsidiary due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than U.S.\$50,000,000 (or its equivalent in any other currency or currencies).

22.6 Insolvency

- (a) Any Obligor or Material Subsidiary:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor or Material Subsidiary. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

22.7 Insolvency proceedings

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (other than as a part of a solvent reorganisation carried out in accordance with paragraph (b)(i) of Clause 21.8 (*Merger*)) (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or Material Subsidiary;
- (b) a composition, compromise, assignment or arrangement with any creditor of any Obligor or Material Subsidiary;
- (c) the appointment of a liquidator, provisional liquidator, restructuring officer, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or Material Subsidiary or any of their respective assets; or
- (d) enforcement of any Security over any assets of any Obligor or Material Subsidiary (except for the enforcement of any Security pursuant to the RBL Facility Agreement provided that the value of any such asset subject to enforcement does not exceed, in aggregate, U.S.\$10,000,000 (or its equivalent in any other currency or currencies)),

in each case, or any analogous procedure or step is taken in any jurisdiction.

This Clause 22.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

22.8 Creditors' process

Any expropriation, attachment (including by way of executory attachment or interlocutory attachment), sequestration, distress, diligence or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor or Material Subsidiary having an aggregate value of more than U.S.\$50,000,000 (or its equivalent in one or more other currencies) and is not discharged within 21 days.

22.9 Ownership of the Obligors

An Obligor (other than the Company) is not or ceases to be a Subsidiary of the Company (except as permitted pursuant to this Agreement).

22.10 Unlawfulness

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

22.11 Repudiation

An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

22.12 Cessation of business

Any Obligor or Material Subsidiary suspends or ceases to carry on all or a material part of its business (other than as part of a solvent reorganisation carried out in accordance with paragraph (b)(i) of Clause 21.8 (*Merger*)).

22.13 Expropriation

The authority or ability of any Obligor or Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or Material Subsidiary or any of their respective assets or the shares in that Obligor or Material Subsidiary (including without limitation the displacement of all or part of the management of any Obligor or Material Subsidiary) which, in each case, has or is reasonably likely to have a Material Adverse Effect.

22.14 Acceleration

Subject to Clause 4.3 (*Utilisations during the Certain Funds Period*), on and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

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

22.15 Clean-up period

- (a) Notwithstanding any other provision of any Finance Document, but subject to paragraph (b) below, and until the Clean Up Date, any matter or circumstance that exists in respect of the Group which would constitute a breach of representation or warranty, a breach of undertaking or an Event of Default (other than as a result of misrepresentation under Clause 18.20 (*Sanctions*), breach of Clause 21.17 (*Sanctions*) or under Clause 22.1 (*Non-payment*) or Clause 22.6 (*Insolvency*)) will be deemed not to be a breach of representation or warranty, a breach of undertaking or an Event of Default (as the case may be) if:
 - (i) it would have been (if it were not for this provision) a breach of representation or warranty, a breach of undertaking or an Event of Default only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group);
 - (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
 - (iii) the circumstances giving rise to it have not been procured or approved by the Company or any other member of the Group; and
 - (iv) it is not reasonably likely to have a Material Adverse Effect.
- (b) If the relevant matter or circumstance is continuing on or after the Clean Up Date, there shall be a breach of representation or warranty, breach of undertaking or Event of Default, as the case may

be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

SECTION 9
CHANGES TO PARTIES

23. CHANGES TO THE LENDERS

23.1 Assignments and transfers by the Lenders

(a) Subject to this Clause 23 and Clause 24 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

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

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

(b) Without prejudice the generality of paragraph (a) above, "**assignment**" shall, to the extent it relates to Scottish assets or assets governed by Scottish law, be construed to refer to assignation.

23.2 Company consent

(a) The consent of the Company is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:

- (i) to another Lender or an Affiliate of any Lender;
- (ii) to a fund which is a Related Fund of that Existing Lender;
- (iii) to a bank, financial institution, trust, fund or other entity with a credit rating of at least Baa2 by Moody's Investors Services Limited, BBB by Standard & Poor's Ratings Services or BBB by Fitch Ratings Ltd, provided that such bank, financial institution, trust, fund or other entity is not a Distressed Fund or a Competitor; or
- (iv) made at a time when an Event of Default is continuing.

(b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed, save where an assignment or transfer is to be made to a Distressed Fund or a Competitor. The Company will be deemed to have given its consent 10 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.

23.3 Other conditions of assignment or transfer

(a) An assignment will only be effective on:

- (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and
- (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender,

the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

- (b) A transfer will only be effective if the procedure set out in Clause 23.6 (*Procedure for transfer*) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply:

- (iii) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or
 - (iv) in relation to Clause 12.2 (*Tax gross-up*), to a UK Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (i)(ii)(B) of Clause 12.2 (*Tax gross-up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that UK Treaty Lender provided that that UK Treaty Lender has provided such confirmation at least 10 Business Days before the date of such payment.
- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

23.4 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of U.S.\$5,000.

23.5 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;

- (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

23.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Company consent*) and Clause 23.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 23.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and

Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

- (iii) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a "Lender".

23.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 23.2 (*Company consent*) and Clause 23.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 23.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 23.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 23.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 23.2 (*Company consent*) and Clause 23.3 (*Other conditions of assignment or transfer*).

23.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company

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

23.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

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

23.10 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 23.6 (*Procedure for transfer*) or any assignment pursuant to Clause 23.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period; and
- (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

- (b) In this Clause 23.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 23.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of

ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

24. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

24.1 Prohibition on Debt Purchase Transactions by the Group

The Company shall not, and shall procure that each other member of the Group and each Affiliate of any member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraph (b) or (c) of the definition of Debt Purchase Transaction.

25. CHANGES TO THE OBLIGORS

25.1 Assignments and transfer by Obligors

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

25.2 Additional Guarantors

(a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.7 ("*Know your customer*" checks), the Company may request that any of its wholly owned Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:

- (i) the Company delivers to the Agent a duly completed and executed Accession Letter; and
- (ii) the Agent has received all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

(b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*).

(c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

25.3 Repetition of representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations and each of the representations set out in Clauses 18.5 (*Validity and admissibility in evidence*), 18.7 (*Deduction of Tax*) and 18.8 (*No filing or stamp taxes*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

25.4 Resignation of a Guarantor

(a) In this Clause 25.4, "**Third Party Disposal**" means the disposal of a Guarantor (other than the Company) to a person which is not a member of the Group where that disposal is either (i)

permitted under the terms of this Agreement (and the Company has confirmed in writing that this is the case) or (ii) made with the approval of the Super Majority Lenders.

- (b) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
 - (i) that Guarantor is being disposed of by way of a Third Party Disposal and the Company has confirmed in writing that this is the case;
 - (ii) all the Lenders have consented to the resignation of that Guarantor; or
 - (iii) that Guarantor is not or will not, on its resignation as a Guarantor, be a guarantor under and in accordance with the terms of the High Yield Note Documentation, the IG Notes, the Target Senior Bonds or the Target Hybrid Bonds.
- (c) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
 - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case);
 - (ii) no payment is due from the resigning Guarantor under this Agreement; and
 - (iii) if a Resignation Letter is being delivered pursuant to paragraph (b)(ii) above only, all the Lenders have consented to the Company's request.
- (d) If a Guarantor is resigning because it is being disposed of by way of a Third Party Disposal and the date of acceptance by the Agent of the relevant Resignation Letter is before the date of such Third Party Disposal, then such resignation shall not be effective until the date of the relevant Third Party Disposal, at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

SECTION 10
FINANCE PARTIES

26. ROLE OF THE AGENT AND THE ARRANGER

26.1 Appointment of the Agent

- (a) Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) For all purposes of the Finance Documents, including for the purpose of this Clause 26.1, each of the Arranger and the Lenders hereby releases the Agent from the restrictions (to the extent that such restrictions would otherwise apply) on self-dealing (*Insichgeschäfte*) and multi-representation (*Mehrfachvertretung*) pursuant to section 181 German Civil Code (*Bürgerliches Gesetzbuch*) and any similar restrictions (if any) under any other applicable law, in each case, to the extent legally possible to such Finance Party. For the avoidance of doubt, if and to the extent that the Agent is authorised to sub-delegate (by power of attorney or otherwise) any powers granted to it pursuant to the Finance Documents (or any of them), this shall extend to include such release from the restrictions on self-dealing and multi-representation pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions under any other applicable laws (in each case to the extent legally possible to the respective Finance Party).

26.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
 - (B) the Super Majority Lenders if the relevant Finance Document stipulates the matter is a Super Majority Lender decision; and
 - (C) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

26.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 23.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

26.4 Role of the Arranger

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

26.5 No fiduciary duties

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

- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

26.6 Business with the Group

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

26.7 Rights and discretions

- (a) The Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent, (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.

- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclosethe identity of a Defaulting Lender to the Company and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

26.8 Responsibility for documentation

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the Information Package or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

26.9 No duty to monitor

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

26.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph (b) subject to Clause 1.6 (*Third party rights*) and any provisions of the Third Parties Acts.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

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

26.11 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability including without limitation for negligence or any other category of liability whatsoever incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or in the case of any cost, loss or liability pursuant to Clause 29.11 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

26.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the same jurisdiction as its existing office as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the same jurisdiction as the retiring Agent).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do

so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 26 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 26 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 12.8 (*FATCA information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 12.8 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

26.13 Replacement of the Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the same jurisdiction as the retiring Agent).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide

such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 26 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

26.14 Confidentiality

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

26.15 Relationship with the Lenders

- (a) Subject to Clause 23.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than 5 Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 31.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 31.2 (*Addresses*) and paragraph (a)(ii) of Clause 31.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

26.16 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger that

it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy or completeness of the Information Package and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

26.17 Agent's management time

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and Clause 26.11 (*Lenders' indemnity to the Agent*) following the occurrence of an Event of Default shall (whilst that Event of Default is continuing) include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

26.18 Deduction from amounts payable by the Agent

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

26.19 Amounts paid in error

- (a) If the Agent pays an amount to another Party and within 10 Business Days of the date of payment the Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent.
- (b) Neither:
 - (i) the obligations of any Party to the Agent; nor
 - (ii) the remedies of the Agent,

(whether arising under this Clause 26.19 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce,

release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).

- (c) All payments to be made by a Party to the Agent (whether made pursuant to this Clause 26.19 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Party which the Agent determines (acting reasonably) was made in error.

27. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

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

28. **SHARING AMONG THE FINANCE PARTIES**

28.1 **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 29 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 29.6 (*Partial payments*).

28.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 29.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

28.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

28.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

28.5 Exceptions

- (a) This Clause 28 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 11
ADMINISTRATION

29. PAYMENT MECHANICS

29.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in a principal financial centre of the country of that currency and with such bank as the Agent specifies.

29.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback and pre-funding*), be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than 5 Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

29.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

29.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
 - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Agent; and

- (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

29.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 29.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 29.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 26.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 29.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

29.6 Partial payments

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

- (i) first, in or towards payment pro rata of any unpaid amount owing to the Agent or the Arranger under the Finance Documents;
 - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
 - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

29.7 No set-off by Obligors

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

29.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

29.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, U.S. Dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than U.S. Dollars shall be paid in that other currency.

29.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency

or currency unit of that country designated by the Agent (after consultation with the Company); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

29.11 Disruption to payment systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 35 (*Amendments and waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 29.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

30. SET-OFF

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

31. NOTICES

31.1 Communications in writing

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

31.2 Addresses

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

(a) in the case of the Company and each other Obligor:

Address: 23 Lower Belgrave Street, London SW1W 0NR

Attention: Group Treasurer

Email: [REDACTED] and

[REDACTED] and [REDACTED]

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

(c) in the case of the Agent, that identified with its signature to this Agreement below,

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

31.3 Delivery

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

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 31.2 (*Addresses*), if addressed to that department or officer.

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

(c) All notices from or to an Obligor shall be sent through the Agent.

(d) Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

(e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

31.4 Notification of address and fax number

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

31.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

31.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 31.6.

31.7 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or

- (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

32. CALCULATIONS AND CERTIFICATES

32.1 Accounts

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

32.2 Certificates and determinations

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

32.3 Day count convention and interest calculation

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
 - (i) on the basis of the actual number of days elapsed and a year of 360 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
 - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places

33. PARTIAL INVALIDITY

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

34. REMEDIES AND WAIVERS

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

35. AMENDMENTS AND WAIVERS

35.1 Required consents

- (a) Subject to Clause 35.2 (*All Lender matters*) and Clause 35.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors' Agent and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.
- (c) Paragraph (c) of Clause 23.10 (*Pro rata interest settlement*) shall apply to this Clause 35.

35.2 All Lender matters

Subject to Clause 35.8 (*Changes to reference rates*) an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" or "Super Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) a change to the Borrower or Guarantors other than in accordance with Clause 25 (*Changes to the Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 7 (*Prepayment and cancellation*), Clause 7.9 (*Application of prepayments*), Clause 18.17 (*Anti-bribery, anti-corruption and anti-money laundering laws*), Clause 18.20 (*Sanctions*), Clause 21.14 (*Anti-bribery, anti-corruption and anti-money laundering laws*), Clause 21.17 (*Sanctions*), Clause 23 (*Changes to the Lenders*), Clause 25 (*Changes to the Obligors*), Clause 28 (*Sharing among the Finance Parties*), Clause 41 (*Governing law*), Clause 42.1 (*Jurisdiction*) or this Clause 35;
- (i) the nature or scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and indemnity*); or
- (j) the definition of "Sanctions", "Sanctioned Country" or "Sanctioned Person" in Clause 1.1 (*Definitions*),

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

35.3 Other exceptions

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

35.4 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
- (i) the Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,
- has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents,

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

- (b) For the purposes of this Clause 35.4, the Agent may assume that the following Lenders are Defaulting Lenders:
- (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of "**Defaulting Lender**" has occurred,
- unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

35.5 Excluded Commitments

If any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 5 Business Days (unless the Company and the Agent agree to a longer time period in relation to any request) of that request being made:

- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

35.6 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 10 Business Days' prior written notice to the Agent and such Lender replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:
- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company and which does not exceed the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 35.6 shall be subject to the following conditions:
- (i) the Company shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) the transfer must take place no later than 10 Business Days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

35.7 Replacement or repayment of Non-Consenting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Non-Consenting Lender (as defined in paragraph (e) below), by giving 10 Business Days' prior written notice to the Agent and such Non-Consenting Lender:
- (i) replace such Non-Consenting Lender by requiring such Non-Consenting Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to

an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest (to the extent that the Agent has not given a notification under Clause 23.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or

- (ii) give the Agent notice of cancellation of the Non-Consenting Lender's Available Commitment(s) and/or prepayment of the Non-Consenting Lender's participation in the Loans.
- (b) On receipt of a notice of cancellation referred to in paragraph (a)(ii) above, the Available Commitment(s) of that Non-Consenting Lender shall be immediately reduced to zero.
 - (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a)(ii) above (or, if earlier, the date specified by the Company in that notice), the Borrower shall repay that Non-Consenting Lender's participation in each Loan and that Non-Consenting Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
 - (d) The replacement or prepayment/repayment of a Non-Consenting Lender pursuant to this Clause 35.7 shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender, such replacement must take place no later than 60 days after the date on which the relevant Lender is deemed a Non-Consenting Lender;
 - (iv) in no event shall the Non-Consenting Lender replaced under this Clause 35.7 be required to pay or surrender to such Replacement Lender any of the fees received by such Non-Consenting Lender pursuant to the Finance Documents; and
 - (v) if applicable, the Non-Consenting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a)(i) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

A Non-Consenting Lender shall perform the checks described in paragraph (d)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a)(i) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks

- (e) In the event that:
 - (i) the Company or the Agent (at the request of the Company) has requested the Lenders to give a consent in relation to, or to agree to, any variation, amendment or waiver in respect of the Sanctions Condition as defined in and under the Acquisition Agreement in

accordance with paragraph (c) of Clause 21.18 (*Compliance with the Acquisition Documents*), and

- (ii) Lenders whose Commitments aggregate more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

35.8 Changes to reference rates

- (a) Subject to Clause 35.3 (*Other exceptions*), if an RFR Replacement Event has occurred, any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
- (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
 - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Reference Rate;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

- (b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

- (i) relates to the use of a risk-free reference rate on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- (ii) is issued on or after the date of this Agreement,

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

(c) In this Clause 35.8:

"RFR Replacement Event" means:

- (i) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders and the Obligors' Agent, materially changed;
- (ii)
 - (A)
 - (X) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
 - (Y) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent,
provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;
 - (B) the administrator of the RFR publicly announces that it has ceased or will cease to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
 - (C) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or
 - (D) the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
- (iii) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors' Agent) temporary; or
 - (B) the RFR is calculated in accordance with any such policy or arrangement for a period no less than 30 days; or
- (iv) in the opinion of the Majority Lenders and the Obligors' Agent, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

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

"Replacement Reference Rate" means a reference rate which is:

- (i) formally designated, nominated or recommended as the replacement for the RFR by:
 - (A) the administrator of the RFR (provided that the market or the economic reality that such reference rate measures is the same as that measured by the RFR); 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 Reference Rate" will be the replacement under paragraph (B) above;

- (ii) in the opinion of the Majority Lenders and the Obligors' Agent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or
- (iii) in the opinion of the Majority Lenders and the Obligors' Agent, an appropriate successor to the RFR.

36. CONFIDENTIAL INFORMATION

36.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 36.2 (*Disclosure of Confidential Information*) and Clause 36.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

36.2 Disclosure of Confidential Information

Any Finance Party may disclose:

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

- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 26.15 (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.9 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Company;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or

more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

36.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:

- (i) names of Obligors;
- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of this Agreement;
- (v) Clause 41 (*Governing law*);
- (vi) the names of the Agent and the Arranger;
- (vii) date of each amendment and restatement of this Agreement;
- (viii) amounts of, and names of, the Facility (and any tranches);
- (ix) amount of Total Commitments;
- (x) currencies of the Facility;
- (xi) type of Facility;
- (xii) ranking of Facility;
- (xiii) Termination Date for the Facility;
- (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
- (xv) such other information agreed between such Finance Party and the Company,

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

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

36.4 Entire agreement

This Clause 36 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

36.5 Inside information

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

36.6 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 36.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 36.

36.7 Continuing obligations

The obligations in this Clause 36 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

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

37. CONFIDENTIALITY OF FUNDING RATES

37.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the Borrower pursuant to Clause 8.4 (*Notifications*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent and each Obligor may disclose any Funding Rate to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender.

37.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.

- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 37.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 37.

38. COUNTERPARTS

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

39. BAIL-IN

39.1 Contractual recognition of bail-in

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

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

39.2 Bail-in definitions

In this Clause 39:

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

"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;
- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and

- (c) in relation to any state other than such an EEA Member Country and 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.

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

"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.

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

"UK Bail-In Legislation" means 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).

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

40. QFC STAY RULES

To the extent that the Finance Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Finance Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Finance Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Finance Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Clause 40, the following terms have the following meanings:

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, Section 1841(k) of Title 12 of the United States Code) of such party.

"**Covered Entity**" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, Section 252.82(b) of Title 12 of the United States Code of Federal Regulations;
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, Section 47.3(b) of Title 12 of the United States Code of Federal Regulations; or

- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, Section 382.2(b) of Title 12 of the United States Code of Federal Regulations.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with Section 252.81, 47.2 or 382.1 of Title 12 of the United States Code of Federal Regulations, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with Section 5390(c)(8)(D) of Title 12 of the United States Code.

SECTION 12
GOVERNING LAW AND ENFORCEMENT

41. GOVERNING LAW

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

42. ENFORCEMENT

42.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

42.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than the Obligors incorporated in England and Wales):

- (a) irrevocably appoints Chrysaor E&P Finance Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify each such Obligor of the process will not invalidate the proceedings concerned.

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

SCHEDULE 1
THE ORIGINAL PARTIES
PART I
THE ORIGINAL GUARANTORS

Name of Original Guarantor	Jurisdiction of incorporation	Registration number (or equivalent, if any)
Harbour Energy PLC	Scotland	SC234781
Chrysaor E&P Finance Limited	England & Wales	10537889
Chrysaor E&P Limited	England & Wales	10871880

PART II
THE ORIGINAL LENDERS

Name of Original Lender	Commitment (U.S.\$)	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
Bank of America, N.A., London Branch	110,250,000	N/A
Barclays Bank PLC	110,250,000	N/A
Citibank N.A., London Branch	66,750,000	N/A
DNB (UK) Limited	110,250,000	N/A
JPMorgan Chase Bank, N.A., London Branch	110,250,000	N/A
Deutsche Bank AG, London Branch	110,250,000	N/A
HSBC Bank plc	110,250,000	N/A
ING Bank N.V.	110,250,000	1/I/70193/DTTP The Netherlands
Lloyds Bank plc	110,250,000	N/A
National Westminster Bank Plc	110,250,000	N/A
Natixis, London Branch	110,250,000	N/A
Standard Chartered Bank	110,250,000	N/A
Sumitomo Mitsui Banking Corporation, London Branch	110,250,000	N/A
Wells Fargo Bank N.A., London Branch	110,250,000	N/A
Total:	1,500,000,000	

SCHEDULE 2
CONDITIONS PRECEDENT

PART I

CONDITIONS PRECEDENT TO SIGNING

1. Original Obligors

- (a) A copy of the constitutional documents of each Original Obligor.
- (b) A copy of a resolution of the board of directors of each Original Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Company (signed by a director or an authorised signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.
- (e) A certificate of an authorised signatory of the relevant Original Obligor certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. The Acquisition

- (a) A copy of each Acquisition Document duly executed by the parties to it substantially in the form delivered to the Arrangers prior to the date of this Agreement (which are not required to be in form and substance satisfactory to the Agent).
- (b) The final form of each of the following Reports on a non-reliance basis:
 - (i) the Tax Structure Memorandum;
 - (ii) the Legal DD Report; and
 - (iii) the Sanctions Report, in substantially the same form as the report provided to each Underwriter (as defined in the Commitment Letter) prior to the date of the Commitment Letter (not required to be in form and substance satisfactory to the Agent).
- (c) The final form of the Target Bond Porting Presentation.
- (d) A copy of the RES/RAS Paper.

3. **Legal opinions**

- (a) A capacity and enforceability legal opinion of Linklaters LLP, legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A capacity legal opinion of Brodies LLP, legal advisers to the Arranger and the Agent in Scotland, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

4. **Other documents and evidence**

- (a) The Original Financial Statements.
- (b) The Group Structure Chart.
- (c) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the date on which they fall due.

PART II

CONDITIONS PRECEDENT TO INITIAL UTILISATION

1. Acquisition

- (a) A certificate of the Company in the agreed form (signed by a director or an authorised signatory) confirming that:
 - (i) the Acquisition Agreement is unconditional in all respects (including each condition of completion of the Acquisition as set out in clause 3 (*Conditions*) of the Acquisition Agreement except for any such condition which is waived in accordance with the Acquisition Agreement, but other than in respect of payments of amounts due and payable thereunder and any other steps that can only be satisfied on the Acquisition Closing Date); and
 - (ii) the Sanctions Condition (as defined in the Acquisition Agreement) is either satisfied or Deemed Satisfaction (as defined in the Acquisition Agreement) in respect of the Sanctions Condition has occurred, in each case, in accordance with the Acquisition Agreement.
- (b) A copy of the funds flow statement (which is not required to be in form and substance satisfactory to the Agent).
- (c) Evidence that the total sources of funds available to the Group on the Acquisition Closing Date are or will be sufficient to pay the full consideration payable in respect of the Acquisition and, if applicable, to refinance all outstanding Financial Indebtedness of the Target Group (excluding the Target Senior Bonds and the Target Hybrid Bonds), in accordance with the funds flow statement.

2. Other documentation and evidence

- (a) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (b) Evidence that:
 - (i) the RBL Facility Agreement has been cancelled in full and any amounts outstanding thereunder have been or will be repaid in full; and
 - (ii) all Security in relation to the RBL Facility Agreement has or will be irrevocably released, in each case, by the first Utilisation Date.
- (c) Evidence that the Group has achieved, or will achieve as a result of the Acquisition Closing Date having occurred, a long-term corporate rating of at least BBB- (or equivalent) from at least two of Moody's Investors Services Limited, Standard & Poor's Ratings Services and Fitch Ratings Ltd.
- (d) Confirmation that the Sanctions Report previously delivered pursuant to this Agreement has not been amended, varied, updated or supplemented.
- (e) Evidence that each company which is required to accede to this Agreement as an Additional Guarantor in accordance with Clause 21.16 (*Guarantors*) by no later than the Acquisition Closing Date have so acceded in accordance with Clause 25.2 (*Additional Guarantors*).

PART III

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL GUARANTOR

1. An Accession Letter, duly executed by the Additional Guarantor and the Company.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors or, with regard to any Additional Guarantor incorporated or established in Germany, of the holders of all shares and, if applicable, of the supervisory board (*Aufsichtsrat*) and/or advisory board (*Beirat*) of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
 - (b) authorising a specified person or persons to execute the Accession Letter on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. In respect of each Additional Guarantor incorporated in the Netherlands:
 - (i) an up-to-date extract from the Dutch trade register (*handelsregister*) relating to it dated no earlier than 5 Business Days prior to the date of the Accession Letter;
 - (ii) if required by law or its articles of association, a copy of a resolution of its general meeting of shareholders:
 - (A) approving the execution of, and the terms of, and the transactions contemplated by, the Finance Documents; and
 - (B) if applicable, appointing one or more authorised persons to represent the relevant Obligor in the event of a conflict of interest or confirming that no such person has been appointed;
 - (iii) if applicable, a copy of a resolution of its board of supervisory directors (if any):
 - (A) approving the execution of, and the terms of, and the transactions contemplated by, the Finance Documents; and
 - (B) if applicable, appointing one or more authorised persons to represent the relevant Obligor in the event of a conflict of interest or confirming that no such person has been appointed; and
 - (iv) neutral or positive advice from the competent works council(s), which, if conditional, contains conditions with which the Obligors will comply and which do not materially and adversely affect the interests of the Lenders as approved by the Lenders.

6. If the Additional Guarantor is incorporated in England and Wales, or if so required by the Agent, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. A certificate of the Additional Guarantor (other than any Additional Guarantor incorporated or established in Germany) (signed by a director or an authorised signatory) confirming that guaranteeing, the Total Commitments would not cause any guaranteeing or similar limit binding on it to be exceeded.
8. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
9. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
10. If available, the latest audited financial statements of the Additional Guarantor.
11. A legal opinion of Linklaters LLP, legal advisers to the Arranger and the Agent in England.
12. If the Additional Guarantor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Arranger and the Agent in the jurisdiction in which the Additional Guarantor is incorporated.
13. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 42.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.

SCHEDULE 3
REQUESTS
PART 1
UTILISATION REQUEST

From: Chrysaor E&P Finance Limited

To: [] as Agent

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

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

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Amount: [] or, if less, the Available Facility

Interest Period: []
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) [or, to the extent applicable, Clause 4.3 (*Utilisations during the Certain Funds Period*)] is satisfied on the date of this Utilisation Request.
4. [The proceeds of this Loan should be credited to [account].]
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

Chrysaor E&P Finance Limited

PART II
SELECTION NOTICE

From: Chrysaor E&P Finance Limited

To: [] as Agent

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on [].¹
3. We request that the above Loan[s] be divided into [] Loans with the following amounts and Interest Periods:²

or

We request that the next Interest Period for the above Loan[s] is [].³
4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
Chrysaor E&P Finance Limited

¹ Insert details of all Loans which have an Interest Period ending on the same date.
² Use this option if division of Loans is requested.
³ Use this option if sub-division is not required.

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [] as Agent

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

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.6 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 23.6 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender] ⁴.
5. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is [not] incorporated, resident, established or acting through a Facility Office in a German Non-Cooperative Tax Jurisdiction. ⁵
6. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes;

⁴ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

⁵ Delete as applicable – to be confirmed by each New Lender.

- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.^{6]}
7. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [____]) and is tax resident in [____]^{7]}, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and notifies the Company that it wishes that scheme to apply to the Agreement.]^{8]}
8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
9. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

⁶ Include if New Lender comes within paragraph (a)(ii) of the definition of UK Qualifying Lender in Clause 12.1 (*Definitions*).

⁷ Insert jurisdiction of tax residence.

⁸ Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

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

[] as Agent

By:

The Agent and the Existing Lender should seek confirmation from Dutch counsel that the transfer will not contravene Section 3:5 of the Dutch Financial Supervision Act (Wet op het financieel toezicht) if the value of the rights acquired by the New Lender is less than €100,000 or, if the competent authority has published its interpretation of the term 'public' as referred to in article 4.1.(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, such other minimum amount as may be required for the New Lender not to be considered part of the public under such interpretation.

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: [] as Agent and Harbour Energy PLC as Company, for and on behalf of each Obligor

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

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 23.7 (*Procedure for assignment*) of the Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.⁹
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]

⁹ If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at primary documentation stage.

- (c) [not a Qualifying Lender].¹⁰
8. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is [not] incorporated, resident, established or acting through a Facility Office in a German Non-Cooperative Tax Jurisdiction.¹¹
9. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
- (i) a company so resident in the United Kingdom; or
- (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of the CTA) of that company.^{12]}
10. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [____]) and is tax resident in [____]¹³, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and notifies the Company that it wishes that scheme to apply to the Agreement.]¹⁴
11. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.8 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*) of the Agreement, to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
12. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
13. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

¹⁰ Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

¹¹ Delete as applicable – to be confirmed by each New Lender.

¹² Include only if New Lender is a UK Non-Bank Lender – i.e. falls within paragraph (a)(ii) of the definition of UK Qualifying Lender in Clause 12.1 (*Definitions*).

¹³ Insert jurisdiction of tax residence.

¹⁴ Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

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

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

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

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

[] as Agent

By:

The Agent and the Existing Lender should seek confirmation from Dutch counsel that the transfer will not contravene Section 3:5 of the Dutch Financial Supervision Act (Wet op het financieel toezicht) if the value of the rights acquired by the New Lender is less than €100,000 or, if the competent authority has published its interpretation of the term 'public' as referred to in article 4.1.(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, such other minimum amount as may be required for the New Lender not to be considered part of the public under such interpretation.

SCHEDULE 6
FORM OF ACCESSION LETTER

To: [] as Agent

From: [Subsidiary] and Harbour Energy PLC

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 25.2 (*Additional Guarantors*) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] [and is resident for Tax purposes in [name of relevant jurisdiction]].
3. [Subsidiary's] administrative details are as follows:
Address:
Fax no:
Attention:
4. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[This Accession Letter has been delivered as a deed on the date stated at the beginning of this Accession Letter.]

Harbour Energy PLC [Subsidiary]

SCHEDULE 7
FORM OF RESIGNATION LETTER

To: [] as Agent

From: [resigning Guarantor] and Harbour Energy PLC

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 25.4 (*Resignation of a Guarantor*) of the Agreement, we request that [resigning Guarantor be released from its obligations as a Guarantor] under the Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) no payment is due from us under this Agreement.
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Harbour Energy PLC [Subsidiary]

By:

By:

SCHEDULE 8
FORM OF COMPLIANCE CERTIFICATE

To: [] as Agent
From: Harbour Energy PLC
Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

1. [We confirm that no Default is continuing.]^{15*}
2. We confirm that for the Relevant Period ended on []:
 - (a) the ratio of Net Debt as at that date to EBITDAX for the Relevant Period was [] to 1; and
 - (b) the ratio of EBITDA to Net Finance Charges for the Relevant Period was [] to 1.
3. [We confirm that the following companies are Material Subsidiaries for the purposes of the Agreement:
[]¹⁶
4. We confirm that the requirements of Clause 21.16 (*Guarantors*) were satisfied as at [].

Signed:.....

Director of
Harbour Energy PLC

¹⁵ If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

¹⁶ This confirmation shall be made in respect of each Compliance Certificate accompanying the financial statements delivered pursuant to paragraph (a) of Clause 19.1 (*Financial statements*).

SCHEDULE 9

TIMETABLES

"D – " refers to the number of Business Days before the relevant Utilisation Date/the first day of the relevant Interest Period.

Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 9.1 (<i>Selection of Interest Periods</i>))	D – 3 09:30 a.m.
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	D – 3 noon

SCHEDULE 10
REFERENCE RATE TERMS

CURRENCY: U.S. Dollars.

Cost of funds as a fallback

Cost of funds will apply as a fallback.

Definitions

Additional Business Days: An RFR Banking Day.

Break Costs: None specified.

Business Day Conventions (definition of "Month" and Clause 9.2 (Non-Business Days)): (a) 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:

(i) subject to paragraph (iii) 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;

(ii) 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

(iii) 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.

(b) 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).

Central Bank Rate: (a) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or

(b) if that target is not a single figure, the arithmetic mean of:

(i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and

(ii) the lower bound of that target range.

Central Bank Rate Adjustment:

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 Agent, or by any other Finance Party which agrees to do so in place of the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

For this purpose, "**Central Bank Rate Spread**" means, in relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Finance Party which agrees to do so in place of the Agent) between:

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

Daily Rate:

The "**Daily Rate**" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day;
- (b) if the RFR for that RFR Banking Day is not available, the Historic RFR for that RFR Banking Day;
- (c) if paragraph (b) above applies but the Historic RFR for that RFR Banking Day is not available, 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
- (d) if paragraph (c) 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 each case, to five decimal places (with 0.000005 being rounded upwards) and if, in each case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

Lookback Period:

Five RFR Banking Days.

Market Disruption Rate:

The percentage rate per annum which is the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan.

Relevant Market:

The market for overnight cash borrowing collateralised by US Government Securities.

Reporting Day: The Business Day which follows the day which is the Lookback Period prior to the last day of the Interest Period.

RFR: The secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

RFR Banking Day: Any day other than:

- (a) a Saturday or Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

Interest Periods

Length of Interest Period in absence of selection (paragraph (c) of Clause 9.1 (*Selection of Interest Periods*)): Three Months

Periods capable of selection as Interest Periods (paragraph (d) of Clause 9.1 (*Selection of Interest Periods*)): One, three or six Months.

Reporting Times

Deadline for Lenders to report market disruption in accordance with Clause 10.2 (*Market disruption*): Close of business in London on the Reporting Day for the relevant Loan.

Deadline for Lenders to report their cost of funds in accordance with Clause 10.3 (*Cost of funds*): Close of business in London on the date falling 5 Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling 5 Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

SCHEDULE 11

DAILY NON-CUMULATIVE COMPOUNDED RFR RATE

The "**Daily Non-Cumulative Compounded RFR Rate**" for any RFR Banking Day "i" during an Interest Period for a Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

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

where:

"**UCCDR_i**" means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day "i";

"**UCCDR_{i-1}**" 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_i**" 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 the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

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

where:

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

"**tn_i**" 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, that 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 the same number of decimal places as the applicable Daily Rate) calculated as set out below:

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

where:

"**d₀**" means the number of 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 d₀, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

"**DailyRate_{i-LP}**" means, for any RFR Banking Day "**i**" in 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_i**" means, for any RFR Banking Day "**i**" in 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_i**" has the meaning given to that term above.

SCHEDULE 12
CUMULATIVE COMPOUNDED RFR RATE

The "**Cumulative Compounded RFR Rate**" for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of "**Annualised Cumulative Compounded Daily Rate**" in Schedule 11 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

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

where:

"**d₀**" means the number of RFR Banking Days during the Interest Period;

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

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

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

"**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; and

"**d**" means the number of calendar days during that Interest Period

SCHEDULE 13
FORM OF INCREASE CONFIRMATION

To: [] as Agent and Harbour Energy PLC as Company, for and on behalf of each Obligor

From: [the *Increase Lender*] (the "**Increase Lender**")

Dated:

Harbour Energy PLC – U.S.\$1,500,000,000 Bridge Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitments specified in the Schedule (the "**Relevant Commitments**") as if it had been an Original Lender under the Agreement in respect of the Relevant Commitments.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitments is to take effect (the "**Increase Date**") is [].
5. On the Increase Date, the Increase Lender becomes party to the Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (*Increase*) of the Agreement.
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].¹⁷
9. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is [not] incorporated, resident, established or acting through a Facility Office in a German Non-Cooperative Tax Jurisdiction.¹⁸
10. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes; or

¹⁷ Delete as applicable – each Increase Lender is required to confirm which of these three categories it falls within.

¹⁸ Delete as applicable – to be confirmed by each Increase Lender.

- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of the CTA) of that company.^{19]}
11. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [____]) and is tax resident in [____]²⁰, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Company that it wishes that scheme to apply to the Agreement.^{21]}
12. This Increase Confirmation may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Increase Confirmation.
13. This Increase Confirmation and any non-contractual obligations arising out of or in connection with it are governed by English law.
14. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

¹⁹ Include only if New Lender is a UK Non-Bank Lender i.e. falls within paragraph (a)(ii) of the definition of UK Qualifying Lender in Clause 12.1 (*Definitions*).

²⁰ Insert jurisdiction of tax residence.

²¹ Include if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[Insert relevant details]

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

[Increase Lender]

By:

This Increase Confirmation is accepted as an Increase Confirmation for the purposes of the Agreement by the Agent and the Increase Date is confirmed as [_____].

Agent

By:

Signature Pages

The Company

Harbour Energy PLC

By:



Alexander Krane

The Borrower

Chrysaor E&P Finance Limited

By:



Alexander Krane

The Original Guarantors

Harbour Energy PLC

By:



Alexander Krane

Chrysaor E&P Finance Limited

By:



Alexander Krane

Chrysaor E&P Limited

By:

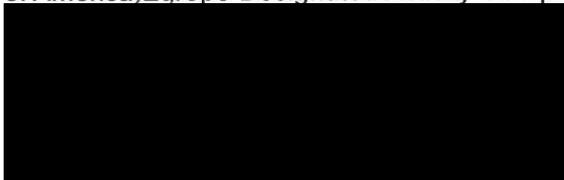


Alexander Krane

The Mandated Lead Arrangers

Bank of America Europe Designated Activity Company

By:



Shih Yi GOH, Director

Barclays Bank PLC

By:



Roger Cosby, Director

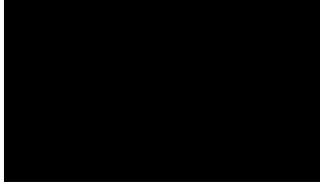
Deutsche Bank AG, London Branch

By:



Violaine Averous
Managing Director

By:



Alastair Macdonald
Managing Director

DNB (UK) Limited

By:



By:



HSBC Bank Plc

By:



ING Bank N.V.

By:



By:

J.P. Morgan Securities plc

By:



Kiran Karia
Managing Director

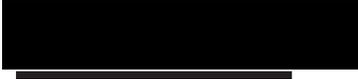
Lloyds Bank plc

By:



Natixis, London Branch

By: Olivier Serra, Managing Director



By: Lucas Helbling, Director



National Westminster Bank Plc

By:



Standard Chartered Bank

By:



SIMON DERRICK

Sumitomo Mitsui Banking Corporation, London Branch

By:



By:

Wells Fargo Bank N.A., London Branch

By:



The Lead Arranger

Citibank N.A., London Branch

By:



The Original Lenders

Bank of America, N.A., London Branch

By:



Roma Patankar
Director

Barclays Bank PLC

By:



Roger Cosby, Director

Citibank N.A., London Branch

By:



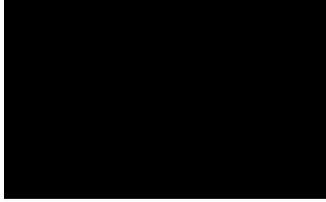
Deutsche Bank AG, London Branch

By:



Violaine Averous
Managing Director

By:



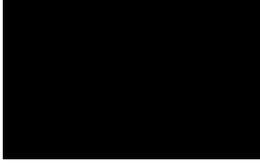
Alastair Macdonald
Managing Director

DNB (UK) Limited

By:



By:



HSBC Bank plc

By:



ING Bank N.V.

By:



By:



Erwin Nederkoorn
Managing Director

JPMorgan Chase Bank, N.A., London Branch

By:



Vilma Pumi
Vice President

Lloyds Bank plc

By:



Natixis, London Branch

By: Olivier Serra, Managing Director

A black rectangular redaction box covering the signature of Olivier Serra.

By: Lucas Helbling, Director

A black rectangular redaction box covering the signature of Lucas Helbling.

National Westminster Bank Plc

By:



Standard Chartered Bank

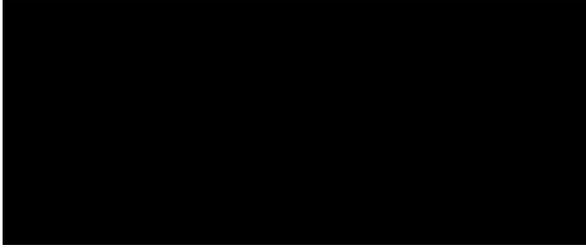
By:



SIMON DERRICK

Sumitomo Mitsui Banking Corporation, London Branch

By:



By:



Wells Fargo Bank N.A., London Branch

By:



The Agent

DNB Bank ASA, London Branch

Address: DNB Bank ASA
8th Floor, The Walbrook Building,
25 Walbrook, London EC4N 8AF

Email: [REDACTED]

Attention: CMOA

By: [REDACTED]