

21 November 2017

Between

THOMAS COOK GROUP PLC
as the Company

THOMAS COOK GROUP TREASURY LIMITED

AND

**THOMAS COOK AIRLINES TREASURY
LIMITED**
as Original Borrowers

CERTAIN SUBSIDIARIES
as Guarantors

THE FINANCIAL INSTITUTIONS
listed as Arrangers

THE FINANCIAL INSTITUTIONS
listed as Original Lenders

LLOYDS BANK PLC
as Facility Agent

REVOLVING FACILITIES AGREEMENT

Dated 21 November 2017

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel: +44.20.7710.1000
www.lw.com

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THIS AGREEMENT is dated 21 November 2017

BETWEEN:

- (1) **THOMAS COOK GROUP PLC**, (the “**Company**”);
- (2) **THOMAS COOK GROUP TREASURY LIMITED** and **THOMAS COOK AIRLINES TREASURY LIMITED** as original borrowers (the “**Original Borrowers**”);
- (3) **THE COMPANIES** listed in Part 1 of Schedule 1 (*The Original Parties*) as original guarantors (the “**Original Guarantors**”);
- (4) **DNB (UK) Limited and UniCredit Bank AG** as joint bookrunning mandated lead arrangers and exclusive joint co-ordinators (the “**Bookrunning Mandated Lead Arrangers**”);
- (5) **Bank of America Merrill Lynch International Limited, Barclays Bank PLC, BNP Paribas London Branch, Lloyds Bank plc, Societe Generale, London Branch, and The Royal Bank of Scotland plc** as mandated lead arrangers, (the “**Mandated Lead Arrangers**”);
- (6) **AIB Group (UK) p.l.c., Axis Bank Limited, DIFC Branch, Axis Bank UK Limited, Citibank N.A. London Branch, Credit Suisse AG, London Branch, Deutsche Bank Luxembourg S.A., KBC Bank NV, Morgan Stanley Senior Funding, Inc., Credit Industriel et Commercial, London Branch and Swiss Re International SE, Niederlassung Deutschland** as arrangers, (together with the Bookrunning Mandated Lead Arrangers and the Mandated Lead Arrangers, the “**Arrangers**”);
- (7) **THE FINANCIAL INSTITUTIONS**, listed in Part 2 and Part 3 of Schedule 1 (*The Original Parties*) as lenders (the “**Original Lenders**”); and
- (8) **Lloyds Bank plc** (the “**Facility Agent**”), as agent of the other Finance Parties.

NOW IT IS HEREBY agreed:

PART 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**2021 Notes**” means the EUR 400,000,000 6.75 per cent. guaranteed notes due 2021 issued by Thomas Cook Finance plc on 23 January 2015.

“**2022 Notes**” means the EUR 750,000,000 6.25 per cent. guaranteed notes due 2022 issued by the Company on 8 December 2016.

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor’s or Fitch or A3 or higher by Moody’s or a comparable rating from an internationally recognised credit rating agency;
- (b) any Lender; or

(c) any other bank or financial institution approved by the Facility Agent.

“Accession Deed” means a document substantially in the form set out in Schedule 6 (*Form of Accession Deed*).

“Accounting Principles” means:

- (a) in respect of the Company, IFRS as used in the preparation of the Original Financial Statements of the Company; and
- (b) in respect of any other Obligor, either:
 - (i) IFRS; or
 - (ii) generally accepted accounting principles in its jurisdiction of incorporation (including IFRS),

as used in the preparation of its Original Financial Statements.

“Additional Borrower” means a company which becomes an Additional Borrower in accordance with clause 30 (*Changes to the Obligors*).

“Additional Guarantor” means a company which becomes an Additional Guarantor in accordance with clause 30 (*Changes to the Obligors*).

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

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company. Notwithstanding the foregoing, in relation to The Royal Bank of Scotland plc, the term "Affiliate" shall not include (a) the UK government or any member or instrumentality thereof, including Her Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof) or (b) any persons or entities controlled by or under common control with the UK government or any member or instrumentality thereof (including Her Majesty's Treasury and UK Financial Investments Limited) and which are not part of The Royal Bank of Scotland Group plc and its subsidiaries or subsidiary undertakings.

“Agent’s Spot Rate of Exchange” means the Facility Agent’s spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11.00 a.m. on a particular day.

“Aircraft Financing” means any Financial Indebtedness incurred by any Obligor or any Aircraft SPV in respect of any Item of Aircraft.

“Aircraft SPV” means a member of the Group which:

- (a) has no Subsidiaries;
- (b) has been incorporated solely for the purposes of owning and/or taking on lease and, in either case, leasing out Items of Aircraft; and
- (c) only owns and/or takes on lease and, in either case, leases out Items of Aircraft.

“Ancillary Commencement Date” means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period for the Revolving Facility.

“Ancillary Commitment” means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under clause 9 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

“Ancillary Document” means each document relating to or evidencing the terms of an Ancillary Facility (including, from the Closing Date, each Existing Ancillary Document).

“Ancillary Facility” means any ancillary facility made available by an Ancillary Lender in accordance with clause 9 (*Ancillary Facilities*) (including, from the Closing Date, each Existing Ancillary Facility).

“Ancillary Facility Limit” means £300,000,000.

“Ancillary Lender” means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with clause 9 (*Ancillary Facilities*).

“Ancillary Outstandings” means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) in the Base Currency of the following amounts outstanding under that Ancillary Facility:

- (a) the principal amount under each overdraft facility and on-demand short term loan facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that such credit balances are freely available to be set off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

in each case as determined by such Ancillary Lender, acting reasonably in accordance with its normal banking practice and in accordance with the relevant Ancillary Document and where an Ancillary Facility permits the issue of Instruments, this will be subject to any provision in the relevant Ancillary Document which provides that Ancillary Outstandings in respect of such Instruments are only required to be re-calculated on a periodic basis.

“Annual Aircraft Lease Rentals” means, for any Measurement Period, all operating lease rental payments in respect of Items of Aircraft which are incurred in that Measurement Period.

“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 date falling one month prior to the Termination Date.

“Available Ancillary Commitment” means in relation to an Ancillary Facility, an Ancillary Lender’s Ancillary Commitment less the Ancillary Outstandings in relation to that Ancillary Facility.

“Available Commitment” means, in relation to a Facility, a Lender’s Commitment under that Facility minus (subject to clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*)) and as set out below):

- (a) in relation to the Revolving Facility:
 - (i) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and the Base Currency Amount of the aggregate of its Ancillary Commitments; and
 - (ii) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and the Base Currency Amount of its Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date; and
- (b) in relation to the Bonding Facility:
 - (i) the Base Currency Amount of the Outstanding Amounts of all BG Instruments issued by that Issuer; and
 - (ii) in relation to any proposed request for a BG Instrument, the Base Currency Amount of the Outstanding Amount of any request for issuance of any other BG Instruments that are due to be issued under the Bonding Facility on or before the proposed Utilisation Date.

For the purposes of calculating a Lender’s Available Commitment in relation to any proposed Utilisation under the Revolving Facility, the following amounts shall not be deducted from a Lender’s Commitment under that Facility:

- (A) that Lender’s participation in any Revolving Utilisations under that Facility that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (B) that Lender’s (or its Affiliate’s) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

For the purposes of calculating an Issuer’s Available Commitment in relation to any proposed Utilisation under the Bonding Facility, the Outstanding Amount of any BG Instrument issued by that Issuer that is due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from that Issuer’s Bonding Facility Commitment.

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

“Base Currency” means Sterling or, in relation to the Swiss Re Bonding Commitment, Euro.

“Base Currency Amount” means:

- (a) in relation to a Revolving Facility Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Revolving Facility Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Facility Agent receives the Utilisation Request in accordance with the terms of this Agreement);
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Facility Agent by TCGT or TCAT pursuant to clause 9.3 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Facility Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement), and
- (c) in relation to a BG Instrument, the amount specified in the Utilisation Request delivered by TCGT or TCAT on behalf of a member of the Group for that BG Instrument (or, if the BG Instrument is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is four Business Days before the Utilisation Date or, if later, on the date that the relevant Issuer receives the Utilisation Request or as recalculated under clause 8.3(a) (*BG Instrument currency*)),

in each case as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility.

"Base Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Base Reference Banks:

- (a) in relation to LIBOR:
 - (i) (other than where paragraph (a)(ii) below applies) as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or
 - (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
- (b) in relation to EURIBOR:
 - (i) (other than where paragraph (b)(ii) below applies) as the rate at which the relevant Base Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
 - (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

"Base Reference Banks" means any three banks or financial institutions appointed as such by the Facility Agent in consultation with TCGT provided that no Lender shall be a Base Reference Bank without the prior written consent of that Lender.

“Beneficiary” means:

- (a) any reputable trading counterparty or financial institution, regulator or other beneficiary (1) in respect of which an Existing BG Instrument has been issued by an Issuer which is to remain outstanding or (2) to which a BG Instrument in a similar form to any Existing BG Instrument issued by an Issuer or in such other form agreed between any member of the Group and the relevant Issuer is to be issued under the Bonding Facility; or
- (b) any beneficiary approved by the Issuer issuing the relevant BG Instrument.

“BG Instrument” means:

- (a) a bond, letter of credit, guarantee or financial guarantee provided that such bond, letter of credit, guarantee or financial guarantee is in a form agreed between any member of the Group and the relevant Issuer; or
- (b) in respect of a particular Issuer, a bond, letter of credit, guarantee or financial guarantee in substantially the same form as that issued by that Issuer on behalf of a member of the Group in the past (provided that the form of such bond, letter of credit, guarantee or financial guarantee is not prohibited by, or would not materially conflict with, any internal policy of the relevant Issuer or any law, regulation or current accepted industry practice).

“Bonding Facility” means the bonding facility made available under this Agreement as described in clause 2.1(a)(ii) (*The Facilities*).

“Bonding Facility Commitment” means:

- (a) in relation to an Issuer which is an Issuer on the date of this Agreement, the amount in the applicable Base Currency set opposite its name under the heading “Bonding Facility Commitment” in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) and the amount of any other Bonding Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Issuer, the amount of any Bonding Facility Commitment transferred to it under this Agreement,

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

“Bonding Fee” means any bond issuance fee payable to the Issuers under clause 7.2 (*Bonding Fee payable in respect of BG Instruments*).

“Borrower” means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 30 (*Changes to the Obligors*) and, in the case of the Ancillary Facility or the Bonding Facility, an Affiliate of a Borrower.

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

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

exceeds:

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

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

- (a) (in relation to any date for payment or purchase of a currency other than Euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of Euro) any TARGET Day.

“**Business Separation**” means the internal separation of tour operator and airline business lines and Subsidiaries of the Company as further described in the Information Package and the Structure Memorandum.

“**Cash**” means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

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

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

- (a) certificates of deposit maturing within one year after the relevant date of calculation;
- (b) any investment in marketable debt obligations that:
 - (i) is issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or any instrumentality or agency of any of them; and
 - (ii) has a credit rating of either A-1 or higher by Standard & Poor’s or F1 or higher by Fitch or P-1 or higher by Moody’s or, if no rating is available in respect of such marketable debt obligation, the issuer of which has, in respect of its long term unsecured and non-credit enhanced debt obligations, an equivalent rating; and
 - (iii) matures within one year after the relevant date of calculation; and
 - (iv) is not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security;

- (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's or F1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) Sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 30 days' notice;
- (f) cash held on deposit at bank which is not repayable on demand but which matures within three months after the relevant date of calculation; or
- (g) any other debt security approved by the Majority Lenders,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security.

“**Closing Date**” means the first Utilisation Date under this Agreement.

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

“**Commitment**” means a Revolving Facility Commitment or a Bonding Facility Commitment.

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

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

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

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

- (c) information that:
- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause 42 (*Confidentiality*); or
 - (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group 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
- (d) any Funding Rate or Reference Bank Quotation.

“Confidentiality Undertaking” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 10 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Facility Agent.

“Counterparty” means the Company, any of its Subsidiaries which are members of the Group listed in Schedule 14 (*Original Counterparties*) or any other member of the Group that the Company has nominated under a counterparty notice in the form set out in Schedule 16 (*Form of Counterparty Notice*) and that has been approved by the relevant Issuer in writing from the date of such approval.

“Credit Support” means:

- (a) cash cover; or
- (b) alternative security or other form of credit support which is acceptable to the Finance Party for whose benefit the credit support is being provided.

“CTA” means the Corporation Tax Act 2009.

“Danish Equity” means the equity (in Danish: egenkapital) of such Danish Guarantor calculated in accordance with the Accounting Principles.

“Debt Capital Markets Issue” means any public or private issue, sale or offering of any debt capital market instrument by the Company, TCGT and/or TCAT (including, but not limited to any bond, convertible bond, note or other debt security but excluding, for the avoidance of doubt, the Existing Debt Capital Markets Issues and any issue of commercial paper).

“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 28 (*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 Facility 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;
 - (B) a Disruption Event;
 - (C) the negligence or wilful default of a third party beyond its control; or
 - (D) an administrative or technical error experienced by a third party beyond its control, and

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

- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question; or
- (iii) it is unlawful in any relevant jurisdiction for the Lender to make that payment (provided that this shall not prejudice the rights of the Borrowers under clause 11.1 (*Illegality*); or
- (iv) the payment has been made on its due date by such Lender to the Facility Agent which is an Impaired Agent and the Borrower has failed to notify the Lenders by giving not less than three Business Days prior notice of alternative arrangements for that payment.

“Designated Gross Amount” has the meaning given to that term in clause 9.3 (*Availability*).

“Designated Net Amount” has the meaning given to that term in clause 9.3 (*Availability*).

“Disruption Event” means either or both of:

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

- (i) from performing its payment obligations under the Finance Documents; or
- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

“Emissions Allowance Repos” means the transactions for the sale and repurchase of carbon credit emissions allowances by TCGT and/or TCAT with one or more counterparties under which TCGT and/or TCAT sells the carbon credit emissions allowances on a spot basis to, and repurchases the carbon credit emissions allowances on a forward basis from that counterparty and whereby the sale and repurchase transaction are contractually committed at the same time at fixed prices.

“EURIBOR” means, in relation to any Loan in Euro:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to clause 16.1 (*Unavailability of Screen Rate*),

and, if, in either case, that rate is below zero, EURIBOR will be deemed to be zero.

“Euro”, **“EUR”** or **“€”** means the single currency of the Participating Member States.

“Event of Default” means any event or circumstance specified as such in clause 28 (*Events of Default*).

“Excluded Company” means:

- (a) any Regulated Entity;
- (b) any other member of the Group in respect of which:
 - (i) it is or would be unlawful for that member of the Group to become a Guarantor or that member of the Group becoming a Guarantor would result in personal liability or a breach of directors’ duties for that company’s directors or other management;
 - (ii) it has contractual restrictions on it becoming a Guarantor; or
 - (iii) the jurisdiction of its incorporation requires that security is provided in respect of any guarantee that could be given under the Finance Documents; and
- (c) any other member of the Group incorporated in Switzerland.

“Existing Ancillary Commitment” means the ancillary facility commitment of an Existing Ancillary Lender as set out in Schedule 17 (*Existing Ancillary Facilities*).

“Existing Ancillary Document” means the ancillary documents set out in Schedule 17 (*Existing Ancillary Facilities*).

“Existing Ancillary Facility” means an ancillary facility made available by an Existing Ancillary Lender as set out in Schedule 17 (*Existing Ancillary Facilities*).

“Existing Ancillary Lender” means each Lender (or Affiliate of a Lender) which has made available an Existing Ancillary Facility.

“Existing BG Instrument” means (i) any bond, letter of credit, guarantee or financial guarantee issued on behalf of a member of the Group under the Existing Facilities and, in each case, specified in Schedule 18 (*Existing BG Instruments*) and (ii) any other bond, letter of credit, guarantee, financial guarantee or other instrument notified by the Company (with the agreement of the applicable Issuer) to the Facility Agent as an “Existing BG Instrument” on or before the Closing Date.

“Existing Debt Capital Markets Issues” means the 2021 Notes and the 2022 Notes.

“Existing Facilities” means the bonding and revolving facilities provided under or pursuant to the Existing Facilities Agreement.

“Existing Facilities Agreement” means the facilities agreement between, amongst others, the Company and Lloyds Bank plc as facility agent originally dated 19 May 2015 and as amended pursuant to the consent letter dated 8 August 2016 or otherwise from time to time.

“Expiry Date” means, in respect of a BG Instrument which has an Expiry Date, the last day on which the Issuer may be under liability under that BG Instrument.

“Facility” means the Revolving Facility or the Bonding Facility.

“Facility Office” means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

“FATCA” means:

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

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

“**Fee Letter**” means:

- (a) any letter or letters between any Arranger and a member of the Group (or the Facility Agent and a member of the Group) setting out any of the fees referred to in clause 17 (*Fees*); and
- (b) any letter or agreement setting out fees payable to a Finance Party referred to in clauses 17.3 (*Interest, commission and fees on Ancillary Facilities*) or under any other Finance Document.

“**Finance Document**” means this Agreement, any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Resignation Letter, any Utilisation Request, any Renewal Request, any document in relation to the provision of Credit Support (and security therefor as relevant) under an Ancillary Document or the Bonding Facility and any other document designated as a “**Finance Document**” by the Facility Agent and the Company.

“**Finance Party**” means the Facility Agent, an Arranger, a Lender, an Issuer or any Ancillary Lender.

“**Financial Indebtedness**” means, without double counting, any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit 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 as used in the preparation of the Original Financial Statements, be treated as a finance or capital lease (subject to the operation of clause 1.2(c) (*Construction*));
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) for the purposes of clause 28.5 (*Cross default*) only, any counter-indemnity obligation in respect of guarantees, bonds, letters of credit or similar instruments issued by a

bank, financial institution, insurer, insurance company or other entity providing such instruments;

- (h) except in relation to clauses 27.11 (*Financial Indebtedness*) and 27.9 (*Loans out*), 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 shall be taken into account); and
- (i) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (h) above (except where such paragraphs are expressed not to apply),

but:

- (i) for the purposes of clause 28.5 (*Cross default*), excluding any Financial Indebtedness for which full Credit Support has been provided; and
- (ii) for the purpose of determining any limit, the principal amount of Financial Indebtedness outstanding under a cash pooling or cash management arrangement entered into by a member of the Group in the ordinary course of its banking arrangements shall be the net principal amount owed under that arrangement after taking into account credit balances available for netting or set off against that Financial Indebtedness.

“Financial Projections” means the base case financial projections of the Group titled “20171031 Project Zeus – Business Plan with Covenants” provided by the Company to the Lenders.

“First Accession Date” means the date that is the earlier of (a) 5 Business Days following the date of issuance of the New Notes, and (b) 31 December 2017.

“Fitch” means Fitch Ratings Limited.

“Fixed Charge Ratio” has the meaning given to that term in clause 26.4 (*Fixed Charge Ratio*).

“Fleet Financing Event” means the date on which members of the Group:

- (a) have financing commitments of no less than £500,000,000 (or its equivalent in different currencies) pursuant to financing documentation entered into after the date of this Agreement with one or more credit providers in circumstances where (i) such amounts are to be applied primarily for purposes of the purchase, lease or other utilisation of replacement aircraft by members of the Group and (ii) the applicable financing arrangements benefit, directly or indirectly, from state or governmental (or similar authority) provided credit support or other enhancement or backing (the **“Fleet Financing Arrangements”**); and
- (b) have borrowed or incurred no less than £100,000,000 (or its equivalent in different currencies) in connection with such Fleet Financing Arrangements primarily for purposes of the purchase, lease or other utilisation of replacement aircraft by members of the Group.

“Funding Rate” means any individual rate notified by a Lender to the Facility Agent pursuant to paragraph (a)(ii) of clause 16.4 (*Cost of funds*).

“Group” means the Company and each of its Subsidiaries from time to time.

“**Group Structure Chart**” means the summary Group structure chart including all Material Companies and Original Obligors provided by the Company to the Facility Agent prior to the date of this Agreement.

“**Guarantor**” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 30 (*Changes to the Obligors*).

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

“**Hotel Investment Vehicle**” means a person that is not a member of the Group whose primary purpose is directly or indirectly to own, lease, license, acquire, operate and/or manage (or own, lease, license, acquire, operate and/or manage investments in) hotels and hotel related assets and undertakings (including pursuant to structures incorporating separation of ownership of the hotel assets from management and operation of such assets and related business).

“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002.

“**Impaired Agent**” means the Facility 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 Facility Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Facility 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 Facility Agent; unless, in the case of paragraph (a) above:
 - (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
 - (ii) the Facility 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 12 (*Form of Increase Confirmation*).

“**Increase Lender**” has the meaning given to that term in clause 2.2 (*Increase*).

“**Information Package**” means:

- (a) the Structure Memorandum;
- (b) the Financial Projections;
- (c) the Group Structure Chart; and

- (d) the presentation entitled 20171006 - Zeus - Bank Meeting - FINAL (V4 - as amended 20171031) dated 31 October 2017 by the Company to the Lenders relating to, among other things, the Business Separation.

“**Insolvency Event**” in relation to a Finance Party means

- (a) a Finance Party being dissolved or having a resolution passed for its winding-up, official management or liquidation (other than, in each case, pursuant to a consolidation, amalgamation or merger);
- (b) a Finance Party admitting in writing its inability generally to pay its debts as they become due;
- (c) a Finance Party making a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) the appointment of a liquidator, receiver, administrator, compulsory manager or similar officer in respect of that Finance Party or all or any material part of that Finance Party’s assets (but other than by way of an Undisclosed Administration) or any analogous procedure or any formal step being taken in respect of any such appointment or procedure other than the presentation of a petition for any such appointment or procedure by a third party which is dismissed, stayed or discharged within 30 days,

and, for this purpose, “**Undisclosed Administration**” means, in relation to a Finance Party, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Finance Party is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“**Insolvency Proceedings Regulation**” means The Council of the European Union Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (recast).

“**Instrument**” means a bond, letter of credit, guarantee or financial guarantee.

“**Intellectual Property**” means:

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

“**Interest Period**” means, in relation to a Loan, each period determined in accordance with clause 15 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 14.4 (*Default interest*).

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

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

- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

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

“Issuer” means:

- (a) an Original Lender who at the date of this Agreement has Bonding Facility Commitments; or
- (b) any other person who becomes an Issuer under the Bonding Facility by becoming a Lender who has Bonding Facility Commitments in accordance with clause 29 (*Changes to the Lenders*),

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

“ITA” means the Income Tax Act 2007.

“Item of Aircraft” means, from time to time, any aircraft, any airframe, any aircraft engine and all parts, components, appliances, accessories, instruments and other items of equipment installed in or attached to (or designed to be installed in or attached to), and any manufacturer's and/or repairer's warranties given in respect of, such airframe, the aircraft engine, any items of aircraft or any aircraft engine equipment (together with any manuals and technical records) including, for the avoidance of doubt and without limitation, any of the above in the course of manufacture.

“Latest Group Accounts” means, at any time, the most recent annual audited consolidated financial statements of the Company at that time.

“Legal Opinion” means any legal opinion delivered to the Facility Agent under clause 4.1 (*Initial conditions precedent*) or clause 30 (*Changes to the Obligors*).

“Legal Reservations” means:

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

“Lender” means:

- (a) 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 29 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement and, where applicable, references to a Lender also include an Issuer.

“**Leverage EBITDAR**” has the meaning given to that term in clause 26 (*Financial Covenants*).

“**Leverage Ratio**” has the meaning given to that term in clause 26.3 (*Leverage Ratio*)

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

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to clause 16.1 (*Unavailability of Screen Rate*),

and, if in either case, such rate is below zero, LIBOR will be deemed to be zero.

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

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

“**Loan**” means a loan made or to be made under the Revolving Facility (excluding, for the avoidance of doubt, the Ancillary Facilities) or the principal amount outstanding for the time being of that loan.

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

“**Margin**” means, in relation to any Loan, the rate per annum determined in accordance with clause 14.3 (*Margin adjustments*).

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

- (a) the business, assets or financial condition of the Obligors taken as a whole; or
- (b) the ability of the Obligors (taken as a whole) to perform any of their payment obligations under any of the Finance Documents or any of their obligations under clause 26 (*Financial Covenants*); or
- (c) the validity, legality or enforceability of any Finance Document.

“**Material Company**” means, at any time:

- (a) any member of the Group whose Leverage EBITDAR (calculated on an unconsolidated basis) for the period of the Latest Group Accounts represents 5 per cent. or more of the aggregate Leverage EBITDAR of the Group for that period;
- (b) any member of the Group whose gross assets (excluding intra-group items and investments in Subsidiaries of any member of the Group and calculated on an unconsolidated basis) for the period of the Latest Group Accounts represents 5 per cent. or more of the gross assets of the Group for that period; or
- (c) members of the Group to which has been transferred (whether in a single transaction or a series of transactions (whether related or not)) the whole or substantially the

whole of the assets of a member of the Group (the “**Transferring Company**”) which immediately prior to such transactions was a Material Company and the Parties agree such Transferring Company shall immediately cease to be a Material Company.

Compliance with the conditions set out in paragraph (a) and (b) above, shall be determined by reference to the most recent Compliance Certificate supplied by the Company which, in accordance with this Agreement, sets out which members of the Group are Material Companies and the Latest Group Accounts. However, if a member of the Group has been acquired since the date as at which the Latest Group Accounts were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary.

“**Material Company Certificate**” means a certificate substantially in the form of Schedule 9 (*Form of Material Company Certificate*).

“**Measurement Period**” has the meaning given to that term in clause 26.1 (*Financial definitions*).

“**Minority Interest Vehicle**” means a person where a member of the Group owns no less than 10 per cent. and no more than 50 per cent. of the shares, equity participations and/or equivalent interests in such entity.

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

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

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

“**Moody’s**” means Moody’s Investors Service Limited, or any successor thereto.

“**New Lender**” has the meaning given to that term in clause 29 (*Changes to the Lenders*).

“**New Notes**” means any guaranteed notes issued by Thomas Cook Finance 2 plc or any other member of the Group primarily for the purposes of prepaying the 2021 Notes.

“**Non-Consenting Lender**” has the meaning given to that term in clause 41.3 (*Replacement of Lender*).

“**Non-Qualifying Shareholder**” means any shareholder other than a parent company which is incorporated under the laws of any country covered by Executive Order No. 275 of 25 March 2010 of the government of Denmark on loans etc. to foreign parent companies, as amended and supplemented from time to time.

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

“Obligors’ Agent” means the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to clause 2.4 (*Obligors’ agent*).

“Optional Currency” means a currency which complies with the conditions set out in clause 4.3 (*Conditions relating to Optional Currencies*).

“Original Financial Statements” means:

- (a) in relation to the Company, its audited financial statements for its financial year ended 30 September 2017;
- (b) in relation to each Original Obligor other than the Company, its audited financial statements for its financial year ended 30 September 2016; and
- (c) in relation to any other Obligor, its audited financial statements delivered to the Facility Agent as required by clause 30 (*Changes to the Obligors*).

“Original Obligor” means an Original Borrower or an Original Guarantor.

“Outstanding Amount” means, in relation to a BG Instrument at any relevant time, the maximum actual or contingent liability of the relevant Issuer under that BG Instrument at that time.

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

“Party” means a party to this Agreement.

“Permitted Acquisition” means:

- (a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
- (b) acquisitions or investments made with the consent of the Majority Lenders;
- (c) acquisitions or investments to the extent funded by equity issued by the Company;
- (d) the incorporation or establishment of an entity or the purchase of shares or other equity interests in an off the shelf entity (which, at the time of purchase, has no material assets, material liabilities, or material trading history) which becomes a member of the Group;
- (e) the acquisition by a member of the Group of shares in TCCT Holdings UK Limited pursuant to the shareholders’ agreement dated 29 October 2010 between Thomas Cook Retail Limited, Co-operation Specialist Business Limited, Midland Co-operative Society Limited, TCCT Holdings UK Limited and the Company (as amended) following the exercise of an option (existing on the date of this Agreement) or other right exercised by one or more parties to that Agreement that are not members of the Group requiring such shares to be acquired by a member of the Group;
- (f) the acquisition by any member of the Group of shares in the capital of ITC Travel Investments, Sociedad Limitada pursuant to (1) a share purchase agreement dated 25 November 2010 (as amended from time to time) between the Company, VAO Intourist, Overseas Property Company Limited and Intourist Overseas Limited

(Cyprus) and/or (2) a shareholders' agreement dated 12 July 2011 (as amended from time to time) between the Company, VAO Intourist, Intourist Overseas Limited (Cyprus) and ITC Travel Investments, Sociedad Limitada;

- (g) a Permitted Hotel Acquisition; and
- (h) an acquisition or investment where:
 - (i) the acquisition or investment is of or in respect of a business that is not located in a country subject to country or territory-wide Sanctions;
 - (ii) the consideration payable for the acquisition or investment does not exceed, when aggregated with the consideration payable in respect of any other acquisition or investment permitted under this paragraph (h) made in the same financial year, £75,000,000 (or its equivalent in other currencies) in any financial year, provided that:
 - (A) if, in any immediately preceding financial year, the aggregate amount spent by members of the Group on acquisitions or investments under this paragraph (h) is less than the maximum amount permitted under this paragraph (h) (the difference being referred to below as the "**Unused Amount**"), then the maximum amount permitted to be spent by members of the Group on acquisitions or investments for the following financial year only shall be increased by an amount equal to the Unused Amount until all Unused Amounts are fully utilised; and
 - (B) in any financial year the maximum amount permitted to be spent by members of the Group under this paragraph (h) may be exceeded by an amount of up to 100% of the limit for the following financial year (the "**Carry-back Amount**") provided that the limit for such following financial year shall be reduced by an amount equal to the Carry-back Amount (and provided, for the avoidance of doubt, that any amount of a Carry-back Amount that is utilised in a financial year shall also be deemed as having been utilised in the following financial year, notwithstanding the fact of its utilisation in the preceding financial year),

provided, further, that in relation to any financial year, the maximum aggregate amount of (x) Unused Amount that may be carried forward to that financial year and (y) Carry-back Amount that may be carried back into that financial year shall not, when taken together, exceed £150,000,000.

"Permitted Disposal" means any sale, lease, licence, transfer, share issue or other disposal:

- (a) made by any member of the Group in the ordinary course of trading of the disposing entity, including, for the avoidance of doubt and without limitation, the Group's fleet management programme in respect of any Item of Aircraft;
- (b) in the case of a member of the Group other than an Obligor, of assets to any other member of the Group;
- (c) in the case of an Obligor, of assets to another member of the Group, provided that:
 - (i) the tests set out in clause 27.16 (*Guarantors*) will continue to be met after the date of such disposal by reference to the most recent annual audited

consolidated financial statements of the Company at that time as adjusted to take into account such disposal; or

- (ii) in circumstances where the tests set out in clause 27.16 (*Guarantors*) will not continue to be met after the date of such disposal by reference to the Latest Group Accounts at that time as adjusted to take into account such disposal, the Company shall notify the Facility Agent in advance that the tests set out in clause 27.16 (*Guarantors*) will not be met after the date of such disposal and must use its reasonable endeavours to procure that such members of the Group accede to this Agreement as Guarantors in accordance with clause 30.4 (*Additional Guarantors*) on or before the date of the disposal, but in any event shall ensure that such members of the Group accede to the Agreement as Guarantors within 30 days after the date of such disposal;
- (d) under any ordinary course lease of any asset of a member of the Group to any person where a member of the Group is the lessor;
- (e) of assets in exchange for other assets comparable or superior as to type, value and quality;
- (f) of obsolete, redundant or surplus assets no longer required in the business of the relevant member of the Group (including, without limitation, any Item of Aircraft);
- (g) of cash or Cash Equivalent Investments including the payment of a lawful dividend or other lawful distribution or, for the avoidance of doubt, by way of loan unless restricted under clause 27.9 (*Loans out*) or 27.17 (*Dividends and share redemption*);
- (h) constituted by a licence of intellectual property rights in the ordinary course of business of the disposing entity;
- (i) arising as a result of any Permitted Security;
- (j) any sale and leaseback, lease and leaseback or similar arrangement entered into in respect of (i) real estate or (ii) any Item of Aircraft;
- (k) of any hotel or hotel related assets and undertakings (including equity or other interests in Subsidiaries directly or indirectly owning the same; provided such Subsidiary (or any intermediate Subsidiary directly or indirectly owned by such Subsidiary) has no material assets other than such hotel or hotel related assets and undertakings) to a Hotel Investment Vehicle or a joint venture partner or other holder of shares or other equity interests in a Hotel Investment Vehicle in connection with the establishment of such Hotel Investment Vehicle (including immediately prior to it becoming the same) on arm's length terms for cash or in exchange for shares or other equity interests (including equity participations) in respect of which Hotel Investment Vehicle, a member of the Group holds directly or indirectly shares, or other equity interests (including equity participations);
- (l) of the shares in The Airline Group Limited and loan notes associated with such shares;
- (m) of emissions allowances by TCGT and/or TCAT pursuant to the Emissions Allowance Repos provided that the aggregate sale price raised by TCGT and/or TCAT under all open Emissions Allowance Repos with counterparties shall not exceed £30,000,000 or its equivalent in other currencies at any time;
- (n) of aircraft landing slots and/or aircraft take-off slots; and

- (o) of assets where the higher of the market value or consideration receivable in any financial year of the Company, when aggregated with the higher of the market value or consideration for any other sale, lease, licence, transfer or other disposal made in the same financial year and not otherwise permitted under the preceding paragraphs (or as a Permitted Transaction), does not exceed 5 per cent. of the total consolidated gross assets of the Group as calculated by reference to the Latest Group Accounts at that time.

“Permitted Financial Indebtedness” means Financial Indebtedness:

- (a) arising under any of the Finance Documents or the 2021 Notes;
- (b) owed by a member of the Group which is not a Guarantor to another member of the Group;
- (c) of any person which is not a Guarantor acquired by a member of the Group which is incurred under arrangements in existence at the date of acquisition, but only for a period of six months from the date of acquisition;
- (d) relating to any financial accommodation required in order to comply with the provisions of the European directive 90/314/EEC and/or the European directive 2015/2302 EU on package travel and holiday tours (each as may be amended or recast from time to time) and the transposition of this consumer protection into the legislation of European member states and similar directives in any other countries;
- (e) from the date of this Agreement until the Closing Date, any Financial Indebtedness outstanding under the Existing Facilities;
- (f) incurred in respect of the financing of Items of Aircraft used, owned, leased or operated by the Group;
- (g) incurred in connection with any real estate owned, leased or operated by a member of the Group which is not a Guarantor where:
 - (i) such Financial Indebtedness is outstanding as at the date of this Agreement (and any Financial Indebtedness incurred in respect of any refinancing thereof); or
 - (ii) such Financial Indebtedness is incurred after the date of this Agreement and the outstanding principal amount thereof does not at any time, when aggregated with the outstanding principal amount of any other Financial Indebtedness permitted under this paragraph (g)(ii) exceed £30,000,000 (or its equivalent in other currencies); and
- (h) not permitted under paragraphs (a) to (g) above, the outstanding principal amount of which does not at any time, when aggregated with the outstanding principal amount of any other Financial Indebtedness permitted under this paragraph (h) exceed £40,000,000 (or its equivalent in other currencies).

“Permitted Guarantee” means:

- (a) any guarantee arising under the Finance Documents;
- (b) any guarantee by a member of the Group of any obligations entered into or incurred by another member of the Group;

- (c) any guarantee by any member of the Group of any obligations (other than in respect of Financial Indebtedness) entered into or incurred by any Minority Interest Vehicle;
- (d) the endorsement of negotiable instruments in the ordinary course of trade;
- (e) any guarantee in respect of pension liabilities or employee benefit schemes;
- (f) any guarantee comprising a netting or set-off or cash pooling arrangement entered into by a member of the Group in the ordinary course of its banking arrangements for the purposes of netting debit and credit balances of that member of the Group or of other members of the Group with, in each case, other members of the Group;
- (g) any obligation arising under any profit and loss sharing (Ergebnisabführungsvertrag) and/or domination agreement (Beherrschungsvertrag) between any members of the Group; and
- (h) any guarantee or equivalent not otherwise permitted by the preceding paragraphs (including, for the avoidance of doubt any guarantees by a member of the Group in respect of Financial Indebtedness of a Minority Interest Vehicle), provided that the aggregate principal amount of such guarantees permitted under this subparagraph (h) does not exceed £50,000,000 (or its equivalent in other currencies).

“Permitted Hotel Acquisition” means an acquisition of shares or other equity interests (including by way of equity participation) in any Hotel Investment Vehicle where the consideration payable for such acquisition or investment does not exceed in any financial year, (when aggregated with the consideration payable in respect of any other Permitted Hotel Acquisitions in such financial year), the aggregate of: (a) £75,000,000 (or its equivalent in other currencies); and (b) the consideration received by a member of the Group in the applicable financial year in cash upon the sale, contribution or lease by a member of the Group to a Hotel Investment Vehicle of hotels and hotel related assets and undertakings (or interests in Subsidiaries owning the same) permitted pursuant to paragraph (k) of the definition of Permitted Disposal, in each case, in any financial year, provided that:

- (a) if, in any immediately preceding financial year, the aggregate amount spent by members of the Group on acquisitions under this definition is less than the maximum amount permitted under this definition (the difference being referred to below as the **“Hotel Acquisition Unused Amount”**), then the maximum amount permitted to be spent by members of the Group on acquisitions in the following financial year only shall be increased by an amount equal to the Hotel Acquisition Unused Amount until all Hotel Acquisition Unused Amounts are fully utilised; and
- (b) in any financial year the maximum amount permitted to be spent by members of the Group under this definition may be exceeded by an amount of up to 100% of the limit for the following financial year (the **“Hotel Acquisition Carry-back Amount”**) provided that the limit for such following financial year shall be reduced by an amount equal to the Hotel Acquisition Carry-back Amount (and provided, for the avoidance of doubt, that any amount of a Hotel Acquisition Carry-back Amount that is utilised in a financial year shall also be deemed as having been utilised in the following financial year, notwithstanding the fact of its utilisation in the preceding financial year),

provided, further, that in relation to any financial year, the maximum aggregate amount of (i) Hotel Acquisition Unused Amount that may be carried forward to that financial year and (ii) Hotel Acquisition Carry-back Amount that may be carried back into that financial year shall not, when taken together, exceed £150,000,000.

“Permitted Loan” means:

- (a) any loans made in the ordinary course of trading of the relevant Obligor or member of the Group;
- (b) any loans made by any member of the Group to any Minority Interest Vehicle, provided that the aggregate principal amount of such loans outstanding at any time shall not exceed £100,000,000 (or its equivalent in other currencies);
- (c) any loan made by any member of the Group to another member of the Group subject always to the terms of this Agreement; and
- (d) any loan not otherwise permitted by paragraphs (a) to (c) above so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £40,000,000 (or its equivalent in other currencies) at any time.

“Permitted Security” means:

- (a) any Security (other than any permitted under paragraphs (b) to (w) below) securing Financial Indebtedness the outstanding principal amount of which does not exceed £100,000,000 (or its equivalent in other currencies);
- (b) any Security which the Majority Lenders have at any time after the date of this Agreement agreed in writing shall be Permitted Security;
- (c) any Security arising out of or in connection with pre-judgment legal process or a judgment or a judicial award relating to security for costs;
- (d) any Security arising by operation of law (or by agreement evidencing the same) in the ordinary course of trading of the relevant member of the Group (including but not limited to, repairers, airport, navigation or maritime liens);
- (e) any Security arising under any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including an Ancillary Facility which is an overdraft comprising more than one account), including any such transactions performed:
 - (i) under swaps or other derivative agreements; or
 - (ii) under cash management arrangements and/or netting arrangements in place from time to time in respect of the Group’s bank accounts and entered into in the ordinary course of the Group’s banking and/or cash management arrangements;
- (f) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security was not created in contemplation of the acquisition of that asset by a member of the Group; and
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group;
- (g) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group if:

- (i) the Security was not created in contemplation of the acquisition of that company; and
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company;
- (h) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of business 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;
- (i) any Security other than in respect of Financial Indebtedness created by any member of the Group over (i) any lease, sublease, or similar agreement in respect of any Item of Aircraft or (ii) the right to receive any amounts payable to any member of the Group under any lease, sublease or similar agreement in respect of any Item of Aircraft or (iii) any Item of Aircraft or (iv) any purchase agreement in respect of any Item of Aircraft or (v) any asset value guarantee, indemnity, option, or analogous arrangement in favour of any member of the Group in respect of any Item of Aircraft, or (vi) any manufacturer warranty rights, support arrangements, service life policies, performance guarantees or patent indemnities in respect of any Item of Aircraft or (vii) insurance policies and/or insurance proceeds effected in relation to any Item of Aircraft or the use or operation thereof, in each case, where such Security is created in favour of the manufacturer, seller, supplier, repairer, owner, lessor or financier of such Item of Aircraft;
- (j) any Security over:
- (i) cash collateral placed on deposit; or
 - (ii) in cash deposits in accounts into which payments in relation to any lease, charter, loan or analogous arrangements, in relation to Items of Aircraft are made where such cash deposits represent amounts of such payments,
- in each case in a manner and amount which is broadly consistent with the current practice of the Group, created by any member of the Group as security for any (a) obligations (other than Financial Indebtedness) under any lease, charter, loan, or analogous arrangement entered into by any member of the Group in respect of any Item of Aircraft, or (b) liability under any indemnity in respect of any BG Instrument, letter of credit, bond, guarantee or analogous arrangement issued or entered into by any other person as security for such obligations;
- (k) any Security over Items of Aircraft or other aircraft related assets used for pooling arrangements in the ordinary course of trading of the member of Group granting such Security;
- (l) any Security over a cash deposit created by any member of the Group to the extent that such Security arises or is required to secure the interests of customers of the Group which have paid moneys into such cash deposit account subject (expressly or impliedly) to any charge, escrow, trust or similar arrangement;
- (m) any Security over a cash deposit created after 11 May 2010 by any member of the Group in favour of any regulatory body or agency (or in favour of any nominee(s) or trustee(s) as directed by such regulatory body or agency) to whose requirements that member of the Group is subject which is granted due to a legal or regulatory requirement;

- (n) any Security (other than in respect of Financial Indebtedness) over:
 - (i) policies of insurance or re-insurance effected or maintained by any member of the Group;
 - (ii) the proceeds of the policies (referred to in subparagraph (i) above); or
 - (iii) any requisition compensation payable to a member of the Group;
- (o) any Security created by any member of the Group pursuant to the terms of any Finance Document or related account security agreements securing amounts outstanding under any Finance Document;
- (p) any Security created in or on or subsisting over any asset (or any rights or entitlements in or to any asset) directly or indirectly held in, with or through Euroclear Bank S.A./N.V. as operator of the Euroclear system, Clearstream Banking, société anonyme or any other securities depository or any clearing house or system, or any securities intermediary pursuant to the standard terms and/or procedures of (or the laws applicable to) the relevant depository, clearing house or intermediary applicable where such asset, rights or entitlement is or are held for the investment purposes, or safekeeping on behalf, of the Group;
- (q) in the case of any member of the Group, any Security arising pursuant to the Dutch general banking conditions as applied generally to Dutch bank accounts or pursuant to the German general terms and conditions of banks or Sparkassen (*Allgemeine Geschäftsbedingungen der Banken oder Sparkassen*) with whom any member of the Group maintains a banking relationship governed by German law;
- (r) any Security arising under the general business conditions (*Allgemeine Geschäftsbedingungen*) used by any bank or other financial institution domiciled in Switzerland;
- (s) any Security replacing, or securing any refinancing of, amounts secured by Security permitted under any of the paragraphs listed in this definition (other than paragraphs (a) above and (x) below) provided relevant Security is no more extensive than the original Security and the principal amount secured does not exceed the principal amount secured by the original Security immediately before the relevant replacement or refinancing;
- (t) any Security created by TCGT and/or TCAT pursuant to any Emissions Allowance Repo;
- (u) any Security securing any Financial Indebtedness incurred or arising in respect of the financing, leasing or sub-leasing of Items of Aircraft used, owned, leased or operated by the Group or real estate owned, leased or operated by the Group;
- (v) cash collateral provided in order to repay or release any Existing BG Instrument;
- (w) any Security created or subsisting in order to secure any obligations incurred in order to comply with the requirements of § 8a of the German Partial Retirement Act (*Altersteilzeitgesetz*) or pursuant to § 7e of the Fourth Book of the German Social Security Code (SGB IV); and
- (x) any Security other than in respect of Financial Indebtedness securing obligations the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other obligations (other than Financial Indebtedness) which

has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (w) above) does not exceed £30,000,000 (or its equivalent in other currencies).

“Permitted Transaction” means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;
- (b) the solvent liquidation, amalgamation, merger or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- (c) any disposal of up to 50.1% of a member of the Group solely for the purposes of:
 - (i) complying with the conditions and requirements under Regulation (EC 1008/2008) of the European Parliament and of the Council on common rules for the operation of air services in the Community (the “Air Services Regulation”) for an operating licence to be granted to and maintained by a member of the Group;
 - (ii) complying with the conditions and requirements of any replacement of the Air Services Regulation in the UK, for an operating licence or equivalent to be granted to and maintained by any member of the Group; and/or
 - (iii) complying with the conditions and requirements of any applicable national legislation and/or bilateral air service agreements in place in the countries in or from which a member of the Group operates flights, for air traffic rights to be granted to and maintained by members of the Group; and
- (d) any payment, disposal, acquisition or other transaction envisaged by the Structure Memorandum.

“Qualifying Lender” has the meaning given to that term in clause 18 (*Tax Gross Up and Indemnities*).

“Quarter Date” means 31 March, 30 June, 30 September and 31 December in each year.

“Quotation Day” means, in relation to any period for which an interest rate is to be determined:

- (a) (if the currency is Sterling) the first day of that period;
- (b) (if the currency is Euro) two TARGET Days before the first day of that period; or
- (c) (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

“Rating Agency” means Standard & Poor’s Fitch or Moody’s.

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

“Regulated Entity” means:

- (a) White Horse Insurance Ireland Designated Activity Company (formerly known as White Horse Insurance Ireland Limited);
- (b) Thomas Cook Money Limited; and
- (c) any member of the Group whose principal business is as a regulated provider of insurance or other financial services.

“Relevant Jurisdiction” means, in relation to an Obligor:

- (a) its jurisdiction of incorporation; and
- (b) any jurisdiction where it conducts its business.

“Relevant Market” means, in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

“Renewal Request” means a written notice requesting a BG Instrument to be renewed which is delivered to the Issuer in accordance with clause 6.6 (*Renewal of a BG Instrument*).

“Repeating Representations” means each of the representations set out in clause 24.2 (*Status*) to clause 24.6 (*Validity and admissibility in evidence*), clause 24.11(a) (*No default*), clause 24.12(e) (*No misleading information*), clause 24.12(f) (*No misleading information*), clause 24.13(c) (*Original Financial Statements*), clause 24.17 (*Centre of Main Interest*) and clause 24.18 (*Sanctions and Restricted Persons*).

“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*).

“Restricted Finance Party” means each Finance Party that is domiciled in Germany (*Inländer*) within the meaning of Section 2 paragraph 15 German Foreign Trade Act (*Außenwirtschaftsgesetz*) (including its directors, managers, officers, agents and employees) or otherwise notifies the Facility Agent that it is a Restricted Finance Party for the purposes of clause 24.18 (*Sanctions and Restricted Persons*), clause 24.19 (*Anti-corruption and anti-money laundering*) and clause 27.20 (*EU residents and Restricted Finance Parties*).

“Restricted Person” means a person or entity that is:

- (a) listed in, or owned or controlled by a person or entity listed in any Sanctions List; or
- (b) located in or resident in or incorporated under the laws of a country or territory that is subject to country- or territory-wide Sanctions.

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

“Revolving Facility Commitment” means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading **“Revolving Facility Commitment”** in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) and the amount of any other Revolving Facility

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 of any Revolving Facility 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.

“Revolving Utilisation” means a Loan.

“Rollover Loan” means one or more Revolving Utilisations made under the same Facility:

- (a) made or to be made on the same day that a maturing Revolving Utilisation under that Facility is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the relevant maturing Revolving Utilisation;
- (c) in the same currency as the maturing Revolving Utilisation (unless it arose as a result of the operation of clause 8.2 (*Unavailability of a currency*)); and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Revolving Utilisation.

“Sanctions” means any economic, financial and trade embargoes and sanctions laws, regulations, rules or similar or equivalent restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom;
- (e) the Kingdom of Norway;
- (f) Switzerland; or
- (g) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the United States Department of State, the United Nations Security Council, the United Nations Security Council Sanctions Committee and any other government, public or regulatory authority or body (including but not limited to Her Majesty’s Treasury) (together **“Sanctions Authorities”**).

“Sanctions List” means the “Specially Designated Nationals and Blocked Persons” and “Sectoral Sanctions Identifications” lists issued by OFAC, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty’s Treasury, or any equivalent list issued or maintained or made public by any of the Sanctions Authorities.

“Screen Rate” means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the

administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); and

- (b) in relation to EURIBOR, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate),

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with TCGT.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**SEK**” means the lawful currency for the time being of Sweden.

“**Separate Loan**” has the meaning given to that term in clause 10.1 (*Repayment of Revolving Utilisations*).

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

“**Standard & Poor’s**” means Standard & Poor’s Rating Services a division of the McGraw Hill Companies, Inc.

“**Sterling**” or “**£**” means the lawful currency for the time being of the United Kingdom.

“**Structure Memorandum**” means the draft report entitled “Project Zeus Structure Report” dated 12 November 2017 prepared by Deloitte LLP for the benefit of the Company relating to, among other things, the steps to be completed in connection with the Business Separation.

“**Subsidiary**” means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting rights, voting capital or similar rights of ownership and “**control**” for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise, provided that, notwithstanding the foregoing, if shares or other equity interests in a Subsidiary are disposed of pursuant to paragraph (c) of the definition of Permitted Transaction, such Subsidiary (and any of the Subsidiaries of such Subsidiary) shall remain or be a Subsidiary for the purposes of this definition.

“**Swiss Re Bonding Commitment**” means the amount in the applicable Base Currency set opposite Swiss Re International SE, Niederlassung Deutschland’s name under the heading “Bonding Facility Commitment” in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) and the amount of any other Bonding Facility Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“**TARGET Day**” means any day on which TARGET2 is open for the settlement of payments in Euro.

“**TARGET2**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

“**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).

“**TCAT**” means Thomas Cook Airlines Treasury Limited.

“**TCGT**” means Thomas Cook Group Treasury Limited.

“**Termination Date**” means, in relation to each Commitment, five years from the date of this Agreement or, to the extent that the 2021 Notes or 2022 Notes (or any Debt Capital Markets Issue replacing the same) is still outstanding, three months prior to the final maturity date of the 2021 Notes or 2022 Notes (or any replacement notes), if earlier.

“**Total Bonding Facility Commitments**” means the aggregate of the Bonding Facility Commitments, being £200,000,000 and €28,000,000 as at the date of this Agreement.

“**Total Commitments**” means the aggregate of the Total Revolving Facility Commitments and the Total Bonding Facility Commitments.

“**Total Revolving Facility Commitments**” means the aggregate of the Revolving Facility Commitments, being £650,000,000 as at the date of this Agreement.

“**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 Facility Agent and the Company.

“**Transfer Date**” means, in relation to an assignment or 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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**Treasury Transactions**” means any derivative transaction or any cap or forward transactions entered into in connection with protection against or benefit from fluctuation in any rate or price (and includes an Emissions Allowance Repo).

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

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

“**US Dollars**” or “**US\$**” means the lawful currency for the time being of the United States of America.

“**Utilisation**” means a Loan or utilisation of a Facility (as the case may be).

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

“**Utilisation Request**” means, in respect of a Loan or a BG Instrument, a notice substantially in the relevant form set out in Schedule 3 (*Utilisation Request*).

“VAT” means:

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

“Wet Lease” means the hire of an aircraft from a third party operator, either directly or indirectly, where such aircraft, insofar as it relates to any member of the Group, is not on the air operator’s certificate of a member of the Group.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) “**Bank of America Merrill Lynch International Limited**” is a reference to its successor in title Bank of America Merrill Lynch International Designated Activity Company (including, without limitation, its branches) pursuant to and with effect from the merger between Bank of America Merrill Lynch International Limited and Bank of America Merrill Lynch International Designated Activity Company that takes effect in accordance with the Cross-Border Mergers Directive (2005/56/EC) (as codified) as implemented in the United Kingdom and Ireland. Notwithstanding anything to the contrary in any Finance Document, a transfer of rights and obligations from Bank of America Merrill Lynch International Limited to Bank of America Merrill Lynch International Designated Activity Company pursuant to such merger shall be permitted;
 - (ii) the “**Facility Agent**”, the “**Arranger**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Issuer**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (iii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iv) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) “**guarantee**” means (other than in clause 23 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (vii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
 - (x) a time of day is a reference to London time.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) It is understood that IFRS 16 (Leases) will not be effective with respect to the Company until 1 October 2019. Notwithstanding IFRS 16 (Leases) coming into force and the Company or any member of the Group applying such principles, IFRS 16 (Leases) (and any other change to the Accounting Principles applied by the Company for purposes of the Original Financial Statements with equivalent effect) shall not be applied for purposes of making of any determinations or calculations under this Agreement, including, without limitation, determinations as to Financial Indebtedness and EBITDA and the calculations of the Leverage Ratio and Fixed Charge Ratio (and calculations of the definitions comprising such ratios) and provided further, for the avoidance of doubt, that Wet Leases shall not constitute a finance or other lease for the purposes of determinations of Financial Indebtedness or financial covenants made under this Agreement.
 - (d) Part, clause and schedule headings are for ease of reference only.
 - (e) 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.
 - (f) A Borrower providing “**cash cover**” for an Ancillary Facility, Bonding Facility or a BG Instrument means, at the option of that Borrower, either:
 - (i) that Borrower paying an amount in the currency of the Ancillary Facility, Bonding Facility or the BG Instrument to an interest-bearing account in the name of the Borrower and the following conditions being met:
 - (A) the account is with the Ancillary Lender or Issuer (as the case may be) for which that cash cover is to be provided;
 - (B) until no amount is or may be outstanding under that Ancillary Facility, Bonding Facility or BG Instrument, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under the Finance Documents in respect of that Ancillary Facility or Bonding Facility; and
 - (C) unless that Ancillary Lender or Issuer agrees otherwise, that Borrower has executed a security document over that account, in form and substance satisfactory to the Ancillary Lender or Issuer (as the case

may be) with which that account is held, creating a first ranking security interest over that account; or

- (ii) cash collateral being placed in the currency of the Ancillary Facility, Bonding Facility or the BG Instrument (as the case may be) by that Borrower with the relevant Ancillary Lender or Issuer (as the case may be), such amount being an absolute payment and not an amount paid by way of deposit, and accordingly such Borrower shall not be entitled to any repayment of such amounts except to the extent expressly provided for in this Agreement or the relevant Ancillary Facility, Bonding Facility or BG Instrument.
- (g) A Default and an Event of Default is “**continuing**” if it has not been remedied or waived.
- (h) From the date of this Agreement to the earlier of the First Accession Date and that date on which the Company complies with paragraph (e) of clause 27.16 (*Guarantors*), each member of the Group which is required to become an Additional Guarantor pursuant to such paragraph (e) shall be deemed to be a Guarantor for purposes of the definition of “Permitted Disposal”, “Permitted Financial Indebtedness”, “Permitted Guarantee”, “Permitted Transaction”, clause 27.3 (*Merger*) and clause 28 (*Events of Default*).
- (i) **German terms**

In this Agreement:

- (i) A reference to an “**administrator**” includes a reference to an Insolvenzverwalter or a vorläufiger Insolvenzverwalter;
- (ii) a reference to a “**director**” or “**managing director**” of a person includes a reference to a Geschäftsführer or Vorstand (as applicable) of such person where such company or person is incorporated in, or organised under the laws of, Germany;
- (iii) “**insolvency**” includes that person being in a state of Zahlungsunfähigkeit within the meaning of section 17 InsO and/or that person being in a state of Überschuldung within the meaning of section 19 InsO;
- (iv) a person’s “**inability to pay its debts**” or “**inability to pay its debts as they fall due**” includes that person being in a state of Zahlungsunfähigkeit within the meaning of section 17 InsO;
- (v) “**InsO**” means the German Insolvency Code (Insolvenzordnung);
- (vi) a reference to the “**management**” of a person includes a reference to its Geschäftsführung or Vorstand (as applicable) where such person is incorporated in, or organised under the laws of, Germany.
- (vii) A Borrower “**repaying**” or “**prepaying**” Ancillary Outstandings means:
 - (A) that Borrower providing Credit Support in respect of the Ancillary Outstandings;
 - (B) the maximum amount payable under the Ancillary Facility being reduced or cancelled in accordance with its terms; or

(C) the Ancillary Lender being satisfied that it has no further liability under that Ancillary Facility,

and the amount by which Ancillary Outstandings are repaid or prepaid under clauses 1.2(i)(vii)(A) and 1.2(i)(vii)(B) above is the amount of the relevant Credit Support or reduction.

(j) TCGT or TCAT “**repaying**” or “**prepaying**” Outstanding Amounts under a BG Instrument means:

(i) TCGT or TCAT providing Credit Support in respect of that Outstanding Amount;

(ii) the maximum amount payable under that BG Instrument being reduced or cancelled in accordance with its terms; or

(iii) the Issuer being satisfied that it has no further liability under that BG Instrument,

and the amount by which the Outstanding Amount is repaid or prepaid under clauses 1.2(j)(i) and 1.2(j)(ii) above is the amount of the relevant Credit Support or reduction.

(k) An amount borrowed includes any amount utilised under an Ancillary Facility.

(l) For the purposes of determining the Majority Lenders, the Base Currency Amount of the Swiss Re Bonding Commitment will be notionally converted into Sterling at the exchange rate of €1.00 to £0.89.

1.3 **Third party rights**

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

(b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

(c) For the avoidance of doubt, no Counterparty has any rights under the Third Parties Act to enforce or to enjoy the benefit of any term of any Finance Document and no consent of any Counterparty is required to rescind or vary this Agreement at any time.

1.4 **BG Instruments**

(a) An amount borrowed includes any amount utilised by way of BG Instruments.

(b) A Utilisation made or to be made to a Counterparty includes a BG Instrument issued on its behalf.

(c) Amounts outstanding under this Agreement include amounts outstanding under or in respect of any BG Instruments.

PART 2
THE FACILITIES

2. THE FACILITIES

2.1 The Facilities

- (a) Subject to the terms of this Agreement:
- (i) the Lenders make available to the Borrowers a multicurrency revolving credit facility in an aggregate amount equal to the Total Revolving Facility Commitments; and
 - (ii) each Issuer makes available to the Borrowers a bilateral bonding facility in an aggregate amount equal to that Issuer's Bonding Facility Commitment.
- (b) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to any of the Borrowers as all or part of its Commitment under the Revolving Facility.

2.2 Increase

- (a) The Company may by giving prior notice to the Facility Agent by no later than the date falling 30 Business Days after the effective date of a cancellation of:
- (i) the Available Commitments of a Defaulting Lender in accordance with clause 11.7 (*Right of cancellation in relation to a Defaulting Lender*); or
 - (ii) the Commitments of a Lender in accordance with clause 11.1 (*Illegality*),
- request that the Total Commitments be increased (and the Commitments under the relevant Facility shall be so increased) in the amount of up to the amount of the Available Commitments or Commitments so cancelled as follows:
- (A) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company or a member of the Group (each of which shall not be a member of the Group and which is further acceptable to the Facility Agent (acting reasonably)) and each of which confirms 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;
 - (B) 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;
 - (C) 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;

- (D) the Commitments of the other Lenders shall continue in full force and effect; and
 - (E) any increase in the Total Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Total Commitments will only be effective on:
- (i) the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase the performance by the Facility Agent of 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, the completion of which the Facility Agent shall promptly notify to the Company and the Increase Lender.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility 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.
- (d) The Company shall (or shall procure that a member of the Group shall), on the date upon which the increase takes effect, promptly on demand pay the Facility 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 and, unless otherwise agreed by the Facility Agent, shall pay to the Facility Agent (for its own account) a fee of €3,000 in respect of each Increase Confirmation.
- (e) Clause 29.4 (*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 shall be a separate and independent debt.

- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.4 **Obligors' agent**

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

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

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.
- (c) Each Obligor incorporated in Germany releases the Company from any restrictions under §181 of the German Civil Code (*Bürgerliches Gesetzbuch*) to the extent legally possible for such Obligor.
- (d) The Obligors' Agent agrees that it will not make any amendments of a substantial nature to any Finance Document to which an Obligor is party without the prior consent of that Obligor.

3. **PURPOSE**

3.1 **Purpose**

- (a) Each Borrower shall apply all amounts borrowed by it under the Revolving Facility towards:
 - (i) the refinancing of existing Financial Indebtedness (including, but not limited to, the Existing Facilities); and/or

- (ii) the general corporate and working capital purposes of the Group.
- (b) Any Borrower may utilise the Bonding Facility to procure the issue of BG Instruments by an Issuer in favour of Beneficiaries:
 - (i) to replace or refinance (in whole or in part) any Existing BG Instrument or any BG Instrument issued under this Agreement; and/or
 - (ii) for the general corporate and working capital purposes of the Group (including to support the ongoing bonding business requirements of the Group).

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 Facility Agent shall notify the Company and Lenders promptly after receiving all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (the “**CP Confirmation Notice**”). Immediately following delivery by the Facility Agent of the CP Confirmation Notice:
 - (i) the Total Commitments under (and as defined in) the Existing Facilities Agreement shall be automatically cancelled in full; and
 - (ii) each Existing BG Instrument will be deemed to be a BG Instrument issued under this Agreement and shall be governed by the terms of this Agreement.
- (b) 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 Facility Agent has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.

4.2 **Further conditions precedent**

Subject to clause 4.1 (*Initial conditions precedent*), the Lenders or Issuers will only be obliged to comply with clause 5.4 (*Lenders' participation*) or clause 6.5 (*Issue of BG Instruments*) if on the date of the Utilisation Request or Renewal Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan or BG Instrument to be renewed in accordance with clause 6.6 (*Renewal of a BG Instrument*), no Event of Default is continuing or would result from the proposed Utilisation and, in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation; and
- (b) the Repeating Representations, to be made by each Obligor are true in all material respects.

4.3 **Conditions relating to Optional Currencies**

- (a) A currency will constitute an Optional Currency in relation to a Utilisation if:
 - (i) it is readily available in the amount required and, in the case of any Optional Currency that has been approved by the Facility Agent under clause 4.3(a)(ii), freely convertible into the Base Currency in the Relevant Market for that currency on the Quotation Day and the Utilisation Date for that Utilisation;
 - (ii) in relation to Utilisations of the Revolving Facility, it is Euro or US Dollars or has been approved by the Facility Agent (acting on the instructions of all the Lenders participating in the relevant Facility) on or prior to receipt by the Facility Agent of the relevant Utilisation Request for that Utilisation; and
 - (iii) in relation to Utilisations of the Bonding Facility, it is Euro or US Dollars or has been approved by the relevant Issuer by the Specified Time but in any case prior to receipt by the Issuer of the relevant Utilisation Request for that Utilisation.
- (b) If the Facility Agent has received a written request from a Borrower for a currency to be approved under clause 4.3(a)(ii), the Facility Agent will confirm to that Borrower by the Specified Time:
 - (i) whether or not the Lenders have granted their approval; and
 - (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.
- (c) If an Issuer has received a written request from the Company for a currency to be approved under clause 4.3(a)(iii) above, that Issuer will confirm to the Company by the Specified Time whether or not it grants its approval of that currency and if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

4.4 **Maximum number of Utilisations**

- (a) A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation 15 or more Loans would be outstanding.
- (b) Any Loan made by a single Lender under clause 8.2 (*Unavailability of a currency*) shall not be taken into account in this clause 4.4.
- (c) Any Separate Loan shall not be taken into account in this clause 4.4.

PART 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

A Borrower may utilise the Revolving Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Borrower;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with clause 15 (*Interest Periods*).
- (b) Only one Utilisation may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed Utilisation must be:
 - (i) if the currency selected is the Base Currency, a minimum of £5,000,000 or, if less, the Available Facility; or
 - (ii) if the currency selected is Euros, a minimum of €5,000,000 or, if less, the Available Facility;
 - (iii) if the currency selected is US Dollars, a minimum of US\$7,500,000 or, if less, the Available Facility; or
 - (iv) if the currency selected is a currency other than the Base Currency, Euros or US Dollars, the minimum amount specified by the Facility Agent pursuant to clause 4.3(b)(ii) (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, and subject to clause 10.1 (*Repayment of Revolving Utilisations*), 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 Facility Agent shall determine the Base Currency Amount of each Revolving Utilisation which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in cash by the Specified Time.

5.5 **Limit on Utilisations**

A Revolving Utilisation denominated in US Dollars will only be made available if, on the applicable Utilisation Date, the amount of such Revolving Utilisation, when aggregated with the amount of all other Revolving Utilisations outstanding on that date which are denominated in US Dollars, would be no greater than the US Dollar equivalent of £100,000,000.

6. **UTILISATION – BG INSTRUMENTS**

6.1 **General**

- (a) Any reference in this Agreement to:
 - (i) an amount borrowed includes any amount utilised by way of BG Instrument;
 - (ii) a Utilisation made or to be made to a Borrower includes a BG Instrument issued on its or a Counterparty's behalf;
 - (iii) a claim being made under a BG Instrument or a claim being paid by an Issuer includes a reference to any amount due (actually or contingently) to the Issuer being taken into account for the purposes of any mandatory set-off under any applicable law or regulation in the insolvency proceedings of the beneficiary of that BG Instrument or any other person.
- (b) Clause 5 (*Utilisation*) does not apply to a Utilisation by way of BG Instrument.
- (c) In determining the amount of the Available Commitment of an Issuer, any Credit Support provided for outstanding BG Instruments will be ignored.

6.2 **Utilisation by BG Instruments**

- (a) The Bonding Facility may be utilised by way of BG Instruments.
- (b) A Borrower may request a BG Instrument to be issued on behalf of a Counterparty by delivery to an Issuer of a duly completed Utilisation Request not later than the Specified Time or such other time as the Issuer and TCGT and/or TCAT may agree.

6.3 **Completion of a Utilisation Request for BG Instruments**

- (a) A Utilisation Request for a BG Instrument is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Issuer;
 - (ii) it specifies that it is for a BG Instrument and it is to be issued in favour of a Beneficiary;
 - (iii) the proposed Utilisation Date is a Business Day within the Availability Period for the Bonding Facility;

- (iv) it specifies the currency and amount of the BG Instrument and confirms that they comply with clause 6.4 (*Currency and amount for BG Instruments*);
 - (v) the form of BG Instrument is attached to the Utilisation Request (being a form that complies with the definition of BG Instrument);
 - (vi) it specifies the Expiry Date of the BG Instrument unless the Issuer has previously agreed that the BG Instrument will not have an Expiry Date;
 - (vii) the Expiry Date of the BG Instrument (unless otherwise agreed between the Issuer and the applicable Borrower) is on or before the Termination Date applicable to the Bonding Facility Commitment under which the BG Instrument is to be issued;
 - (viii) the delivery instructions for the BG Instrument are specified;
 - (ix) if it is in respect of an Existing BG Instrument, it specifies that it is in respect of an Existing BG Instrument; and
 - (x) the Counterparty on whose behalf the BG Instrument is to be issued and the identity and address of the Beneficiary of the BG Instrument are specified.
- (b) Unless otherwise agreed by the relevant Issuer, only one BG Instrument may be requested in each Utilisation Request provided that any Utilisation Request issued to replace any Existing BG Instrument may request multiple BG Instruments.

6.4 **Currency and amount for BG Instruments**

- (a) The currency specified in a Utilisation Request in relation to the Bonding Facility must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed BG Instrument must be:
 - (i) if the currency selected is the Base Currency, a minimum of £25,000; or
 - (ii) if the currency selected is Euros, a minimum of €25,000;
 - (iii) if the currency selected is US Dollars, a minimum of US\$40,000; or
 - (iv) if the currency selected is a currency other than the Base Currency, Euros or US Dollars, the minimum amount specified by the relevant Issuer pursuant to clause 4.3(c) (*Conditions relating to Optional Currencies*); and

or in each case such other amount as an Issuer may agree, but in any event such that its Base Currency Amount is less than or equal to the Available Commitment of the relevant Issuer in respect of the Bonding Facility.
- (c) Any Optional Currency must have been approved by the relevant Issuer before receipt by the Issuer of the relevant Utilisation Request.

6.5 **Issue of BG Instruments**

- (a) An Issuer need not execute or deliver any BG Instrument to a Beneficiary if to do so:
 - (i) would result in a breach of any law or regulation by the Issuer or any internal policy of the Issuer; or

- (ii) would result in the aggregate Base Currency Amount of the Outstanding Amount of the BG Instruments issued by that Issuer exceeding the Bonding Facility Commitment of that Issuer.
- (b) The Issuer must determine the Base Currency Amount of each BG Instrument which is to be issued in an Optional Currency by the Specified Time.
- (c) No Issuer has a duty to enquire of any person whether or not any of the conditions precedent set out in clause 4.2 (*Further conditions precedent*) and this clause 6.5 (*Issue of BG Instruments*) have been met. Each Issuer may assume that those conditions have been met unless it is expressly notified to the contrary by the Facility Agent. No Issuer will have any liability to any person for issuing a BG Instrument based on that assumption.
- (d) The relevant BG Instrument shall be issued on the relevant Utilisation Date by the relevant Issuer executing and delivering the BG Instrument to the relevant Beneficiary on the proposed Utilisation Date provided all of the conditions to the issue of the BG Instrument have been satisfied.
- (e) Unless the Issuer otherwise agrees, during the Negotiation Period, the Issuer will not be obliged to comply with paragraph (d) above.

6.6 **Renewal of a BG Instrument**

- (a) A Borrower may request any BG Instrument issued on its behalf (and which has an Expiry Date) be renewed by delivery to the Issuer of a Renewal Request by the Specified Time.
- (b) The Issuer must treat any Renewal Request in the same way as a Utilisation Request for a BG Instrument except that the conditions set out in paragraphs (a)(v) and (a)(x) of clause 6.3 (*Completion of a Utilisation Request for BG Instruments*) will not apply and, provided the currency has not changed, the currency of the renewed BG Instrument shall continue to qualify as an Optional Currency (if it is not the Base Currency).
- (c) The terms of each renewed BG Instrument will be the same as those of the relevant BG Instrument immediately before its renewal, except that:
 - (i) its amount may be less than the amount of the BG Instrument immediately before its renewal; and
 - (ii) the term of the renewed BG Instrument (unless otherwise agreed by the applicable Borrower and the relevant Issuer) will start on the date which was the Expiry Date of the BG Instrument immediately before its renewal, and will end on the proposed Expiry Date specified in the Renewal Request.
- (d) If the conditions set out in this Agreement have been met, the relevant Issuer must issue, amend and/or re-issue any BG Instrument in accordance with a Renewal Request.
- (e) The applicable Borrower must (or procure that a member of the Group shall) reimburse the Issuer for all reasonable costs and expenses incurred by it in arranging any such renewal.

6.7 Utilisation Request in respect of Existing BG Instruments

- (a) Subject to paragraph (b) below the Bonding Facility may be utilised in respect of an Existing BG Instrument.
- (b) If:
 - (i) a Utilisation Request in respect of a BG Instrument states that it is in respect of an Existing BG Instrument; and
 - (ii) the Issuer to whom the Utilisation Request was delivered is the issuer of the Existing BG Instrument

then, subject to the requirements and limits set out in this Agreement, that Existing BG Instrument will, from the applicable Utilisation Date, be deemed to be a BG Instrument issued under this Agreement and shall be governed by the terms of this Agreement.

7. BG INSTRUMENTS

7.1 Repayment and prepayment

- (a) In this Agreement, a BG Instrument is “repaid” or “prepaid” to the extent that:
 - (i) the applicable Borrower provides Credit Support for that BG Instrument;
 - (ii) the maximum amount payable under that BG Instrument is reduced or cancelled in accordance with its terms; or
 - (iii) an Issuer is satisfied that it has no further liability under that BG Instrument and all amounts payable by the applicable Borrower in respect of that BG Instrument have been paid in full.

The amount by which a BG Instrument is repaid or prepaid under subparagraphs (i) and (ii) above is the amount of the relevant Credit Support, reduction or cancellation.

- (b) If a BG Instrument or any amount outstanding under a BG Instrument becomes immediately payable, the applicable Borrower must repay or prepay the amount under the BG Instrument immediately.
- (c) If the Expiry Date for a BG Instrument extends beyond the Termination Date applicable to the Bonding Facility Commitment under which the BG Instrument is to be issued or if a BG Instrument has no Expiry Date and is still outstanding on the date falling ten Business Days before the applicable Termination Date, the applicable Borrower shall, on the date falling ten Business Days before that Termination Date, provide Credit Support for the full amount of that BG Instrument to the relevant Issuer.
- (d) The outstanding or principal amount of a BG Instrument at any time is the maximum amount (actual or contingent) that is or may be payable by the relevant Issuer in respect of that BG Instrument at that time.
- (e) If any amount standing to the credit of any account in which Credit Support is held is returned to the applicable Borrower, any interest accrued on such amount shall be paid to the applicable Borrower on that date. The applicable Borrower shall be entitled to withdraw from such account the amount of any interest credited to such

account provided that no Event of Default is continuing at the time of, or will occur as a result of, that withdrawal.

- (f) If the applicable Borrower notifies the relevant Issuer of the initial period (and, at the end of that period, any subsequent period) in respect of which interest should be calculated on any Credit Support (a “**Bonding Interest Period**”), that Issuer shall, in calculating the rate of interest, apply the relevant Bonding Interest Period, so notified, provided that such Bonding Interest Period must be of one, three or six months duration (or of such other duration as may be agreed between the applicable Borrower and the relevant Issuer from time to time).

7.2 **Bonding Fee payable in respect of BG Instruments**

- (a) The applicable Borrower shall (or procure that another member of the Group shall) pay to each Issuer a Bonding Fee in the applicable Base Currency computed at the Agreed Rate on the Base Currency Amount of the Outstanding Amount of each BG Instrument issued on its behalf for the period from the issue of that BG Instrument until its Expiry Date or, if there is no Expiry Date for that BG Instrument, from the Utilisation Date until such time that the BG Instrument is no longer outstanding (provided, in each case, that the Bonding Fee in respect of any part of any BG Instrument for which Credit Support has been provided shall be 0.10 per cent. per annum).
- (b) For the purposes of this clause, “**Agreed Rate**” means the percentage rate per annum equal to the then applicable Margin, as determined in accordance with clause 14.3 (*Margin adjustments*).
- (c) Bonding Fees are payable quarterly in arrear (or any shorter period that ends on the Expiry Date for that BG Instrument). Bonding Fees are also payable to each relevant Issuer on the cancelled amount of that Issuer’s Bonding Facility Commitment at the time the cancellation is effective if that Bonding Facility Commitment is cancelled in full and that Issuer’s BG Instruments are prepaid or repaid in full. Any amount of Bonding Fee paid by or on behalf of a Borrower shall (in the absence of manifest error) be conclusive evidence of the amount of Bonding Fee then owing unless the relevant Issuer, within 120 days of receipt of such fee, notifies the applicable Borrower in writing of the amount of the Bonding Fee then owing as calculated by the relevant Issuer together with an explanation of the calculations used to determine such amount (such calculations, in the absence of manifest error, to be conclusive) and, if any additional Bonding Fee is owing to any Issuer, the applicable Borrower shall (or procure that another member of the Group shall) pay such additional amount within five Business Days from the date of that notice.
- (d) Upon a Utilisation Request in respect of a BG Instrument being delivered, prior to the applicable Utilisation, the applicable Borrower and the applicable Issuer will agree arrangements for any handling or other applicable fees and all reasonable costs and expenses incurred by the applicable Issuer in arranging the issuance of the BG Instrument to be paid to that Issuer in respect of that Utilisation and the issue of any BG Instrument under this Agreement subject to an agreement being reached in respect of such handling or other applicable fees and costs and expenses.

7.3 **Affiliates of Issuers**

- (a) Subject to the terms of this Agreement, with the agreement of the applicable Borrower and an Issuer, an Affiliate of an Issuer may become an Issuer. In such case, the Issuer and its Affiliate shall be treated as a single Issuer whose Bonding Facility

Commitment is the amount set out opposite the relevant Issuer's name in Part 2 or Part 3 of Schedule 1 (*The Original Parties*).

- (b) To the extent that an Issuer has agreed under paragraph (a) above, the applicable Borrower shall specify any relevant Affiliate of an Issuer in any Utilisation Request for a BG Instrument delivered by the applicable Borrower under this Agreement.
- (c) If an Issuer assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in clause 29 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement.
- (d) Where this Agreement or any other Finance Document imposes an obligation on an Issuer and the relevant Issuer is an Affiliate of an Issuer which is not a party to that document, the relevant Issuer shall ensure that the obligation is performed by its Affiliate.
- (e) An Affiliate of an Issuer that becomes an Issuer under the terms of this Agreement has all rights in accordance with the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of any Finance Document as if it were an Issuer under the terms of this Agreement, provided that no consent of such an Affiliate is required at any time to rescind or vary the terms of any Finance Document to which it is not a party.

7.4 Affiliates of Counterparties

- (a) Subject to the terms of this Agreement, an Affiliate of a Counterparty may with the approval of the relevant Issuer become a Counterparty with respect to a BG Instrument.
- (b) The applicable Borrower shall specify any Affiliate of a Counterparty in any Utilisation Request for a BG Instrument delivered by the applicable Borrower under this Agreement.
- (c) Where this Agreement, any other Finance Document or any BG Instrument imposes an obligation on a Counterparty under a BG Instrument and the relevant Counterparty is an Affiliate of a Counterparty which is not a party to that document, the applicable Borrower shall ensure that the obligation is performed by that Counterparty's Affiliate.
- (d) Any reference in this Agreement, any other Finance Document or any BG Instrument to a Counterparty being under no obligations (whether actual or contingent) under this Agreement, such Finance Document or BG Instrument shall be construed to include a reference to any Affiliate of that Counterparty being under no obligations under this Agreement, such Finance Document or BG Instrument.
- (e) Unless the context otherwise requires, any reference in an Existing BG Instrument to the Existing Facilities Agreement shall be construed to refer to this Agreement.

7.5 Claims under a BG Instrument

- (a) The applicable Borrower irrevocably and unconditionally authorises each Issuer to pay any demand or claim made or purported to be made under each BG Instrument and which appears on its face to be in order (a "**claim**") on first written request or demand being made without requiring proof or the agreement of any Obligor, Counterparty or any other person that the amounts so demanded are or were due and

notwithstanding that an Obligor, Counterparty or any other person may dispute the validity of any such demand or payment.

- (b) The applicable Borrower acknowledges that an Issuer:
 - (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
 - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (c) The obligations of the applicable Borrower under this clause will not be affected by:
 - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
 - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

7.6 Indemnity

- (a) The applicable Borrower undertakes to pay on demand by each Issuer an amount equal to each amount which is paid by that Issuer in accordance with clause 7.5(a) (*Claims under a BG Instrument*) above in the currency which the BG Instrument is denominated together with interest at the rate specified in clause 14.4 (*Default interest*) from and including the date such payment is made, until but excluding, the date of demand by the Issuer.
- (b) The applicable Borrower must immediately on demand indemnify each Issuer against any cost, loss, liability, damage, demand or expense properly incurred or sustained by that Issuer (otherwise than by reason of that Issuer's gross negligence or wilful misconduct) in acting as an Issuer under any BG Instrument issued at the request of the applicable Borrower or resulting from any actions, claims or demands of or made by any person by reason of or arising in any way whatsoever in connection with the issue of each BG Instrument.
- (c) The obligations of the applicable Borrower under this clause 7.6 are continuing obligations and will extend to the ultimate balance of sums payable by the applicable Borrower in respect of any BG Instrument, regardless of any intermediate payment or discharge in whole or in part and shall continue notwithstanding the termination or expiry of the Facilities for so long as any amount is or may become owing by an Obligor to an Issuer in connection with a BG Instrument.
- (d) The obligations of the applicable Borrower under this clause 7.6 will not be affected by any act, omission, matter or thing which, but for this paragraph, would reduce, release or prejudice any of its obligations under this clause 7.6 including (without limitation and whether or not known to it or any other person):
 - (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a BG Instrument or any other person;
 - (ii) the release of any Obligor or any other person under the terms of any composition or arrangement;
 - (iii) 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, any beneficiary under a BG Instrument or any other person;

- (iv) 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;
- (v) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any beneficiary under a BG Instrument or any other person;
- (vi) any amendment of any Finance Document, any BG Instrument 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;
- (vii) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document, any BG Instrument or any other document or security; or
- (viii) any insolvency or similar proceedings.

7.7 **Certificate**

A certificate in writing signed by one of the relevant Finance Party's officers and certifying the total amount due from the applicable Borrower under this clause 7 shall, save for manifest error, be conclusive evidence of the matters so certified. In the case of any claim in respect of clause 7.6 (*Indemnity*), such certificate must be accompanied by particulars (in reasonable detail) of the circumstances giving rise to the claim and a calculation of the costs giving rise to the claim (also in reasonable detail). Any disagreement or dispute as to whether any such particulars or circumstances are reasonably detailed shall not impair, lessen, discharge or otherwise qualify the obligations of any Borrower under this clause 7 or the Guarantors under clause 23 (*Guarantee and Indemnity*).

7.8 **Preservation of rights**

- (a) No invalidity or unenforceability of all or any part of clause 7.6 (*Indemnity*) to this clause 7.8 (*Preservation of rights*) shall affect any rights of indemnity or otherwise which the Issuers would or may have (whether against any Borrower, a Counterparty, an Obligor, an Issuer or otherwise) in the absence of or in addition to clause 7.6 (*Indemnity*) to this clause 7.8 (*Preservation of rights*).
- (b) Where any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the applicable Borrower under this clause 7 shall continue as if the discharge or arrangement had not occurred (but only to the extent that such payment, security or other disposition is avoided or restored).
- (c) An Issuer may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

7.9 Amounts claimable under the indemnity

The aggregate amount which any Issuer may claim from the applicable Borrower under the indemnity given pursuant to this clause 7 shall be reduced to the extent of any irrevocable application by the Issuer of money held by it as Credit Support towards the liability of the applicable Borrower under this clause 7.

7.10 Amendment of a BG Instrument

- (a) The applicable Borrower may request an amendment to any BG Instrument by notice to the applicable Issuer.
- (b) The amendment requested in such request shall be made if it has been approved by the applicable Issuer and the relevant Beneficiary.
- (c) If the Issuer of the BG Instrument approves the amendments, the Issuer of the BG Instrument shall execute and deliver any documents necessary to effect such amendment. The applicable Borrower shall (or procure that another member of the Group shall) reimburse the relevant Issuer for all reasonable costs and expenses incurred by it in arranging any such amendment.
- (d) For the avoidance of doubt, this clause 7.10 does not apply to:
 - (i) any request by the applicable Borrower to increase the Outstanding Amount of any BG Instrument and the Parties agree that any such request shall, if made during the Availability Period in respect of the Bonding Facility, constitute an additional Utilisation in an amount equal to the Base Currency Amount of the requested Outstanding Amount under the Bonding Facility. In such circumstances the relevant Issuer is only obliged to agree to such increase if, as a result of the increased Base Currency Amount of the Outstanding Amount, its Bonding Facility Commitment is not exceeded and, on the date that the increase to the relevant Base Currency Amount of the Outstanding Amount is to become effective:
 - (A) no Default is continuing or would result from the proposed Utilisation; and
 - (B) the Repeating Representations to be made by each Obligor are true in all material respects,
 - (ii) any request by the applicable Borrower to extend the Expiry Date of any BG Instrument and the Parties agree that such a request shall constitute a request under clause 6.6 (*Renewal of a BG Instrument*).

7.11 Beneficiary Amendments

- (a) Subject to clause 6.5 (*Issue of BG Instruments*), if a Beneficiary amends its standard form of bond and such amendment would result, if an Issuer were to issue a BG Instrument incorporating such amendment, in an increase to the payment liability of that Issuer from the payment liability it would have had under the BG Instrument if such amendment had not been made (any BG Instrument issued in such amended form being an “**Increased Liability BG Instrument**”), then notwithstanding any other provision of this Agreement, that Issuer shall have no obligation to issue an Increased Liability BG Instrument until the applicable Borrower (or another member of the Group on its behalf), if requested by the Issuer, has provided Credit Support in

respect of the increase in liability, in form and substance satisfactory to the Issuer (acting reasonably).

- (b) If a Beneficiary amends the form of its bond an Issuer may certify that it will not issue a BG Instrument in the proposed amended form because to do so would cause the Issuer to breach a financial regulation applicable to it, or because it has determined (acting in good faith) that it would suffer material prejudice in doing so, provided that prior to making any such certification, an Issuer shall take all reasonable account of whether it has accepted such amendment in respect of bonds issued in support of similar companies operating in the travel or leisure industry and whether it should therefore accept such amendment in relation to a BG Instrument. For the purposes of this paragraph (b), material prejudice to an Issuer shall mean that the Issuer would incur material costs or other material liabilities for administrative or other reasons as a result of the proposed amendment.
- (c) If an Issuer validly makes a certification under paragraph (b) above, that Issuer shall have no obligation to issue a BG Instrument in the amended form (such Issuer being a “**Declining Issuer**”). At any time after such certification, the Company will have the option to:
 - (i) identify an Issuer or any other person to whom the Declining Issuer may transfer its rights and obligations under clause 29.1 (*Assignments and transfers by the Lenders*) (such transferee being willing to accept a transfer of those rights and obligations), in which event and at such time the Declining Issuer shall transfer its rights and obligations in respect of the Bonding Facility under this Agreement to that other Issuer or other person at par and in accordance with the provisions of clause 29.5 (*Procedure for transfer*) and the Company will ensure that any outstanding BG Instruments issued by the Declining Issuer will be cancelled and replaced by BG Instruments issued by that other Issuer, or otherwise repaid or prepaid no later than the date of such transfer; or
 - (ii) repay or prepay each BG Instrument that the Declining Issuer has issued, and the Bonding Facility Commitment of the Declining Issuer will be immediately cancelled on the date of repayment or prepayment.
- (d) The Declining Issuer shall only be obliged to transfer its rights and obligations pursuant to paragraph (c) above once it is satisfied (acting reasonably and promptly) 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.

7.12 **Termination**

The Bonding Facility Commitment of each Issuer will expire and cease to be available on the Termination Date applicable to that Bonding Facility Commitment and all amounts not otherwise due in respect of that Bonding Facility Commitment prior to such date under the Bonding Facility shall be due and payable on the applicable Termination Date.

7.13 **Rights of contribution**

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this clause.

7.14 **Rights and discretions of an Issuer**

- (a) Each Issuer may rely on:

- (i) any representation, notice or document believed by it to be genuine and correct, and appropriately authorised; and
 - (ii) any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) Each Issuer may engage, pay for and rely on professional advisers selected by it (including those representing a person other than that Issuer).
 - (c) Each Issuer may act under the Finance Documents through its personnel and agents.

7.15 **Address for notices**

The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made or document is to be delivered) of an Issuer for any communication or document to be made or delivered under or in connection with the Finance Documents is that notified in writing to the Company and the Facility Agent before the date of this Agreement in the case of an Issuer which is an Original Lender or on the date of its accession in the case of an Issuer that has acceded in accordance with this Agreement, or in each case any substitute address, electronic mail address or department or officer as the relevant Issuer may notify to the Company and the Facility Agent by not less than five Business Days' notice.

7.16 **Additional Counterparty**

- (a) A Borrower shall, by prior written notice to an Issuer in the form of a counterparty notice substantially in the form of Schedule 16 (*Form of Counterparty Notice*), notify that Issuer of its intention to request that one of its Subsidiaries becomes a Counterparty for the purposes of the Bonding Facility.
- (b) A Subsidiary of the Company may only be a Counterparty as long as:
 - (i) it is a member of the Group;
 - (ii) no BG Instrument requested by a Borrower on its behalf or money obtained in relation to the Bonding Facility is used for a purpose that is in any way inconsistent with or in contravention of its duties under any applicable money laundering or similar law, regulation or code;
 - (iii) it is not named on any list maintained by the US Office of Foreign Asset Control, Bureau of Industry and Security of the US Department of Commerce, HM Treasury, the European Union or the United Nations (or any applicable equivalent) or any similar authority as an entity with which nationals or residents of a country for which such authority has legislative or regulative powers, are prohibited from conducting business; and
 - (iv) in respect of the Counterparty, the Issuer has carried out and is satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations.

8. OPTIONAL CURRENCIES

8.1 Selection of currency

A Borrower shall select the currency of a Utilisation in a Utilisation Request.

8.2 Unavailability of a currency

- (a) In respect of Utilisations other than BG Instruments, if before the Specified Time on any Quotation Day:
 - (i) a Lender notifies the Facility Agent that the Optional Currency requested is not readily available to it in the amount required; or
 - (ii) a Lender notifies the Facility Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Facility Agent will give notice to the relevant Borrower to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this clause 8.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, of the Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency.

- (b) In respect of BG Instruments only, if before the Specified Time an Issuer notifies the applicable Borrower that compliance with its obligation to issue a BG Instrument in the proposed Optional Currency would contravene a law or regulation applicable to it that Issuer will not be required to issue a BG Instrument in the requested Optional Currency.

8.3 BG Instrument currency

- (a) If a BG Instrument is denominated in an Optional Currency, each Issuer that has issued a BG Instrument must, on each Quarter Date falling after the date of this Agreement, recalculate the Base Currency Amount of that BG Instrument by notionally converting the Outstanding Amount of that BG Instrument into the Base Currency on the basis of the Agent's Spot Rate of Exchange on the date of calculation.
- (b) The applicable Borrower must, if requested by an Issuer within ten Business Days of any calculation under paragraph (a) above, ensure, by the provision of Credit Support, that sufficient BG Instruments are prepaid to prevent the Base Currency Amount of the BG Instruments exceeding the Bonding Facility Commitment of that Issuer following any adjustment to a Base Currency Amount under paragraph (c) below.
- (c) No provision of Credit Support is required under paragraph (b) above if the amount by which the Base Currency Amount of the BG Instruments issued by an Issuer exceeds that Issuer's Bonding Facility Commitment on each Quarter Date falling after the date of this Agreement ("**Historic Bonding Facility Commitment**"), is less than 10 per cent. of that Issuer's Historic Bonding Facility Commitment, provided always that if at any time after the applicable Borrower has provided such Credit Support, on the date of any calculation under paragraph (a) above, the amount by which the Base Currency Amount of all BG Instruments issued by that Issuer exceeds the Historic Bonding Facility Commitment is less than 10 per cent. of the Historic Bonding Facility Commitment at that time, the Issuer shall at the request and expense of the applicable Borrower, release any Credit Support granted pursuant to this clause.

8.4 Facility Agent's calculations

Each Lender's participation in a Loan will be determined in accordance with clause 5.4(b) (*Lenders' participation*).

8.5 **Optional Currency equivalents**

The equivalent in the Base Currency of a Utilisation or part of a Utilisation in an Optional Currency for the purposes of calculating:

- (a) whether any limit under this Agreement has been exceeded;
- (b) the participation of a Lender in a Utilisation;
- (c) the amount of any repayment or prepayment of a Utilisation; or
- (d) the amount of a Lender's Available Commitment,

is its Base Currency Amount.

9. **ANCILLARY FACILITIES**

9.1 **Type of facility**

An Ancillary Facility may be by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a loan facility; or
- (d) any other facility or accommodation required in connection with the business of the Group and which is agreed by TCGT or TCAT with an Ancillary Lender.

9.2 **Limitations on Utilisations**

The maximum aggregate amount of the Ancillary Commitments of all the Lenders shall not at any time exceed the Ancillary Facility Limit.

9.3 **Availability**

- (a) If TCGT or TCAT and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide an Ancillary Facility on a bilateral basis as all or part of that Lender's unutilised Revolving Facility Commitment.
- (b) Subject to clause 9.11 (*Existing Ancillary Facilities*) below, an Ancillary Facility shall only be made available if, not later than five Business Days prior to the Ancillary Commencement Date for an Ancillary Facility), the Facility Agent has received from TCGT or TCAT:
 - (i) a notice (in the form of Schedule 13 (*Form of Ancillary Notice*)) in writing of the establishment of an Ancillary Facility and specifying:
 - (A) the proposed Borrower(s) (or Affiliates of a Borrower) which may use the Ancillary Facility;
 - (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
 - (C) the proposed type of Ancillary Facility to be provided;
 - (D) the proposed Ancillary Lender;

- (E) if the proposed Ancillary Facility is to be provided in place of all or part of a Lender's participation in any then outstanding Loans;
 - (F) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account its maximum gross amount (that amount being the "**Designated Gross Amount**") and its maximum net amount (that amount being the "**Designated Net Amount**"); and
 - (G) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency); and
- (ii) any other information which the Facility Agent may reasonably request in connection with the Ancillary Facility.

The Facility Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this clause). In such a case, the provisions of this Agreement with regard to amendments and waivers will apply.

- (c) Subject to compliance with clause 9.3(b) above:
- (i) the Lender concerned will become an Ancillary Lender; and
 - (ii) the Ancillary Facility will be available,
- with effect from the date agreed by TCGT or TCAT and the Ancillary Lender.
- (d) If agreed between TCGT or TCAT and the relevant Ancillary Lender, upon the drawdown of a new Ancillary Facility (each a "**Relevant Ancillary Facility**"), that Ancillary Lender's participation (or the participation of any of its Affiliates) in any or all outstanding Loans (each a "**Designated Loan**") may be deemed to be amounts made available under that Relevant Ancillary Facility. TCGT or TCAT shall notify the Facility Agent of any such agreement under this paragraph.
- (e) Following any agreement in accordance with paragraph (d) above, on and from the date of drawdown of the Relevant Ancillary Facility:
- (i) all Designated Loans will be deemed to be reduced pro rata by an amount equal to the amount agreed by TCGT or TCAT and the relevant Ancillary Lender as being the amount instead drawn down under the Relevant Ancillary Facility (the "**Relevant Amount**"); and
 - (ii) the Relevant Amount shall be deemed to be an amount made available under the Relevant Ancillary Facility.
- (f) A Borrower under an Ancillary Facility may request an Instrument to be issued by an Ancillary Lender on behalf of a member of the Group in accordance with the terms as set out in the relevant Ancillary Facility.

9.4 Terms of Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and TCGT or TCAT.
- (b) However, those terms:
 - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
 - (ii) subject to clause 9.3(f) above, may allow only Borrowers or Affiliates of Borrowers to use the Ancillary Facility;
 - (iii) may not allow the Ancillary Outstandings under an Ancillary Facility to exceed the Ancillary Commitment under that Ancillary Facility except that in the case of an Ancillary Facility which permits the issue of Instruments:
 - (A) the Ancillary Outstandings under that Ancillary Facility may exceed the Ancillary Commitment under that Ancillary Facility by an amount that is less than 10 per cent. of such Ancillary Commitment under that Ancillary Facility;
 - (B) if the Ancillary Outstandings under that Ancillary Facility exceed the Ancillary Commitment under that Ancillary Facility by an amount that is equal to or more than 10 per cent. of such Ancillary Commitment under that Ancillary Facility, the Ancillary Document must provide that the Borrower, TCGT or TCAT (as applicable) has (up to) ten Business Days to ensure that sufficient Instruments are repaid or prepaid so that the amount by which the Ancillary Outstandings under that Ancillary Facility exceed the Ancillary Commitment under that Ancillary Facility complies with clause 9.4(b)(iii)(A) above; and
 - (C) such recalculation of the Ancillary Outstandings must occur on each Quarter Date,
but only if the reason for such excess is because of movement in exchange rates.
 - (iv) may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment with respect to the Revolving Facility of that Lender;
 - (v) may not cause the aggregate Ancillary Commitments of all of the lenders to exceed the Ancillary Facility Limit; and
 - (vi) must require that the Ancillary Commitment is reduced to nil, and that all Ancillary Outstandings are repaid or refinanced (or Credit Support provided in respect of all the Ancillary Outstandings) not later than the applicable Termination Date (or such earlier date as the Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) is cancelled in full).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (i) clause 38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility; (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to

the extent required to permit the netting of balances on those accounts; and (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.

- (d) Interest, commission and fees on Ancillary Facilities are dealt with in clause 17.3 (*Interest, commission and fees on Ancillary Facilities*).

9.5 Repayment of Ancillary Facility

- (a) An Ancillary Facility shall cease to be available on the applicable Termination Date or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero.
- (c) No Ancillary Lender may demand repayment or prepayment of any amounts or demand Credit Support for any liabilities made available or incurred by it under its Ancillary Facility (except where (i) the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit or (ii) to the extent required to comply with clause 9.4(b)(iii) above) unless:
 - (i) the Total Revolving Facility Commitments have been cancelled in full, or all outstanding Utilisations under the Revolving Facility have become due and payable in accordance with the terms of this Agreement, or the Facility Agent has declared all outstanding Utilisations under the Revolving Facility immediately due and payable, or the expiry date of the Ancillary Facility occurs; or
 - (ii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility; or
 - (iii) the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a Loan and the Ancillary Lender gives sufficient notice to enable a Loan to be made to refinance those Ancillary Outstandings.
- (d) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in clause 9.5(c)(iii) above can be refinanced by a Utilisation of the Revolving Facility:
 - (i) the Available Commitment under the Revolving Facility of the Ancillary Lender will be increased by the amount of its Ancillary Outstandings to be refinanced; and
 - (ii) the Utilisation may (so long as clause 9.5(c)(i) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether clause 4.4 (*Maximum number of Utilisations*) or clause 5.2(a)(iii) (*Completion of a Utilisation Request for Loans*) applies.
- (e) On the making of a Utilisation of the Revolving Facility to refinance Ancillary Outstandings:

- (i) each Lender will participate in that Utilisation in an amount (as determined by the Facility Agent) which will result as nearly as possible in the aggregate amount of its participation in the Loans then outstanding bearing the same proportion to the aggregate amount of the Loans then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments; and
 - (ii) the relevant Ancillary Facility shall be cancelled.
- (f) In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to the Financial Services Authority or other applicable regulatory authorities as netted for capital adequacy purposes.

9.6 Ancillary Outstandings

Each Borrower and each Ancillary Lender agrees with and for the benefit of each Lender that:

- (a) the Ancillary Outstandings under any Ancillary Facility provided by that Ancillary Lender shall not exceed the Ancillary Commitment applicable to that Ancillary Facility (except as permitted under clause 9.4(b)(iii) above) and where the Ancillary Facility is an overdraft facility comprising more than one account, Ancillary Outstandings under that Ancillary Facility shall not exceed the Designated Net Amount in respect of that Ancillary Facility; and
- (b) where all or part of the Ancillary Facility is an overdraft facility comprising more than one account, the Ancillary Outstandings (calculated on the basis that the words in brackets in subparagraph (a) of the definition of that term were deleted) shall not exceed the Designated Gross Amount applicable to that Ancillary Facility.

9.7 Information

Each Borrower and each Ancillary Lender shall, promptly upon request by the Facility Agent, supply the Facility Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Facility Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Facility Agent and the other Finance Parties.

9.8 Affiliates of Lenders as Ancillary Lenders

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender provided that no Borrower would be obliged to make a payment or an increased payment under clause 18 (*Tax Gross Up and Indemnities*) or a payment under clause 19 (*Increased Costs*) as a result of such Affiliate becoming an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) and/or the amount of any Revolving Facility Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement. For the purposes of calculating the Lender's Available Commitment with respect to the Revolving Facility, the Lender's Available Commitment with respect to the Revolving Facility shall be reduced to the extent of the aggregate of the Ancillary Commitments of its Affiliates.

- (b) TCGT or TCAT shall specify any relevant Affiliate of a Lender in any notice delivered by TCGT or TCAT to the Facility Agent pursuant to clause 9.3(b)(i) (*Availability*).
- (c) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in clause 29 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.
- (e) An Affiliate of a Lender that becomes an Ancillary Lender under the terms of this Agreement has all rights in accordance with the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of any Finance Document as if it were a Lender under the terms of this Agreement, provided that no consent of such an Affiliate is required at any time to rescind or vary the terms of any Finance Document to which it is not a party.

9.9 Affiliates of Borrowers

- (a) Subject to the terms of this Agreement, an Affiliate of a Borrower may with the approval of the relevant Lender become a borrower with respect to an Ancillary Facility.
- (b) TCGT or TCAT shall specify any relevant Affiliate of a Borrower in any notice delivered by TCGT or TCAT to the Agent pursuant to paragraph (b)(i) of clause 9.3 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with clause 30.3 (*Resignation of a Borrower*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.

9.10 Revolving Facility Commitment amounts

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Revolving Facility Commitment is not less than:

- (a) its Ancillary Commitment; plus (if any)
- (b) the Ancillary Commitment of its Affiliate(s).

9.11 Existing Ancillary Facilities

- (a) With effect on and from the Closing Date, the Facility Agent, the Obligors and each Existing Ancillary Lender agree that:
 - (i) the Existing Ancillary Facility provided by that Existing Ancillary Lender is an Ancillary Facility made available under this Agreement;
 - (ii) that Existing Ancillary Lender is an Ancillary Lender under this Agreement;
 - (iii) the Existing Ancillary Commitment of that Existing Ancillary Lender is an Ancillary Commitment under this Agreement; and
 - (iv) the Existing Ancillary Document to which that Existing Ancillary Lender is a party is an Ancillary Document under this Agreement.
- (b) Unless the context otherwise requires, any reference in an Existing Ancillary Document to the Existing Facilities Agreement shall be construed to refer to this Agreement.

PART 4
REPAYMENT, PREPAYMENT AND CANCELLATION

10. REPAYMENT

10.1 Repayment of Revolving Utilisations

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Revolving Utilisation shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Revolving Utilisations under the same Facility are to be made available to a Borrower:
 - (i) on the same day that a maturing Revolving Utilisation under that Facility is due to be repaid by that Borrower;
 - (ii) in the same currency as the maturing Revolving Utilisation (unless it arose as a result of the operation of clause 8.2 (*Unavailability of a currency*)); and
 - (iii) in whole or in part for the purpose of refinancing the maturing Revolving Utilisation;

the aggregate amount of the new Revolving Utilisation shall be treated as if applied in or towards repayment of the maturing Revolving Utilisation so that:

- (A) if the amount of the maturing Revolving Utilisation exceeds the aggregate amount of the new Revolving Utilisation:
 - (1) the relevant Borrower will only be required to pay an amount in cash in the relevant currency equal to that excess; and
 - (2) each Lender's participation (if any) in the new Revolving Utilisation shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation (if any) in the maturing Revolving Utilisation and that Lender will not be required to make its participation in the new Revolving Utilisation available in cash; and
- (B) if the amount of the maturing Revolving Utilisation is equal to or less than the aggregate amount of the new Revolving Utilisations:
 - (1) the relevant Borrower will not be required to make any payment in cash; and
 - (2) each Lender will be required to make its participation in the new Revolving Utilisations available in cash only to the extent that its participation (if any) in the new Revolving Utilisations exceeds that Lender's participation (if any) in the maturing Revolving Utilisation and the remainder of that Lender's participation in the new Revolving Utilisations shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Revolving Utilisation.

- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Utilisations then outstanding will be automatically extended to the applicable Termination Date in relation to that Defaulting Lender's participation in the Revolving Facility and will be treated as separate Revolving Utilisations (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.
- (d) A Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving three Business Days' prior notice to the Facility Agent. The Facility Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Facility Agent (acting reasonably) and will be payable by that Borrower to the Defaulting Lender on the last day of each Interest Period of that Loan.
- (f) The terms of this Agreement relating to Revolving Utilisations generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan. Notwithstanding any other term of this Agreement, if a Separate Loan is outstanding and any cancellation of the Commitments of the Lenders generally under the Revolving Facility occurs, a proportionate part of that Separate Loan will be prepaid on the date such cancellation becomes effective on the same basis as if such Revolving Utilisations were not being treated as a Separate Loan.

10.2 Repayment of BG Instruments

- (a) Subject to clause 7.1(c) (*Repayment and prepayment*), each Borrower must repay (or procure repayment of) each BG Instrument in full on the Expiry Date of that BG Instrument or, if a BG Instrument has no Expiry Date or the Expiry Date of a BG Instrument extends beyond the Termination Date applicable to the Bonding Facility Commitment under which the BG Instrument was issued, on that Termination Date.
- (b) Subject to clause 7.1(c) (*Repayment and prepayment*), each Borrower must ensure that all BG Instruments issued under a Bonding Facility Commitment are repaid or prepaid in full on or before the Termination Date applicable to that Bonding Facility Commitment or such earlier date as that Bonding Facility Commitment is cancelled in full in accordance with this Agreement.

11. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

11.1 Illegality

- (a) If it becomes unlawful in any applicable jurisdiction for a Lender (i) to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation or (ii) to issue or maintain a BG Instrument, then:
 - (i) that Lender, shall promptly notify the Facility Agent upon becoming aware of that event;
 - (ii) upon the Facility Agent notifying the Company, each Commitment of that Lender or the relevant Lenders, as the case may be, will be immediately cancelled;

- (iii) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Facility Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law); and
- (iv) in relation to BG Instruments:
 - (A) the Company shall procure the release of all the BG Instruments issued by the relevant Issuer on or before the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and, if such release is not possible, then the Company shall provide Credit Support in an amount equal to the Outstanding Amount of those BG Instruments; and
 - (B) if the Company is able to release a BG Instrument issued by an Issuer, then the applicable Credit Support will be returned to the Company or otherwise released,
 - (C) provided that, if the circumstances specified in 11.1(a)(ii) above only apply to certain BG Instruments issued by an Issuer, paragraphs (2) and (3) above shall not apply and paragraph (4) shall apply only in respect of those affected BG Instruments.
- (b) At any time prior to the date for release, repayment, or provision of Credit Support under paragraph (a) above, the Company will have the option to identify a Lender or any other person to whom a Lender may transfer its rights and obligations under clause 29.1 (*Assignments and transfers by the Lenders*) that is willing to accept an assignment or transfer of the rights and obligations under this Agreement of a Lender who has made a notification under this clause 11.1 in which event and at such time, the Lender who has made such notification shall assign or transfer its rights and obligations under this Agreement to that other Lender or other person at par and in accordance with the provisions of clause 29.5 (*Procedure for transfer*).
- (c) The Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (b) above once it is satisfied (acting reasonably and promptly) 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.

11.2 Voluntary cancellation

A Borrower may, if it gives the Facility Agent not less than three 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 £5,000,000) of an Available Facility. Any cancellation under this clause 11.2 shall reduce the Commitments of the Lenders rateably under that Facility.

11.3 Automatic Cancellation of Commitments

The Commitment of a Lender under a Facility which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period for that Facility.

11.4 Voluntary prepayment of Revolving Utilisations

A Borrower to which a Revolving Utilisation has been made may, if it gives the Facility Agent not less than three Business Days' (and not later than 11.00 a.m. on the date of delivery or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Utilisation (but if in part, being an amount that reduces the Base Currency Amount of the Revolving Utilisation by a minimum amount of £5,000,000).

11.5 Voluntary prepayment of BG Instruments

- (a) A Borrower may, by giving not less than three Business Days' prior notice to the applicable Issuer, prepay any BG Instrument at any time in whole or in part.
- (b) A prepayment of part of a BG Instrument must be in an amount that reduces the Base Currency Amount of the BG Instrument by a minimum amount of £1,000,000 (or its equivalent in Euro), or if less, an amount equal to the Base Currency Amount of such BG Instrument.

11.6 Right of cancellation and repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under clause 18.2(c) (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from an Obligor under clause 18.3 (*Tax indemnity*) or clause 19.1 (*Increased costs*),

a Borrower may, whilst the circumstance giving rise to such requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Commitments of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations or give notice of its intention to replace that Lender in accordance with paragraph (b) below.

- (b) A Borrower may in the circumstances set out in paragraph (a) above, on five Business Days' notice to the Facility Agent and the relevant Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to another bank or financial institution selected by a Borrower which is willing to purchase all of the Commitments and participations in Loans and Ancillary Outstandings of such Lender, for, in respect of Loans and Ancillary Outstandings, a purchase price in cash payable at the time of transfer equal to the outstanding participations in Loans and Ancillary Outstandings and all accrued interest and/or Break Costs in each case accrued under the Finance Documents and, in respect of BG Instruments, at the option of the transferring Lender, in consideration of an indemnity from the new Lender in a manner acceptable to the Lender or the provision of Credit Support (on the same basis as Credit Support must otherwise be provided in this Agreement) in each case in an amount equal to the Outstanding Amount of the relevant BG Instruments and all accrued Bonding Fees and, in each case all other amounts payable in relation thereto under the Finance Documents.
- (c) On receipt of a notice referred to in clause 11.6(a) above in relation to a Lender, the Commitments of that Lender shall immediately be reduced to zero.

- (d) On the last day of each Interest Period which ends after a Borrower has given notice under clause 11.6(a) above in relation to a Lender (or, if earlier, the date specified by a Borrower in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.
- (e) The Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (b) above once it is satisfied (acting reasonably and promptly) 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.

11.7 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, a Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent five Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Facility Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

11.8 Right of cancellation and repayment in relation to an unacceptable Issuer

- (a) If an Issuer (the "**affected Issuer**") ceases to be acceptable to a Beneficiary to which it has issued a BG Instrument, a Borrower may give the Facility Agent notice of cancellation of the relevant Bonding Facility Commitments of the affected Issuer (the "**affected Bonding Facility Commitments**") and its intention to procure the repayment of the Outstanding Amounts of the BG Instruments issued by that Issuer in favour of the relevant Beneficiary or give notice of its intention to replace that Issuer in accordance with paragraph (b) below.
- (b) A Borrower may, in the circumstances set out in paragraph (a) above, on five Business Days' notice to the Facility Agent and the affected Issuer, replace the affected Issuer by requiring the affected Issuer to (and the affected Issuer shall) transfer pursuant to clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the affected Bonding Facility Commitments to another bank or financial institution selected by a Borrower which is acceptable to the relevant Beneficiary and is willing to purchase the affected Bonding Facility Commitments and, a Borrower will ensure that any outstanding BG Instruments issued by the affected Issuer under the affected Bonding Facility Commitments will be cancelled and replaced by BG Instruments issued by the new Issuer, or otherwise repaid or prepaid, no later than the date of such transfer. The affected Issuer shall only be obliged to transfer its rights and obligations pursuant to this paragraph once it is satisfied (acting reasonably and promptly) that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) On the date of such transfer referred to in paragraph (b) above, the Bonding Facility Commitments of the affected Issuer shall immediately be reduced by an amount equal to the affected Bonding Facility Commitments.

12. MANDATORY PREPAYMENT

12.1 Change of Control

- (a) If, at any time, a person or group of persons acting in concert acquires more than 50 per cent. of the issued and registered voting share capital of the Company or otherwise gains control of the Company (a “**Change of Control**”), then the Company shall, promptly upon becoming aware of such Change of Control, notify the Facility Agent (which shall promptly notify each Lender) following which the Lenders shall, in good faith, negotiate with the Company for a period not exceeding 30 days from the date of the Change of Control or such longer period (not exceeding a further 30 days) as may be agreed between the Majority Lenders and the Company (the “**Negotiation Period**”) with a view to agreeing terms and conditions that are acceptable to the Company and the Lenders for continuing the Facilities.
- (b) For the purpose of paragraph (a) above:
 - (i) “**acting in concert**” means acting together pursuant to an agreement or understanding (whether formal or informal); and
 - (ii) “**control**” means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.
- (c) During the Negotiation Period, the Facilities (including without limitation and for the avoidance of doubt an Ancillary Facility) may not be utilised without the consent of each Lender, other than in respect of:
 - (i) the Revolving Facility, in respect of the drawdown of Rollover Loans only; and
 - (ii) the Bonding Facility made available by an Issuer if the relevant Issuer agrees to a Utilisation of the Bonding Facility.
- (d) If no agreement is reached within the Negotiation Period, the Facility Agent shall, if a Lender so requires no later than 30 days after the end of the Negotiation Period, by notice to the Company:
 - (i) cancel the Commitments (including the Ancillary Commitments) of that Lender; and/or
 - (ii) demand that any Loans and any Ancillary Outstandings that are outstanding and all or part of the fees, commission and interest accrued and all other amounts accrued under the Finance Documents and owed to that Lender, to be immediately due and payable, whereupon the Commitments of that Lender shall be cancelled in full and all such outstanding amounts shall become immediately due and payable; and/or
 - (iii) if that Lender (or its Affiliate) is also an Issuer, demand immediate Credit Support be provided to that Issuer in an amount not exceeding the Outstanding Amount of all BG Instruments issued by that Issuer, less any Credit Support already provided to that Issuer in respect of those BG Instruments whereupon the Bonding Facility Commitment of that Lender shall be cancelled in full.

13. RESTRICTIONS

13.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) shall (subject to the terms of that clause) 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.

13.2 Interest and other amounts

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

13.3 Reborrowing

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

13.4 Prepayment in accordance with Agreement

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

13.5 No reinstatement of Commitments

Subject to clause 2.2 (*Increase*), no amount of the Total Commitments cancelled or reduced under this Agreement may be subsequently reinstated.

13.6 Facility Agent's receipt of notices

If the Facility Agent receives a notice under clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) it shall promptly forward a copy of that notice or election to either the Borrowers or the affected Lender, as appropriate.

**PART 5
COSTS OF UTILISATION**

14. INTEREST

14.1 Calculation of interest

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

- (a) Margin; and
- (b) LIBOR or, in relation to any Loan in Euro, EURIBOR.

14.2 Payment of interest

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

14.3 Margin adjustments

- (a) The initial Margin from the date of this Agreement until and including 27 February 2018, will be 3.0833 per cent. per annum.
- (b) From and including 28 February 2018, the Margin will be the percentage rate per annum determined by reference to the corporate family rating assigned by the Rating Agencies (provided such rating has not been provided on an unsolicited basis) to the Group, as set out in the table below:

Rating (Moody's/S&P/Fitch)	Margin (% per annum)
Ba2 / BB / BB or better	2.50
Ba3 / BB- / BB-	2.75
B1 / B+ / B+	3.00
B2 / B / B	3.25
B3 / B- / B- or worse (or unrated)	3.50

- (c) The Company must promptly notify the Facility Agent of any notification to it by a Rating Agency of a change in the corporate family rating of the Group.
- (d) Any change in the Margin shall, subject to paragraphs (e) and (f) below, apply to each Loan from the Business Day after the date of notification by the Company of the change in rating.
- (e) If the Rating Agencies assign different corporate family credit ratings to the Group the Margin will be the average of the applicable rates set out in the table in paragraph (b) above.
- (f) For so long as:
 - (i) no corporate family rating has been assigned to the Group by a Rating Agency; or
 - (ii) an Event of Default is continuing,

the Margin will be the highest applicable rate set out in the table in paragraph (b) above, being 3.50 per cent, per annum.

14.4 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to clause 14.4(b) below, is determined by the Facility Agent to be one per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this clause 14.4 shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

14.5 Notification of rates of interest

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

15. INTEREST PERIODS

15.1 Selection of Interest Periods

- (a) A Borrower (or the Company) may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this clause 15, a Borrower (or the Company) may select an Interest Period of one, three or six Months, or of any other period agreed between the Borrower (or the Company), the Facility Agent and all the Lenders in relation to the relevant Loan).
- (c) An Interest Period for a Loan shall not extend beyond the applicable Termination Date.
- (d) A Revolving Utilisation has one Interest Period only.

15.2 Non-business days

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

16. CHANGES TO THE CALCULATION OF INTEREST

16.1 Unavailability of Screen Rate

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

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

- (c) *Cost of funds*: If paragraph (b) above applies but no Base Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR or EURIBOR for that Loan and clause 16.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

16.2 Calculation of Base Reference Bank Rate

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

16.3 Market disruption

- (a) If, before close of business in London on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, EURIBOR then clause 16.4 (*Cost of funds*) will apply to that Loan for the relevant Interest Period.

16.4 Cost of funds

- (a) If this clause 16.4 (*Cost of funds*) applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event by close of business on the date falling one Business Day after the Quotation Day (or, if earlier, on the date falling two Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this clause 16.4 (*Cost of funds*) applies pursuant to clause 16.3 (*Market disruption*), and:
- (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than EURIBOR or, in relation to any Loan not in euro, LIBOR; or
 - (ii) a Lender has not notified the Facility Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above,
- the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR, or in relation to a Loan not in euro, LIBOR.
- (c) If this clause 16.4 (*Cost of funds*) applies and the Facility Agent or the Company so requires, the Facility 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.
- (d) Any alternative basis agreed pursuant to paragraph (c) above shall, with the prior consent of the Majority Lenders and the Company, be binding on all Parties.

16.5 Break Costs

- (a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

17. FEES

17.1 Commitment fee

- (a) The Company shall (or procure that another member of the Group shall) pay to the Facility Agent (for the account of each Lender) a fee in the Base Currency computed at the percentage rate per annum equal to 40 per cent. of the applicable Margin from time to time (the “**Agreed Commitment Fee Rate**”) on that Lender’s Available Commitment under the Revolving Facility for the Availability Period applicable to the Revolving Facility.
- (b) The Company shall (or procure that another member of the Group shall) pay to each Issuer a fee in the applicable Base Currency computed at the Agreed Commitment

Fee Rate on that Issuer's Available Commitment under the Bonding Facility for the Availability Period applicable to the relevant Bonding Facility Commitments.

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

17.2 Agency fee

The Company shall (or procure that another member of the Group shall) pay to the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

17.3 Interest, commission and fees on Ancillary Facilities

- (a) The commitment fee payable under an Ancillary Facility shall be computed at the Agreed Commitment Fee Rate on each Ancillary Lender's available Ancillary Commitments under the relevant Ancillary Facility.
- (b) The margin of any cash drawings under an Ancillary Facility and the bonding issuance fee in respect of any bonding under an Ancillary Facility (where applicable) shall be the percentage rate per annum equal to the then applicable Margin, as determined in accordance with clause 14.3 (*Margin adjustments*).
- (c) Subject to paragraphs (a) and (b) above and clauses 17.5 (*Revolving Facility utilisation fee*) and 17.6 (*Calculation of utilisation fee*), the rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.

17.4 Arrangement fee

The Company shall (or procure that a member of the Group shall) pay to the Facility Agent (for the account of the Original Lenders) an arrangement and participation fee in the amount and at the times agreed in a Fee Letter.

17.5 Revolving Facility utilisation fee

- (a) The Company shall (or shall procure that a member of the Group shall) pay a utilisation fee in the Base Currency on the Base Currency Amount of all Loans outstanding from day to day to the Facility Agent (for the account of the Lenders) computed at the rates set out below:
 - (i) 0.15 per cent. per annum in respect of each day that the Base Currency Amount of all Loans exceeds 33 $\frac{1}{3}$ per cent. of the Total Revolving Facility Commitments but is less than or equal to 66 $\frac{2}{3}$ per cent. of the Total Revolving Facility Commitments; or
 - (ii) 0.30 per cent. per annum in respect of each day that the Base Currency Amount of all Loans exceeds 66 $\frac{2}{3}$ per cent. of the Total Revolving Facility Commitments.

- (b) Utilisation fee is payable in arrears on the same dates on which commitment fee is payable in accordance with clause 17.1(c) (*Commitment fee*) and on the applicable Termination Date.

17.6 Calculation of utilisation fee

- (a) For the purposes of determining the utilisation fee in clause 17.5 (*Revolving Facility utilisation fee*):
 - (i) the Available Commitment of each Lender under the Revolving Facility will be increased by the amount of its (and its Affiliates) unutilised Ancillary Commitments; and
 - (ii) the Loans of each Ancillary Lender will be increased by the amount of its Ancillary Outstandings (and for the avoidance of doubt, the Base Currency Amount of the Loans means the Base Currency Amount of the Loans as increased by the Ancillary Outstandings of each Ancillary Lender).
- (b) Each Ancillary Lender must by no later than 11.00 a.m. one Business Day prior to the date (the relevant payment date) on which any payment of utilisation fee is payable, notify the Company of its Ancillary Commitments and Ancillary Outstandings on each day from and including the last date on which the relevant fee was payable to but excluding the relevant payment date. The Company will provide a template to each Ancillary Lender to be used for the notification.
- (c) Based on the information provided by the Ancillary Lenders to the Company pursuant to paragraph (b) above, the Company will deliver to the Facility Agent by no later than 11.00 a.m. on the relevant payment date, a schedule setting out the Ancillary Commitments and Ancillary Outstandings of each Ancillary Lender on each day from and including the last date on which the relevant fee was payable to but excluding the relevant payment date. The utilisation fee payable by the Company in respect of a relevant payment date will be due no later than four Business Days after the relevant payment date.
- (d) If any Lender with an Ancillary Commitment does not supply the required information by 11.00 a.m. on the day falling one Business Day prior to a relevant payment date or if the Company does not supply the schedule setting out the Ancillary Commitments and Ancillary Outstandings of each Ancillary Lender by 11.00 a.m. on the relevant payment date, the Facility Agent may demand further payment from the Company of utilisation fees when the required information is received and such further payment will be due from the Company no later than two Business Days following demand by the Facility Agent.

PART 6
ADDITIONAL PAYMENT OBLIGATIONS

18. TAX GROSS UP AND INDEMNITIES

18.1 Definitions

“**Advance**” means (1) a Loan; and/or (2) a payment made by an Issuer under the Bonding Facility; and/or (3) an amount advanced by way of loan by an Ancillary Lender under an Ancillary Facility; and/or (4) a payment made by an Ancillary Lender under an Ancillary Facility (or other event occurring that has the effect of giving rise to indebtedness between a Borrower and an Ancillary Lender under an Ancillary Facility) (and “**Advances**” shall be construed appropriately and references to an Advance being made to, in respect of or on behalf of a Borrower shall be construed as referring to an Advance occurring and having the effect under the Finance Documents of giving rise to indebtedness between that Borrower and a Lender).

“**Borrower DTTP Filing**” means a HM Revenue & Customs’ Form DTTP2 duly completed and filed by the relevant 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 2 of Schedule 1 (*The Original Parties*) and:
 - (i) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
 - (ii) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (b) where it relates to a UK Treaty Lender that is a New Lender, an Increase Lender or an Ancillary Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document and:
 - (i) where the Borrower is a Borrower as at the relevant Transfer Date (or date on which the Ancillary Document or the relevant Increase Confirmation is entered into) is filed with HM Revenue & Customs within 30 days of that Transfer Date (or date on which the Ancillary Document or the relevant Increase Confirmation is entered into); or
 - (ii) where the Borrower is not a Borrower as at the relevant Transfer Date (or date on which the Ancillary Document or the relevant Increase Confirmation is entered into), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

“**German Qualifying Lender**” means, in relation to an Advance made to or in respect of a Borrower incorporated in Germany, a Lender which is beneficially entitled to interest payable to that Lender in respect of that Advance and is:

- (a) carrying on a business through a Facility Office in Germany with which that Lender’s participation in that Advance is effectively connected; or
- (b) a German Treaty Lender in respect of that Advance.

“German Treaty Lender” means, in relation to an Advance made to or in respect of a Borrower incorporated in Germany, a Lender which:

- (a) is resident for the purposes of the appropriate double taxation agreement in a country with which Germany has a double taxation agreement which makes provision for full exemption from tax imposed by Germany on interest;
- (b) does not carry on a business in Germany in respect of that Advance through a permanent establishment with which the payment is effectively connected;
- (c) meets all other conditions in the relevant double taxation agreement for full exemption from taxation in Germany in respect of that Advance on interest, except that for this purpose it shall be assumed that the following are satisfied:
 - (i) any condition which relates (expressly or by implication) to there being a special relationship between such Borrower and such Lender or between both of them and another person, or to the amounts or terms of the Loan, Ancillary Facility or Bonding Facility, as the case may be, or to any other matter which is within the control of such Borrower and outside the control of such Lender; and
 - (ii) any necessary procedural formalities.

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

“Qualifying Lender” means, in respect of an Advance, a German Qualifying Lender (if the Borrower in respect of such Advance is incorporated in Germany) or a UK Qualifying Lender (if the Borrower in respect of such Advance is incorporated in the United Kingdom), or a Swedish Qualifying Lender (if the Borrower in respect of such Advance is incorporated in Sweden).

“Swedish Qualifying Lender” means, in relation to an Advance made to or in respect of a Borrower incorporated in Sweden, a Lender which is:

- (a) entitled under domestic Swedish law to receive interest payable to that Lender in respect of that Advance free of any Tax Deduction; or
- (b) a Swedish Treaty Lender in respect of that Advance.

“Swedish Treaty Lender” means, in relation to an Advance made to or in respect of a Borrower incorporated in Sweden, a Lender which:

- (a) is resident for the purposes of the appropriate double taxation agreement in a country with which Sweden has a double taxation agreement which makes provision for full exemption from taxation in Sweden on interest;
- (b) does not carry on a business in Sweden in respect of that Advance through a permanent establishment with which the payment is effectively connected; and
- (c) meets all other conditions in the relevant double taxation agreement for full exemption from taxation in Sweden in respect of that Advance on interest, subject to completion of any necessary procedural formalities.

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

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

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

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

“Tax Payment” means either the increase in a payment by an Obligor to a Finance Party under clause 18.2 (*Tax gross-up*) or a payment under clause 18.3 (*Tax indemnity*).

“UK Non-Bank Lender” means:

- (a) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part 3 of Schedule 1 (*The Original Parties*); and
- (b) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document which it executes on becoming a Party.

“UK Qualifying Lender” means, in relation to an Advance made to or in respect of a Borrower incorporated in the United Kingdom:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of that Advance 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; 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 880 of the ITA) at the time that that Advance was made,

and which is within the charge to United Kingdom corporation tax in respect of 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

- (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; 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;
- (iii) a UK Treaty Lender in respect of that Advance; 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 Treaty Lender” means, in relation to an Advance made to or in respect of a Borrower incorporated in the United Kingdom, a Lender which:

- (a) is resident for the purposes of the appropriate double taxation agreement in a jurisdiction with which the United Kingdom has a double taxation agreement which makes provision for full exemption from tax imposed by the United Kingdom on interest;
- (b) does not carry on a business in the United Kingdom in respect of that Advance through a permanent establishment with which the payment of the Advance is effectively connected; and
- (c) meets all other conditions in the relevant double taxation agreement for full exemption from tax on interest in the United Kingdom, except that for this purpose it shall be assumed that the following are satisfied:
 - (iii) any condition which relates (expressly or by implication) to there being a special relationship between that Borrower and that Lender or between both of them and another person or to the amounts or terms of any Loan or the Finance Documents, or to any other matter which is within the control of such Borrower and outside the control of that Lender; and
 - (iv) any necessary procedural formalities.

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

For the avoidance of doubt, references in this clause to a Lender shall include an Issuer, Affiliates of an Issuer and Affiliates of a Lender; and references to a Borrower shall, in respect of payments due from TCGT and/or TCAT (as applicable) to an Issuer in respect of a BG Instrument, include TCGT and/or TCAT (as applicable).

18.2 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) TCGT or TCAT 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 Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify TCGT or TCAT 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) An Obligor is not required to make an increased payment to a Lender in relation to an Advance made to or in respect of a Borrower incorporated in the United Kingdom 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) that payment could have been made to the relevant Lender without a Tax Deduction if it was a UK Qualifying Lender in relation to that Advance but on that date that Lender is not or has ceased to be a UK Qualifying Lender in relation to that Advance 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 double taxation treaty, or any published practice or concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a UK Qualifying Lender in relation to that Advance solely under subparagraph (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 (as that provision has effect on the date on which the relevant Lender became a Party) which relates to that payment and that Lender has received from that Obligor or the Company a certified copy of that Direction; and
 - (B) that payment could have been made to the Lender without any Tax Deduction in the absence of that Direction; or
 - (iii) the relevant Lender is a UK Qualifying Lender in relation to that Advance solely under paragraph (a)(ii) of the definition of UK Qualifying Lender and:

- (A) it has not, given a Tax Confirmation to the Company and the relevant Obligor; and
 - (B) that payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company and the relevant Obligor, on the basis that the Tax Confirmation would have enabled the relevant Obligor to have formed a reasonable belief that the payment was an “excepted payment” for the purposes of section 930 of the ITA.
- (e) An Obligor is not required to make an increased payment to a Lender in relation to an Advance made to or in respect of a Borrower incorporated in Germany under paragraph (c) above by reason of a Tax Deduction in respect of Tax imposed by Germany if on the date on which the payment falls due the payment could have been made to the relevant Lender without a Tax Deduction if it was a German Qualifying Lender in relation to that Advance but on that date that Lender is not or has ceased to be a German Qualifying Lender in relation to that Advance 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 double taxation treaty, or any published practice or concession of any relevant taxing authority.
 - (f) An Obligor is not required to make an increased payment to a Lender in relation to an Advance made to or in respect of a Borrower incorporated in Germany under paragraph (c) above by reason of a Tax Deduction in respect of Tax imposed by Germany if the relevant Lender is a German Treaty Lender and the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under clause 18.2(m) below.
 - (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 Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (i)
 - (i) Subject to paragraph (ii) below, a UK Treaty Lender in relation to an Advance made to or in respect of a Borrower incorporated in the United Kingdom and each Obligor which makes a payment to which that UK Treaty Lender is entitled in relation to that Advance shall co-operate in completing, in a timely manner, 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 becomes a Party on the day on which this Agreement is entered into which holds a passport under the HM Revenue & Customs DT Treaty Passport scheme, and which wishes the scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Schedule 1 (*The Original Parties*); and

- (B) a New Lender, an Increase Lender or an Ancillary Lender that is a UK Treaty Lender that holds a passport under the HM Revenue & Customs DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i)(i) above.

- (j) If a UK Treaty Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (i)(ii) above and:

- (A) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

- (B) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

- (1) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

- (2) HM 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,

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 that Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (k) If a UK Treaty Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with in clause 18.2(i)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HM Revenue & Customs DT Treaty Passport scheme in respect of that UK Treaty Lender's Commitments or its participation in any Utilisation unless that UK Treaty Lender otherwise agrees.

- (l) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Facility Agent for delivery to the relevant Lender.

- (m) A German Treaty Lender in relation to an Advance made to or in respect of a Borrower incorporated in Germany and each Obligor which makes a payment to which that Lender is entitled in relation to that Advance shall co-operate in completing, in a timely manner, any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

- (n) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Company and the relevant Obligors by entering into this Agreement. A UK Non-Bank Lender which becomes a Party after the day on which this Agreement is entered into shall give a Tax Confirmation in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document which it executes on becoming a Party.

- (o) A UK Non-Bank Lender shall promptly notify the Company and the Facility Agent if there is any change in the position from that set out in the Tax Confirmation.
- (p) An Obligor is not required to make an increased payment to a Lender in relation to an Advance made to or in respect of a Borrower incorporated in the United Kingdom under paragraph (c) above for a Tax Deduction in respect of tax imposed by the United Kingdom if the relevant Lender is a UK Treaty Lender and the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under clause 18.2(i) above.

18.3 Tax indemnity

- (a) The Company shall (or procure that a member of the Group shall) (within three Business Days of demand by the Facility 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; or
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

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

- (A) is compensated for by an increased payment under clause 18.2 (*Tax gross-up*);
- (B) would have been compensated for by an increased payment under clause 18.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraphs (d), (e), (f) or (p) of clause 18.2 (*Tax gross-up*) applied; or
- (C) is compensated for by clause 18.5 (*Stamp taxes*) or clause 18.6 (*Value added tax*) (or would have been so compensated for under the relevant clause but was not so compensated solely because any of the exceptions set out therein applied);
- (D) (for the avoidance of doubt) is suffered or incurred with respect to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy); or
- (E) relates to a FATCA Deduction required to be made by a Party.

- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 18.3 (*Tax indemnity*), notify the Facility Agent.

18.4 Tax Credit

- (a) If an Obligor makes a Tax Payment and the relevant Finance Party determines that:
 - (i) a Tax Credit is attributable, to an increased payment of which that Tax Payment forms part, to that Tax Payment, to a Tax Deduction in consequence of which that Tax Payment was required, or to the circumstances giving rise to that Tax Payment; and
 - (ii) 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.

- (b) If an Obligor makes a Tax Deduction in respect of a payment of interest to a UK Treaty Lender, and clause 18.2 (*Tax gross-up*) applies to increase the amount of the payment due to that UK Treaty Lender from that Obligor, that Obligor must provide that UK Treaty Lender with a tax deduction certificate reasonably satisfactory to that UK Treaty Lender evidencing that Tax Deduction within thirty days of making that Tax Deduction. That UK Treaty Lender must, within a reasonable period following receipt of that certificate, make reasonable endeavours to apply to HM Revenue & Customs for a refund of the amount of that Tax Deduction. On receipt by that UK Treaty Lender of such a refund (if any) from HM Revenue & Customs, that refund will be considered a Tax Credit and this clause 18.4 (*Tax Credit*) will apply to the extent that the refund is attributable to the increase in the amount paid by the relevant Obligor under clause 18.2 (*Tax gross-up*). The Company shall (or procure that a member of the Group shall) (within five Business Days of demand by the Facility Agent) pay to a UK Treaty Lender which claims a refund from HM Revenue & Customs pursuant to this clause 18.4(b) (*Tax Credit*) an amount equal to any loss, liability or cost which that UK Treaty Lender determines will be or has been (directly or indirectly) suffered by that UK Treaty Lender in connection with a claim for such a refund.

18.5 Stamp taxes

The Company shall (or procure that a member of the Group 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 other than any stamp, registration or similar tax which is or becomes payable in connection with any assignments or transfers (including, without limitation, by way of an assignment of rights and a release and assumption of obligations) by Lenders, unless such assignment or transfer is pursuant to clause 11.6 (*Right of cancellation and repayment in relation to a single Lender*) clause 21.1 (*Mitigation by the Lenders*) or clause 41.3 (*Replacement of Lender*) in which case the indemnity in this clause 18.5 shall apply in respect of any such Taxes which would otherwise be borne by the Finance Party making such assignment or transfer pursuant to these provisions.

18.6 Value added tax

- (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 shall be deemed to be exclusive of any VAT which is chargeable on such 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 shall pay to the Finance Party (in addition to and at the same time as paying the consideration for the supply) an amount equal to the amount of the VAT incurred by such Finance Party (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).
- (b) If VAT is chargeable on any supply made by a Finance Party (the “**Supplier**”) to another 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 such 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 costs or expenses, that Party shall also at the same time reimburse or indemnify (as applicable) the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.
- (d) In relation to any supply made by a Finance Party to any Party under a Finance Document and if reasonably requested by the Finance Party, that Party must give the Finance Party details of its VAT registration number and any other information as is reasonably requested in connection with the Finance Party’s reporting requirements for the supply and at such time that the Finance Party may reasonably request.
- (e) Any reference in this clause 18.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994 or in the relevant legislation of any other

jurisdiction having implemented Council Directive 2006/112/EC on the common system of value added tax).

18.7 Lender status confirmation

- (a) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document (as applicable) which it executes on becoming a Party, and for the benefit of the Facility Agent and without liability to any Obligor, which of the below categories it falls in:
- (i) in relation to all Advances made to or in respect of a Borrower incorporated in the United Kingdom to the extent that it is a Lender in respect of such Advances, it is:
 - (A) a UK Qualifying Lender other than a UK Treaty Lender;
 - (B) a UK Treaty Lender; or
 - (C) not a UK Qualifying Lender.
 - (ii) in relation to all Advances made to or in respect of a Borrower incorporated in Germany to the extent that it is a Lender in respect of such Advances, it is:
 - (A) a German Qualifying Lender other than a German Treaty Lender;
 - (B) a German Treaty Lender; or
 - (C) not a German Qualifying Lender.
- (b) in relation to all Advances made to or in respect of a Borrower incorporated in Sweden to the extent that it is a Lender in respect of such Advances, it is:
- (i) a Sweden Qualifying Lender other than a Sweden Treaty Lender);
 - (ii) a Sweden Treaty Lender; or
 - (iii) not a Sweden Qualifying Lender.
- (c) If a New Lender, Increase Lender or Ancillary Lender (as applicable) fails to indicate its status in accordance with this clause 18.7 then such New Lender, Increase Lender or Ancillary Lender (as applicable) shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a UK Qualifying Lender or a German Qualifying Lender or a Sweden Qualifying Lender (as applicable) until such time as it notifies the Facility Agent which category applies (and the Facility Agent, upon receipt of such notification, shall inform the Company, TCGT and TCAT). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement, Increase Confirmation or Ancillary Document (as applicable) shall not be invalidated by any failure of a Lender to comply with this clause 18.7.

18.8 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:

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

18.9 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, TCGT and/or TCAT (as applicable), the Facility Agent and the other Finance Parties.

19. INCREASED COSTS

19.1 Increased costs

- (a) Subject to clause 19.3 (*Exceptions*), the Company shall (or procure that a member of the Group shall), within five Business Days of a demand by the Facility 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, (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 or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

(b) In this Agreement:

“Increased Costs” means:

- (i) a reduction in the rate of return from a 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 an Ancillary Commitment or funding or performing its obligations under any Finance Document.

“Bank Levy” means:

- (i) the UK bank levy as set out in the Finance Act 2011;
- (ii) the bank levy imposed by the German Government under the Bank Restructuring Fund Regulation (*Restrukturierungsfonds-Verordnung*) which has been issued pursuant to the provisions of the Bank Restructuring Fund Act (*Restrukturierungsfondsgesetz*); and
- (iii) any other substantially similar bank levy or tax imposed by any other jurisdiction in which the relevant Finance Party or Affiliate (as the case may be) is incorporated, resident for Tax purposes or carries on business through a permanent establishment by reference to the relevant Finance Party’s balance sheet or capital base (or any part of it) or its liabilities or minimum regulatory capital or any combination thereof (and not by reference to income, profits or gains),

in each case, in the form existing (or formally announced though not yet enacted into law) on the date that the relevant Finance Party or Affiliate (as the case may be) becomes a Party to 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 and “*Revisions to the Basel II market risk framework*” published by the Basel Committee on Banking Supervision in February 2011 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”.

19.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 19.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Company, TCGT and TCAT.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

19.3 Exceptions

Clause 19.1 (*Increased costs*) does not apply to the extent any Increased Cost:

- (a) is compensated for under another clause or would have been but for an exception to that clause; or
- (b) is incurred in respect of any day more than six months before the first date on which it was reasonably practicable to notify the Company, TCGT and TCAT (except in the case of any retrospective change); or
- (c) is attributable to any Tax Deduction required by law to be made by an Obligor; or
- (d) is, or is attributable to, any Tax on the overall net income, profits or gains of the relevant Finance Party or any of its Affiliates (or the overall net income, profits or gains of a division or branch of the relevant Finance Party or any of its Affiliates); or
- (e) results from the gross negligence or wilful default of the relevant Finance Party or its Affiliates including but not limited to breaching any law or regulation imposed on it by any fiscal, monetary or other regulatory or judicial authority; or
- (f) is attributable to a FATCA Deduction required to be made by a Party; or
- (g) is attributable to the introduction of the Euro into any jurisdiction where the Euro is not currently the official currency of that jurisdiction other than an increased cost which the relevant Finance Party reasonably determines is being incurred generally and on a consistent basis by banks (or a class of banks of which the relevant Finance Party forms part) transacting Euro business in the relevant bank market; or
- (h) attributable to the implementation or application of or compliance with the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (*Basel II*) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) but, subject to paragraph (i) below, excluding any Increased Cost attributable to the implementation or application of or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV; or
- (i) attributable to the implementation or application of or compliance with Basel III or CRD IV, in each case, if the relevant Finance Party was or should reasonably have

been aware of such Increased Cost on the date it became a party under this Agreement provided that, if the Increased Cost was not fully quantifiable on or prior to the date on which it became a Finance Party, clause 19.1 (*Increased costs*) shall apply to that amount of the Increased Cost which was not, or could not reasonably be expected to have been, quantifiable; or

- (j) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy).

In this clause 19.3 reference to a “**Tax Deduction**” has the same meaning given to the term in clause 18.1 (*Definitions*).

20. OTHER INDEMNITIES

20.1 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 seven Business Days of demand, indemnify the Arranger and each other 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.

20.2 Other indemnities

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

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of clause 33 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or TCGT and/or TCAT.

20.3 Indemnity to the Facility Agent

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

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

21. MITIGATION BY THE LENDERS

21.1 Mitigation

- (a) Each Finance Party shall, in consultation with the TCGT and TCAT, take all reasonable steps to mitigate any circumstances which arise and which result or would result in:

- (i) any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 11.1 (*Illegality*), clause 18 (*Tax Gross Up and Indemnities*) or clause 19 (*Increased Costs*);
- (ii) that Finance Party incurring any cost of complying with the minimum reserve requirements of the European Central Bank, the Financial Services Authority or the Bank of England; or
- (iii) any stamp duty, registration or other similar taxes becoming payable in connection with any assignment or transfer pursuant to clause 11.6(b) (*Illegality, Voluntary Prepayment and Cancellation*) or clause 41.3 (*Replacement of Lender*),

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

- (b) Clause 21.1(a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

21.2 Limitation of liability

- (a) The Company shall (or procure that a member of the Group 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 21.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

22. COSTS AND EXPENSES

22.1 Transaction expenses

The Company shall (or procure that a member of the Group shall), within seven Business Days of demand, pay the Facility Agent and the Arrangers the amount of all costs and expenses (including legal fees which, to the extent that such fees are connected to paragraph 22.1(a) below, shall be limited to a maximum aggregate amount agreed with the Company

prior to the date of this Agreement) 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,
but excluding, without limitation, travel expenses.

22.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to clause 35.10 (*Change of currency*), the Company shall (or procure that a member of the Group shall), within seven Business Days of demand, reimburse the Facility Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent in responding to, evaluating, negotiating or complying with that request or requirement.

22.3 Enforcement costs

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

**PART 7
GUARANTEE**

23. GUARANTEE AND INDEMNITY

23.1 Guarantee and indemnity

- (a) Each Guarantor irrevocably and unconditionally jointly and severally:
- (i) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
 - (ii) undertakes with each Finance Party that whenever another Obligor 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
 - (iii) 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 an Obligor 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 23 if the amount claimed had been recoverable on the basis of a guarantee.
- (b) The guarantees under this clause 23 (*Guarantee and Indemnity*) will become effective and binding on the Guarantors on and with effect from the Closing Date (but prior to the Closing Date shall have no effect).

23.2 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.

23.3 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, administration or otherwise, without limitation, then the liability of each Guarantor under this clause will continue or be reinstated as if the discharge, release or arrangement had not occurred.

23.4 Waiver of defences

The obligations of each Guarantor under this clause 23 will not be affected by an act, omission, matter or thing which, but for this clause 23, would reduce, release or prejudice any of its obligations under this clause 23 (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 or restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

23.5 **Guarantor Intent**

Without prejudice to the generality of clause 23.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

23.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

23.7 **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 23.

23.8 **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 Facility 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 23:

- (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 23.1 (*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.
- (g) 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 Facility Agent or as the Facility Agent may direct for application in accordance with clause 35 (*Payment Mechanics*).

23.9 **Release of Guarantors' right of contribution**

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

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

23.10 Additional security

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

23.11 Guarantee limitations

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

23.12 Limitations – Danish Guarantors

Notwithstanding anything set out to the contrary in this Agreement or any other Finance Document, the obligations of each Guarantor which is incorporated in Denmark (a “**Danish Guarantor**”) under this Agreement or any other Finance Document to which it is a party:

- (a) shall be limited if and to the extent required to comply with Danish statutory provisions including, without limitation, (i) Section 206(1) (as modified by Section 206(2)) of Consolidated Act No. 1089 of 14 September 2015 on public and private limited liability companies as amended and supplemented from time to time (the “**Danish Companies Act**”) and (ii) Section 210(1) (as modified by Section 210(2) and Sections 211 and 212) of the Danish Companies Act, and, accordingly, shall not include, and shall not be or be construed as, any indemnity, guarantee or security in respect of:
 - (i) any obligations incurred or undertaken in relation to the financing of an acquisition of shares issued or to become issued by such Danish Guarantor or by a direct or indirect parent company of such Danish Guarantor (“**Acquisition Debt**”); nor
 - (ii) any obligations other than Acquisition Debt of a direct or indirect Non-Qualifying Shareholder (as defined below), and
- (b) shall further be limited to the amount equivalent to the higher of Danish Equity:
 - (i) at the date of this Agreement (or, if such Danish Guarantor is not an Original Guarantor, on the date upon which it accedes to this Agreement as an Additional Guarantor); and
 - (ii) at the time or times that payment is requested from it,

save that these limitations shall not apply to any obligations and liabilities of a Danish Guarantor in respect of amounts relating to a Facility and placed at the disposal of the Danish Guarantor by a Borrower by way of a loan or otherwise (other than as share capital).

23.13 Limitations – German Guarantors

- (a) With regard to a German Guarantor (as defined below) and without prejudice to its rights to make a demand under this Agreement, each of the Finance Parties agrees not to enforce the guarantee granted and any other indemnity provided for under this Agreement against any German Guarantor irrespective of whether the relevant German Guarantor is at the time of enforcement incorporated as a limited liability

company (a “**German GmbH Guarantor**”) or as a limited partnership of which the general partner is a limited liability company (a “**German GmbH & Co. KG Guarantor**”) (each German GmbH Guarantor and each German GmbH & Co. KG Guarantor collectively a German Guarantor or the “**German Guarantors**) if and to the extent the guarantee and/or any other indemnity under this Agreement secures obligations of a shareholder of any German Guarantor and/or any of its Affiliates (as defined below), in each case other than any direct or indirect subsidiary of such German Guarantor, and if and to the extent the enforcement of such guarantee and/or any other indemnity would cause:

- (i) the assets of the relevant German GmbH Guarantor, or in the case of the German GmbH & Co. KG Guarantor, the assets of its general partner, assets (the calculation of which shall take into account the captions reflected in § 266(2) A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch*)) less the liabilities, provisions and liability reserves of the German GmbH Guarantor, or in case of a German GmbH & Co. KG Guarantor, the liabilities, provisions and liability reserves of its general partner (the calculation of which shall take into account the captions reflected in § 266(3) B, C, D and E of the German Commercial Code) (the “**Net Assets**”) to be less than the registered share capital (*Stammkapital*) of the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor, of the registered share capital of its general partner (*Begründung einer Unterbilanz*); or
- (ii) an increase of a shortfall, if the Net Assets of the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor, of its general partner, already fall short of the amount of the registered share capital (*Vertiefung einer Unterbilanz*).

In this paragraph (a) the term “**Affiliate**” refers to an affiliated company (*verbundenes Unternehmen*) of a shareholder of the German Guarantor within the meaning of §§ 15 et. seq. of the German Stock Corporation Act (*Aktiengesetz*).

- (b) For the purposes of the calculation of the Net Assets in this clause 23.13 the following items shall be adjusted as follows:
 - (i) the amount of an increase in the registered share capital of the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor of its general partner, that has been effected out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) without the prior written consent of the Facility Agent after the date of this Agreement shall be deducted from the registered share capital; and
 - (ii) any amount of an increase in the registered share capital that has not been fully paid shall be deducted from the registered share capital;
 - (iii) any loans and other contractual liabilities incurred in violation of any Finance Document after the date of this Agreement shall be disregarded as liabilities; and
 - (iv) any loans and other contractual liabilities provided to a German GmbH Guarantor or, in the case of a German GmbH & Co. KG Guarantor, its general partner, by any member of the Group shall be disregarded if and to the extent that such loans are subordinated or are considered subordinated.

- (c) In addition to paragraph (a) above, if after enforcement of the guarantee and/or any other indemnity the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor its general partner, would not have Net Assets in excess of its respective registered share capital, any German Guarantor shall dispose of, to the extent permitted by law and commercially justifiable and notwithstanding any other terms of this Agreement, any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the asset and that are not operationally necessary to continue its existing business or can be (subject to commercially reasonable conditions) replaced by way of sale and lease-back, the purchase of services from third parties or otherwise.
- (d) The limitations set out in this clause 23.13 shall not apply to a guarantee and/or any other indemnity granted by the relevant German Guarantor in relation to any amounts borrowed under any Finance Document to the extent that the proceeds of such borrowing are on-lent to it or any of its Subsidiaries from time to time and have not been repaid.
- (e) The limitations set out in this clause 23.13 shall cease to apply:
- (i) on the date on which and so long as a profit and loss sharing agreement (*Ergebnisabführungsvertrag*) and/or a domination agreement (*Beherrschungsvertrag*) is registered with the relevant commercial register (*Handelsregister*) of the relevant German Guarantor; it being understood that (without prejudice to its rights to make a demand under this Agreement) in such case each Finance Party shall only be entitled to enforce the amount of any guarantee and/or any other indemnity provided for under this Agreement without the limitations set out in the preceding paragraphs if and to the extent that it may reasonably be expected (applying the due care of an ordinary businessman (*Sorgfalt eines ordentlichen Geschäftsmannes*)) that such German Guarantor or, in case of a German GmbH & Co KG Guarantor, its general partner, is able to recover the annual loss (*Jahresfehlbetrag*) which the dominating entity is obliged to pay pursuant to § 302 of the German Stock Corporation Act (*Aktiengesetz*), unless there is a final and unappealable judgment of the German Federal High Court (*Bundesgerichtshof*) that this prerequisite is not required to fall within the scope of the exemption set forth in § 30(1)(2) paragraph 1 S. 2 of the German Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*); or
 - (ii) but only if and to the extent that the relevant German Guarantor's guarantee and/or any other indemnity provided under this Agreement is covered by a valuable consideration or recourse claim (*vollwertiger Gegenleistungs- oder Rückgewähranspruch*).
- (f) The enforcement of the guarantee and/or indemnity shall initially be excluded pursuant to this clause 23.13 if no later than 10 (ten) Business Days following a request by the Facility Agent to make a payment under the guarantee and/or indemnity, the relevant German Guarantor has provided a certificate signed by two managing directors or a managing director and an authorised signatory to the Facility Agent:
- (i) to what extent the guarantee and/or indemnity granted hereunder is an up-stream or cross-stream guarantee and/or indemnity; and
 - (ii) which amount of such cross-stream and/or up-stream guarantee and/or indemnity cannot be enforced as it would cause the Net Assets of the relevant

German Guarantor, or, where the guarantor is a German GmbH & Co KG Guarantor, its general partner, being less than its respective registered share capital (taking into account the adjustments set out in paragraph (b) above and the realisation duties set out paragraph (c) above),

(the “**Management Determination**”) and such confirmation is supported by a reasonably satisfactory calculation provided that the Facility Agent shall in any event be entitled to enforce the guarantee and/or indemnity for any amounts where such enforcement would, in accordance with the Management Determination, not cause the Net Assets of the relevant German Guarantor, or, where the guarantor is a German GmbH & Co KG Guarantor, the Net Assets of its general partner, to be less than (or to fall further below) the amount of its respective registered share capital (in each case as calculated and adjusted in accordance with paragraphs (b) and (c) above).

(g) Upon the earlier of (i) the Facility Agent’s receipt of a Management Determination or (ii) expiry of the date falling ten Business Days after a request by the Facility Agent to make a payment under the guarantee and/or indemnity, the enforcement of the guarantee and/or indemnity shall be excluded pursuant to paragraph (a) above for a period of 30 calendar days. If the Facility Agent receives within such 30 calendar days period:

- (i) an up-to date balance sheet; together with
- (ii) a determination in each case prepared by auditors of international standard and reputation appointed by the relevant German Guarantor either confirming the Management Determination or setting out deviations from the Management’s Determination or, if no Management Determination has been provided, determining these matters which would have been the subject of the Management Determination provided by the relevant German Guarantor under paragraph (f) above (the “**Auditor’s Determination**”),

the enforcement of this Guarantee shall be limited, if and to the extent such enforcement would, in accordance with the Auditor’s Determination cause the Net Assets of the relevant German Guarantor’s, or, where the guarantor is a German GmbH & Co KG Guarantor, the Net Assets of its general partner to be less than (or to fall further below) the amount of its respective registered share capital in each case as calculated and adjusted in accordance with paragraphs (b) and (c) above. If the relevant German Guarantor fails to deliver an Auditor’s Determination within such 30 calendar day period, the Facility Agent shall be entitled to enforce this guarantee and/or any other indemnity without any limitation or restriction.

- (h) For the avoidance of doubt, any balance sheet to be prepared for the determination of the Net Assets shall be prepared in accordance with relevant accounting principles.
- (i) Nothing in this Agreement shall be interpreted as a restriction or limitation of the enforcement of the guarantee and/or indemnity if and to the extent that the guarantee and/or indemnity secures the relevant German Guarantor’s own obligations or obligations of any of its direct or indirect Subsidiaries.
- (j) Each German Guarantor takes the view that the granting and enforcement of the guarantee and/or any other indemnity (even if it is upstream or cross-stream) provided under this Agreement would not result in a personal liability of any managing director of any German Guarantor pursuant to § 64 sentence 3 of the German Limited Liability Companies Act.
- (k) In the event that:

- (i) any German Guarantor has delivered to the Facility Agent:
 - (A) a legal opinion of a reputable German law firm acceptable to the Facility Agent confirming (without making any qualifications being unreasonable from the Facility Agent's perspective) by reference to a court decision of the Federal High Court (*Bundesgerichtshof*) handed-down after the date of this Agreement that (a) according to such new jurisprudence a managing director of such German Guarantor will be personally liable upon enforcement of the guarantee and/or indemnity provided under this Agreement pursuant to § 64 sentence 3 of the German Limited Liability Companies Act and (b) such personal liability of such managing director would solely be based on the enforcement of the guarantee and/or indemnity provided under this Agreement and not on any other action taken or omission made in particular not just on the granting of the guarantee and/or indemnity under this Agreement by the relevant managing director of such German Guarantor, and
 - (B) a certificate signed by two managing directors, or two authorised signatories, of such German Guarantor that, as of the date of such certificate, as a result of the jurisprudence set out in the opinion provided under 23.13(k)(i)(A) above, the German Guarantor no longer agrees with the statement set out in 23.13(j) above and requesting the Facility Agent to enter into an amendment agreement to make such modification to this Agreement as the Facility Agent is advised by a reputable German law firm acceptable to and acting for the Facility Agent at the cost and expense of the Company as are necessary to avoid the personal liability for the managing directors of the German Guarantor referred to in paragraph 23.13(k)(i)(A) above (the "**Amendment Agreement**");

and

- (ii) the Company has delivered to the Facility Agent a certificate signed by two managing directors of the Company requesting the Facility Agent to enter into the Amendment Agreement,

the Facility Agent for itself and on behalf of the other Finance Parties shall enter into the Amendment Agreement. The Facility Agent shall not be obliged to agree to any modifications under this clause 23.13 which, in its sole opinion, would have the effect of (i) increasing the obligations or duties of the Facility Agent or (ii) modifying any of the Facility Agent's rights or powers or any protective provisions from which the Facility Agent has the benefit.

- (l) In the absence of manifest error, the Facility Agent shall rely on the opinions and/or certifications and/or advice and/or determination referred to above and such opinions and/or certifications and/or advice and/or determination shall, in the absence of manifest error, be conclusive and binding on all concerned and no liability of the Company or the German Guarantors or the Finance Parties (other than the Facility Agent) shall attach to the Facility Agent in connection with its actions pursuant to this clause 23.13. The Facility Agent shall not be bound in any case to call for further investigation and/or evidence or be responsible for any liability that may be occasioned by any other person acting on such certificates and/or legal opinions and/or advice.

23.14 **Limitations – Swedish Guarantors**

Notwithstanding the other provisions of this Agreement, the obligations and liabilities of any Guarantor incorporated in Sweden in its capacity as Guarantor (each a “**Swedish Guarantor**”) under this Agreement shall not include any obligations and/or liabilities to the extent they would constitute unlawful distribution of assets within the meaning of Chapter 17 Sections 1-4 (or its equivalent from time to time) of the Companies Act (Sw. *Aktiebolagslagen (2005:551)*) and, with respect to an Additional Guarantor incorporated in Sweden, is subject to any further limitations set out in the Accession Deed applicable to such Additional Guarantor, if any.

PART 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

24. REPRESENTATIONS

24.1 General

Except where stated otherwise, each Obligor makes the representations and warranties set out in this clause 24 to each Finance Party.

24.2 Status

- (a) It and each of its Subsidiaries which are members of the Group is a limited liability corporation or a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries which are members of the Group has the power to own its assets and carry on its business as it is being conducted.

24.3 Binding obligations

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

24.4 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement which is binding on it or is binding on its assets (or constitute a default or termination event (however described) under any such agreement or instrument), in each case, to an extent or in a manner which has or would be reasonably likely to have a Material Adverse Effect.

24.5 Power and authority

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

24.6 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

- (b) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions (other than in relation to Denmark, where, amongst other things, such Finance Documents require translation into Danish in order to be admissible as evidence),

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

24.7 **Governing law and enforcement**

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

24.8 **Insolvency**

No corporate action, legal proceeding or other procedure or step described in clause 28.7(a) (*Insolvency proceedings*) has been taken or, to the knowledge of the Company, threatened in relation to a Material Company or an Obligor and none of the circumstances described in clause 28.6 (*Insolvency*) currently applies to a Material Company or an Obligor.

24.9 **No filing or stamp taxes**

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

- (a) any filing, recording or enrolling or any Tax or fee payable which is referred to in any Legal Opinion and which will be made or paid (as the case may be) promptly after the date of the relevant Finance Document; and
- (b) any filing, recording or enrolling or any Tax or fee required to be paid in connection with any assignment or transfer (including, without limitation, by way of an assignment of rights and a release and assumption of obligations) by a Finance Party

24.10 **Deduction of Tax**

- (a) It is not required to make any deduction for or on account of Tax (other than a FATCA Deduction) from any payment it may make under any Finance Document to a Lender in relation to all Advances made by such Lender in respect of a Borrower incorporated in the United Kingdom, where such Lender is:
 - (i) a UK Qualifying Lender:
 - (A) falling within paragraph (a)(i) of the definition of “UK Qualifying Lender”; or
 - (B) 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
 - (C) falling within paragraph (b) of the definition of “UK Qualifying Lender” or;

- (ii) 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).
- (b) It is not required to make any deduction for or on account of Tax (other than a FATCA Deduction) from any payment it may make under any Finance Document to a Lender which is a German Qualifying Lender in relation to all Advances made by such Lender in respect of a Borrower incorporated in Germany.

24.11 No default

- (a) No Event of Default is continuing.
- (b) It is not, and in the case of the Company, no member of the Group is, in breach of any agreement to which it (or any of its Subsidiaries which are members of the Group) is a party or by which it (or any of its Subsidiaries which are members of the Group) is bound or to which any of its (or any of its Subsidiaries which are members of the Group) assets are subject to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

24.12 No misleading information

In the case of the Company only, save as disclosed in writing to the Facility Agent and the Arrangers prior to the date of this Agreement:

- (a) any written factual information contained in the Information Package was true and accurate in all material respects as at the date the information was prepared to the best of its knowledge and belief (after due and careful enquiry);
- (b) any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions (as at the date the projection or forecast was made) and arrived at after careful consideration;
- (c) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Package were made after careful consideration and (as at the date of the Information Package) were honestly held;
- (d) to the best of its knowledge and belief (after due and careful enquiry) no event or circumstance has occurred or arisen and no information has been omitted from the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect;
- (e) to the best of its knowledge and belief (after due and careful enquiry), all written information provided by any member of the Group to a Finance Party ("Relevant Information") 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, except to the extent that such Relevant Information has subsequently been updated by the provision of subsequent information by a member of the Group; and
- (f) so far as it is aware, the Relevant Information was not as at the date at which it was provided misleading by the omission of material information, except to the extent that such Relevant Information has subsequently been updated or supplemented.

24.13 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
- (c) Its most recent financial statements delivered pursuant to clause 25.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements;
 - (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate; and
 - (iii) are unqualified and contain no emphasis of matter.
- (d) In the case of the Company only, there has been no material adverse change in the business, assets or financial condition of the Group since the date on which the annual audited consolidated financial statements of the Company for the financial year ending 30 September 2016 were drawn up.

24.14 No proceedings pending or threatened

No litigation, arbitration or administrative proceeding is taking place, or, to its knowledge, pending or threatened against it or any member of the Group which:

- (a) is reasonably likely to be adversely determined; and
- (b) if adversely determined, would have or would be reasonably likely to have a Material Adverse Effect.

24.15 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.

24.16 Obligors

As at the First Accession Date, clause 27.16 (*Guarantors*) is complied with by reference to the annual audited consolidated financial statements of the Company for the financial year ending 30 September 2016.

24.17 Centre of Main Interest

For the purposes of the Insolvency Proceedings Regulation, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Proceedings Regulation) of each Original Borrower is situated in England and Wales.

24.18 Sanctions and Restricted Persons

- (a) Save as disclosed separately to the Lenders in Schedule 15 (*Sanctions Disclosure*), neither it nor any member of the Group, nor any director, officer or employee of it or any member of the Group:
- (i) is a Restricted Person or is engaging in or has, during the last three years, engaged in any transaction or conduct that is in breach of applicable Sanctions;
 - (ii) to the best of the Group's knowledge, is or during the last three years has been subject to any claim, proceeding or formal notice with respect to Sanctions;
 - (iii) is engaging or has, during the last three years, engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
 - (iv) has during the last three years engaged or is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Person in breach of Sanctions or which has resulted in any other Party being in breach of Sanctions.
- (b) The representations and warranties contained in this clause 24.18 are only given by, and/or (as applicable) shall only apply to, any national of or resident in any EU Member State or any legal person incorporated in any EU Member State insofar as the giving of and compliance with such representations and warranties do not result in a violation of or conflict with or liability under any provision of Council Regulation (EC) 2271/96, any national legislation enacted pursuant to Council Regulation (EC) 2271/96 or any similar applicable anti-boycott law or regulation (including but not limited to § 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*, AWV) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (*Außenwirtschaftsgesetz*, AWG))).
- (c) In relation to each Restricted Finance Party, the representations and warranties contained in this clause 24.18 shall only apply for the benefit of that Restricted Finance Party to the extent that such benefit and the exercise of any rights based on such representations and warranties will not result in (i) any violation of, conflict with or liability under Council Regulation (EC) 2271/96 or (ii) a violation of or conflict with or liability under § 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*, AWV) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (*Außenwirtschaftsgesetz*, AWG)) or (iii) a similar anti-boycott law or regulation. In connection with any amendment, waiver, determination or direction relating to any part of this clause of which a Restricted Finance Party does not have the benefit, the Commitments of that Restricted Finance Party will be disregarded for all purposes when determining whether the consent of the Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders has been made.

24.19 **Anti-corruption and anti-money laundering**

- (a) It has conducted its businesses in compliance in all material respects with applicable anti-corruption laws or regulations and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws or regulations.
- (b) No Obligor or any of their directors or officers, or, to the best knowledge of the Company, any Affiliate or employee of it, has engaged in any activity or conduct which constitutes an offence under any applicable anti-money laundering laws or regulations in any applicable jurisdiction and the Company has instituted and maintained policies and procedures designated to prevent violation of such laws, regulations and rules.
- (c) The representations and warranties contained in this clause 24.19 are only given by, and/or (as applicable) shall only apply to, any national of or resident in any EU Member State or any legal person incorporated in any EU Member State insofar as the giving of and compliance with such representations and warranties do not result in a violation of or conflict with or liability under any provision of Council Regulation (EC) 2271/96, any national legislation enacted pursuant to Council Regulation (EC) 2271/96 or any similar applicable anti-boycott law or regulation (including but not limited to § 7 of the German Foreign Trade Regulation (Außenwirtschaftsverordnung, AWV) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (Außenwirtschaftsgesetz, AWG))).
- (d) In relation to each Restricted Finance Party, the representations and warranties contained in this clause 24.19 shall only apply for the benefit of that Restricted Finance Party to the extent that such benefit and the exercise of any rights based on such representations and warranties will not result in (i) any violation of, conflict with or liability under Council Regulation (EC) 2271/96 or (ii) a violation of or conflict with or liability under § 7 of the German Foreign Trade Regulation (Außenwirtschaftsverordnung, AWV) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (Außenwirtschaftsgesetz, AWG)) or (iii) a similar anti-boycott law or regulation. In connection with any amendment, waiver, determination or direction relating to any part of this clause of which a Restricted Finance Party does not have the benefit, the Commitments of that Restricted Finance Party will be disregarded for all purposes when determining whether the consent of the Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders has been made.

24.20 **Times when representations made**

- (a) All the representations and warranties in this clause 24 (other than clause 24.13(a) (*Original Financial Statements*) and clause 24.16 (*Obligors*)) are made by each Original Obligor by reference to the facts and circumstances then existing on the date of this Agreement.
- (b) The representation and warranty in clause 24.13(a) (*Original Financial Statements*) is made by the Obligors by reference to the facts and circumstances then existing on the date of delivery of such Original Financial Statements to the Facility Agent.
- (c) The representation and warranty in clause 24.16 (*Obligors*) is made by each Obligor by reference to the facts and circumstances then existing on the First Accession Date.
- (d) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request and on the first day of each Interest Period.

- (e) The Repeating Representations are deemed to be made by each Additional Obligor on the day on which it becomes an Additional Obligor.
- (f) The Repeating Representations are deemed to be made on the date of any request to extend the maturity of any BG Instrument and the date that any such BG Instrument is extended in accordance with this Agreement.
- (g) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

25. INFORMATION UNDERTAKINGS

The undertakings in this clause 25 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.

25.1 Financial statements

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

- (a) as soon as they are available, but in any event within 90 days after the end of each of its financial years, its audited consolidated financial statements for that financial year;
- (b) as soon as they are available, but in any event within 150 days after the end of each Obligor's financial year (as appropriate), the audited statutory financial statements (or, if not required by statute, audited balance sheet and profit and loss statement) of each Obligor;
- (c) as soon as they are available, but in any event within 60 days after the end of each financial half year, its consolidated financial statements for that financial half year; and
- (d) as soon as they are available, but in any event within 45 days after the end of each financial quarter of each of its financial years (other than the second quarter and fourth quarter in each financial year), its interim management statements on a consolidated basis, or, if the Company no longer prepares and publicly discloses such interim management statements, information equivalent in nature and scope to that previously contained in such interim management statements on a consolidated basis.

25.2 Provision and contents of Compliance Certificate

- (a) The Company shall supply a Compliance Certificate to the Facility Agent with each set of statements provided under paragraphs (a), (c) and (d) of clause 25.1 (*Financial Statements*).
- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with clause 26 (*Financial Covenants*).
- (c) The Company shall also supply a Material Company Certificate to the Facility Agent as soon as reasonably practicable after and in any case within 20 days of the date of delivery of the Compliance Certificate provided in connection with the financial statements delivered under paragraph (a) of clause 25.1 (*Financial Statements*) setting out (in reasonable detail) relevant computations.
- (d) Each Compliance Certificate shall be signed by one director and one authorised signatory of the Company and be sent together with a report by its auditors addressed to the Company in the case of its annual audited financial statements.

- (e) Each Material Company Certificate shall be signed by one director and one authorised signatory of the Company.

25.3 Requirements as to financial statements

- (a) Other than as agreed with the Facility Agent prior to the date of this Agreement, the Company shall procure that each set of financial statements provided pursuant to clauses 25.1(a), (b) and (c) (*Financial statements*) is prepared using the Accounting Principles unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in the Accounting Principles or reference periods (including, without limitation, the financial year end date and/or financial quarter dates of the Company in accordance with clause 25.4 (*Year-end*) below) and its auditors deliver to the Facility Agent (but, for the avoidance of doubt, with no requirement for its auditors to address, for reliance purposes, anything supplied by its auditors to the Finance Parties):
 - (i) a description of any change necessary for those financial statements to reflect the Accounting Principles; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 26 (*Financial Covenants*) and (in the case of financial statements provided under clause 25.1(a) only) clause 27.16 (*Guarantors*) has been complied with.
- (b) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the Accounting Principles.
- (c) If the Company notifies the Facility Agent of a change in accordance with paragraph (a) above, the Company and the Facility Agent shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. To the extent practicable these amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations in this Agreement. If any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

25.4 Year-end

The Company shall not change its accounting reference date.

25.5 Information: miscellaneous

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

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Company to its shareholders generally (or any class of them) or dispatched by the Company or any Obligor to its creditors generally;
- (b) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which has or is reasonably likely to have a Material Adverse Effect; and
- (c) promptly such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Facility

Agent) may reasonably request (including, for the avoidance of doubt, details of the Material Companies including evidence of compliance with clause 27.16 (*Guarantors*)).

25.6 Further information

The Company will:

- (a) deliver to the Facility Agent, in sufficient copies for all the Lenders, by no later than 31 October of each year, the Group annual budget for that financial year, approved by the board of directors of the Company; and
- (b) ensure that promptly after the delivery of the annual financial statements referred to in clause 25.1(a) (*Financial statements*), the senior management of the Company will give a presentation to which all Lenders are invited for the purposes of presenting to the Lenders the Company's financial performance for the relevant financial year. The first of such presentations shall be given following the delivery of the first set of annual financial statements pursuant to clause 25.1(a) (*Financial Statements*).

25.7 Notification of Default

- (a) Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Company shall supply to the Facility 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).

25.8 Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Facility Agent (the "**Designated Website**") if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Facility Agent.
- (b) If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Facility Agent shall notify the Company accordingly and the Company shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.
- (c) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Facility Agent.

- (d) The Company shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Facility Agent under subparagraph (d)(i) or subparagraph (d)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (e) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within ten Business Days.

25.9 Know your customer checks

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

obliges the Facility Agent or any Lender (or, in the case of clause 25.9(a)(iii) above, any prospective new Lender) or Issuer to comply with “know your customer” or similar identification procedures in relation to an Obligor or a Counterparty in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Facility Agent, any Lender or Issuer supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in clause 25.9(a)(iii) above, on behalf of any prospective new Lender) in order for the Facility Agent, such Lender or, in the case of the event described in clause 25.9(a)(iii), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility 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 ten Business Days’ prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to clause 30 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to clause 25.9(c) above, if the accession of such Additional Obligor obliges the Facility 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 Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility 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 Facility Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

26. FINANCIAL COVENANTS

26.1 Financial definitions

In this Agreement:

“**Adjusted Debt**” means, in respect of the Group at any time, the aggregate of the following liabilities, calculated at the nominal, principal or other amount at which the liabilities would be carried in a consolidated balance sheet of the Group drawn up at that time:

- (a) money borrowed (provided that, where such money is borrowed under a cash pooling facility, only the net aggregate indebtedness of all relevant members of the Group under that cash pooling facility shall constitute Adjusted Debt) (but, for the avoidance of doubt, without netting any cash that may result from any liquidation of managed assets classified as asset management classified as “**Held for Trading**”);
- (b) the issue of any bond, note, loan stock, debenture or similar instrument;
- (c) any finance leases (whether in respect of land, machinery, aircraft, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition of the asset leased and which would be classified as a finance or capital lease under the Accounting Principles applicable to the Company (subject to the operation of clause 1.2(c) (*Construction*));
- (d) in respect of any Measurement Period, an amount equal to six times Annual Aircraft Lease Rentals for that Measurement Period; and
- (e) any other transaction (not otherwise specifically excluded by paragraphs (a) to (c) of this definition) which would be treated for the purposes of the Accounting Principles applicable to the Company as a borrowing of money,

but:

- (i) excluding (to the extent such liabilities would otherwise be included) any liabilities in respect of pension deficits; and
- (ii) adjusted to deduct Payments in Transit.

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

- (a) excluding (to the extent included in Adjusted Debt) any such obligation to any other member of the Group;
- (b) deducting the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Group at that time.

“Consolidated Interest Expense” means, in relation to a Measurement Period, all interest and other financing charges (whether paid, payable or added to principal) incurred by the Group during that period calculated on a consolidated basis.

“Consolidated Interest Receivable” means all interest and other financing charges received or receivable by the Group during a Measurement Period calculated on a consolidated basis.

“Consolidated Net Interest Expense” means, in respect of a Measurement Period, Consolidated Interest Expense for that Measurement Period less Consolidated Interest Receivable for that Measurement Period, calculated on a consolidated basis and taking no account of any applicable Exceptional Items.

“EBIT” means, in relation to a Measurement Period, the consolidated profits of the Group (including the results from discontinued operations) before Consolidated Net Interest Expense and Tax for that Measurement Period, adjusted by:

- (a) taking no account of any interest payable in respect of a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme; and
- (b) taking no account of Exceptional Items.

“EBITDA” means, in relation to a Measurement Period, EBIT for that Measurement Period after adding back any depreciation and amortisation (other than any depreciation and/or amortisation that constitutes an Exceptional Item).

“Exceptional Items” means any material items of an unusual or non-recurring nature which represent gains or losses including those specified in the applicable financial statements of the Company and those arising on:

- (a) the restructuring, reorganisation or integration of the activities of an entity and the reversal of any provisions made for this purpose;
- (b) transaction costs attributable to acquisition activity;
- (c) write-offs of unamortised arrangement fees relating to the Existing Facility;
- (d) disposals of businesses, intangible assets or property, plant and equipment;
- (e) impairments or reversal of impairments of intangible assets or property, plant and equipment; and

- (f) fair value measurements under IAS39 “Financial Instruments: Recognition and Measurement”, which relate to:
- (i) the forward points component of foreign exchange contracts;
 - (ii) the time value component of option contracts; and/or
 - (iii) any other hedge ineffectiveness,
- in each case as applied in accordance with IAS39.

“**Fixed Charge EBITDAR**” means in relation to a Measurement Period, Leverage EBITDAR for that Measurement Period, as adjusted:

- (a) to add back Rental Charges paid during that Measurement Period; and
- (b) with respect to a business or undertaking of any member of the Group which has been disposed of during that Measurement Period, to include the operating profit or loss before interest, tax, depreciation and amortisation with respect to that Measurement Period attributable to that business or undertaking for so long as that business or undertaking remained part of the Group (including if that business or undertaking was designated as an “asset held for sale” in accordance with the Accounting Principles applicable to the Company).

“**Fixed Charges**” means in relation to a Measurement Period the aggregate of:

- (a) Consolidated Net Interest Expense;
- (b) Annual Aircraft Lease Rentals; and
- (c) Rental Charges.

“**Leverage EBITDAR**” means, in relation to a Measurement Period, EBITDA for that Measurement Period, as adjusted to:

- (a) add back Annual Aircraft Lease Rentals incurred during that Measurement Period; and
- (b) include the profit or loss before interest, tax, depreciation and amortisation with respect to that Measurement Period attributable to a business or undertaking of any member of the Group which has been designated as an “asset held for sale” in accordance with the Accounting Principles applicable to the Company if such business or undertaking remains part of the Group at the end of that Measurement Period and to exclude the profit or loss before interest, tax, depreciation and amortisation with respect to that Measurement Period attributable to any business or undertaking of a member of the Group which has been disposed of on or before the end of that Measurement Period.

“**Measurement Period**” means each period of 12 months ending on the last day of a financial quarter, financial half year or financial year of the Company.

“**Rental Charges**” means for any Measurement Period, the aggregate amount of retail rental charges incurred in respect of all properties used in the business of the Group less any retail rental income earned by the Group during such Measurement Period.

“**Payments in Transit**” means the amount of any payment made by a member of the Group which would be shown as a liability on the consolidated balance sheet of the Group as a result

of the Group's accounting systems, which payment has not, at the time of calculation, been recorded as a debit item on any bank account of any member of the Group and such payment will only be designated as Payments in Transit to the extent that such payment results in an increase to the Adjusted Debt (ignoring, for this purpose, the deduction of Payments in Transit).

26.2 Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this clause is to be construed in accordance with the Accounting Principles applicable to the Company.
- (b) Any amount in a currency other than Sterling is to be taken into account at its Sterling equivalent calculated on the basis of:
 - (i) the Facility Agent's spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market with Sterling at or about 11.00 a.m. London time on the day the relevant amount falls to be calculated; or
 - (ii) if the amount is to be calculated on the last day of a financial period of the Company, the relevant rates of exchange used by the Company in, or in connection with, its financial statements for that period.
- (c) No item may be credited or deducted more than once in any calculation under this clause.

26.3 Leverage Ratio

The Company must ensure that:

- (a) subject to paragraph (b) below, the ratio of Consolidated Adjusted Net Debt on the last day of each Measurement Period ending on the date set out in the first column of Table A below (and commencing with the Measurement Period ending on 31 December 2017) to Leverage EBITDAR for that same Measurement Period is less than or equal to the ratio for that date set out in the second column of Table A below; and
 - (b) on the date on and from the occurrence of a Fleet Financing Event, the ratio of Consolidated Adjusted Net Debt on the last day of each Measurement Period ending on the date set out in the first column of Table B below (and not Table A below) (and commencing with the Measurement Period ending on 31 December 2017) to Leverage EBITDAR for that same Measurement Period is less than or equal to the ratio for that date set out in the second column of Table B below,
- (subsections (a) and (b) together being the "**Leverage Ratio**").

Table A

Measurement Period End Date	Ratio
31 December 2017	3.85:1
31 March 2018	3.30:1
30 June 2018	2.60:1

30 September 2018	2.20:1
31 December 2018	3.75:1
31 March 2019	3.20:1
30 June 2019	2.50:1
30 September 2019	2.10:1
31 December 2019	3.60:1
31 March 2020	3.05:1
30 June 2020	2.35:1
30 September 2020	1.95:1
31 December 2020	3.40:1
31 March 2021	2.85:1
30 June 2021	2.15:1
30 September 2021	1.80:1
31 December 2021	3.20:1
31 March 2022	2.65:1
30 June 2022	1.95:1
30 September 2022	1.80:1

Table B

Measurement Period End Date	Ratio
31 December 2017	3.85:1
31 March 2018	3.30:1
30 June 2018	2.60:1
30 September 2018	2.20:1
31 December 2018	3.75:1
31 March 2019	3.20:1
30 June 2019	2.50:1
30 September 2019	2.10:1
31 December 2019	3.75:1
31 March 2020	3.35:1
30 June 2020	2.65:1
30 September 2020	2.25:1
31 December 2020	3.70:1
31 March 2021	3.15:1
30 June 2021	2.45:1
30 September 2021	2.10:1
31 December 2021	3.50:1
31 March 2022	2.95:1
30 June 2022	2.25:1
30 September 2022	2.10:1

26.4 **Fixed Charge Ratio**

The Company must ensure that the ratio (the “**Fixed Charge Ratio**”) of Fixed Charge EBITDAR to Fixed Charges in respect of each Measurement Period and commencing with the Measurement Period ending on 31 December 2017 is greater than or equal to 2.00:1.

26.5 **Financial testing**

- (a) Subject to paragraph (b) below, the financial covenants set out in clauses 26.3 (*Leverage Ratio*) and 26.4 (*Fixed Charge Ratio*) shall be calculated in accordance with the Accounting Principles as used in the preparation of the Financial Projections

and tested by reference to each of the financial statements delivered pursuant to paragraphs (a), (c) and (d) of clause 25.1 (*Financial statements*) in respect of the Group.

- (b) For the purpose of calculating Consolidated Adjusted Net Debt in a Measurement Period, any amount that is denominated in Euro or SEK shall be taken into account at its Sterling equivalent calculated on the basis of the average of the rates of exchange for the purchase of Sterling with Euro or SEK used in the Company's consolidated financial statements for determining EBITDA for the relevant Measurement Period.

27. GENERAL UNDERTAKINGS

The undertakings in this clause 27 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.

27.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) upon request, supply copies to the Facility Agent of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Finance Documents; and
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document (other than in relation to the admissibility in evidence of the Finance Documents under the laws and courts of Denmark, where, amongst other things, such Finance Documents require translation into Danish in order to be admissible as evidence).

27.2 Compliance with laws

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

27.3 Merger

- (a) Subject to paragraph (b) below, no Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.
- (b) Paragraph (a) above does not apply to any Obligor which is not the Company where the merger is conducted on a solvent basis and either:
 - (i) each surviving entity is an Obligor; or
 - (ii) the surviving entity is one or more members of the Group (other than an Obligor) provided that:
 - (A) the tests set out in clause 27.16 (*Guarantors*) will continue to be met after the date of the amalgamation, demerger, merger, consolidation or corporate reconstruction by reference to the most recent annual audited consolidated financial statements of the Company at that time

as adjusted to take into account such amalgamation, demerger, merger, consolidation or corporate reconstruction; or

- (B) in circumstances where the tests set out in clause 27.16 (*Guarantors*) will not continue to be met after the date of such amalgamation, demerger, merger, consolidation or corporate reconstruction by reference to the most recent annual audited consolidated financial statements of the Company at that time as adjusted to take into account such amalgamation, demerger, merger, consolidation or corporate reconstruction, the Company shall notify the Facility Agent in advance that the test set out in clause 27.16 (*Guarantors*) will not be met after the date of such amalgamation, demerger, merger, consolidation or corporate reconstruction and must use its reasonable endeavours to procure that other members of the Group accede to this Agreement as Guarantors in accordance with clause 30.4 (*Additional Guarantors*) on or before the date of the amalgamation, demerger, merger, consolidation or corporate reconstruction but will in any event ensure that such members of the Group accede to this Agreement as Guarantors in accordance with clause 30.4 (*Additional Guarantors*) within 30 days after the date of such amalgamation, demerger, merger, consolidation or corporate reconstruction.

27.4 **Change of business**

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

27.5 **Acquisitions**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall procure that no other member of the Group shall) acquire a company, any shares in a company or any business undertaking.
- (b) Paragraph (a) above does not apply to a Permitted Acquisition or a Permitted Transaction.

27.6 **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.

27.7 **Negative pledge**

- (a) Except as permitted under paragraph (b) below no Obligor shall (and the Company shall procure that no other Material Company shall) create or permit to subsist any Security over any of its assets.
- (b) Paragraph (a) above does not apply to any Security which is Permitted Security, or to any Security which constitutes a Permitted Transaction.
- (c) Notwithstanding paragraphs (a) and (b) above, the Company shall procure that no member of the Group shall create or permit to subsist any Security over any of its assets to the extent that such Security would result in a breach of the "Limitation on

liens” covenant applicable to the 2021 Notes and the 2022 Notes (or, in each case, any notes issued to replace or refinance those notes).

27.8 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall procure that no other member of the Group shall) enter into a single transaction or a series of transactions (whether related or not) to dispose of all or any part of its assets.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal or a Permitted Transaction.

27.9 Loans out

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

27.10 No guarantees

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall procure that no other member of the Group shall) incur or allow to remain outstanding any guarantee by any such Obligor or member of the Group in respect of any person.
- (b) Paragraph (a) above does not apply to a guarantee which is a Permitted Guarantee or which is a Permitted Transaction.

27.11 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, the Company shall procure that no member of the Group that is not a Guarantor shall incur or allow to remain outstanding any Financial Indebtedness
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness or which is a Permitted Transaction.

27.12 Insurance

- (a) Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) Where failure to do so would be reasonably likely to result in the air operating licence of any member of the Group being suspended or revoked, the Company will maintain insurance cover in relation to any aircraft owned or operated by any member of the Group of a type and in an amount sufficient to avoid such suspension or revocation.

27.13 Pensions

Each Obligor (for itself, and in the case of the Company, for itself and each Material Company) undertakes that it shall comply with all applicable laws in respect of each pension scheme operated or maintained for the benefit of its employees. A breach of such applicable laws by the pension trustees of any such pension scheme shall not constitute a breach of this undertaking by any Obligor.

27.14 Intellectual Property

Each Obligor shall and the Company shall procure that each Group member will:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, has or is reasonably likely to have a Material Adverse Effect.

27.15 Treasury Transactions

No Obligor shall (and the Company will procure that no members of the Group will) enter into any Treasury Transaction, other than:

- (a) spot and forward delivery foreign exchange and commodities contracts (and options to enter into the same) entered into in the ordinary course of business and not for speculative purposes; and
- (b) any Treasury Transaction entered into for the hedging of actual or projected real exposures of a member of the Group and not for speculative purposes.

27.16 Guarantors

- (a) Subject to paragraph (b) below, the Company shall ensure that at all times from and including the First Accession Date (i) the aggregate Leverage EBITDAR of the Guarantors who are members of the Group represents not less than 80 per cent. of Leverage EBITDAR of the Group (excluding any Regulated Entity) and (ii) the aggregate gross assets (excluding intra-group items and investments in Subsidiaries which are members of the Group) of the Guarantors who are members of the Group represents not less than 70 per cent. of the consolidated gross assets of the Group (excluding any Regulated Entity) and for the purposes of this clause:

- (i) the aggregate of each of Leverage EBITDAR and gross assets of the Group shall be calculated on a consolidated basis by reference to the Latest Group Accounts; and
- (ii) the aggregate of Leverage EBITDAR and gross assets for each Guarantor shall, in respect of each such Guarantor, be calculated on an unconsolidated basis by reference to the accounts of that Guarantor which were used in the preparation of the Latest Group Accounts,

provided that, if a member of the Group has been acquired since the date as at which the Latest Group Accounts were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary.

- (b) The Company shall ensure that each member of the Group (other than an Excluded Company) that becomes a Material Company accedes as an Additional Guarantor to this Agreement, as soon as practicable, but in any event within 60 days after becoming a Material Company.
- (c) The Company need only ensure that a particular Subsidiary becomes a Guarantor in order to comply with its obligations under paragraphs (a) and (b) above if:
 - (i) it is not unlawful for that Subsidiary to become a Guarantor and that Subsidiary becoming a Guarantor would not result in personal liability or a breach of directors' duties for that Subsidiary's directors or other management;
 - (ii) there are no contractual restrictions on that Subsidiary becoming a Guarantor; and
 - (iii) the law of the jurisdiction of incorporation of that Subsidiary does not require that security is to be provided in respect of any guarantee to be given in respect of the Finance Documents.
- (d) Notwithstanding the above, the Company must use, and must procure that the relevant Subsidiary uses, all reasonable endeavours lawfully available to avoid any such unlawfulness, personal liability or contractual restrictions. This includes agreeing to a limit on the amount guaranteed and/or complying with the requirements of sections 678 or 679 of the UK Companies Act 2006 and any equivalent legislation in any other jurisdiction to enable that Subsidiary to become an Obligor. The Facility 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.
- (e) The Company shall ensure that each of:
 - (i) Thomas Cook Airlines Treasury Limited;
 - (ii) Thomas Cook GmbH;
 - (iii) Thomas Cook Northern Europe AB;
 - (iv) Ving Sverige AB; and
 - (v) Thomas Cook Airlines Scandinavia A/S,

shall accede to this Agreement as Additional Guarantors by no later than the First Accession Date, unless otherwise agreed with the Facility Agent.

27.17 **Dividends and share redemption**

The Company must not:

- (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; or
- (c) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so, save to the extent that on the date of such declaration of any such dividend, charge, fee, distribution or redemption, repurchase, defeasement, retirement or repayment (each a “**Distribution**”):
 - (i) no Event of Default is continuing or could reasonably be expected to occur as a result of the declaration or payment of such Distribution; and
 - (ii) the amount of that Distribution, when aggregated with the amount of any other Distribution declared in the same financial year of the Group, will not exceed the aggregate of 50 per cent. of the retained earnings of the Group for the immediately preceding financial year of the Group.

27.18 **Anti-corruption law**

- (a) No Obligor shall (and the Company shall procure that each member of the Group will not) directly or indirectly use the proceeds of the Facilities for any purpose which would breach or constitute an offence under the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar anti-corruption legislation in other jurisdictions.
- (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 or regulations and anti-money laundering laws or regulations; and
 - (ii) establish and subsequently maintain policies and procedures designed to promote and achieve compliance with such laws or regulations.

27.19 **Sanctions and Use of Proceeds**

- (a) Each Obligor undertakes that it, and the Company will use its best efforts to procure that any other member of the Group, or any director, officer, agent, employee or person acting on behalf of the foregoing, is not a Restricted Person and will not act in breach of Sanctions.
- (b) Each Obligor shall not, and the Company shall procure that any other member of the Group shall not:
 - (i) use, lend contribute or otherwise make available any part of the proceeds of any Utilisation or any other product or services offered to it by a Lender, directly or (to the best of its knowledge (acting with due care and attention)) indirectly:

- (A) for the purpose of financing any trade, business or other activities involving or for the benefit of, any Restricted Person that would reasonably be expected to cause any Party to be in breach of any Sanctions;
- (B) in any other manner that would reasonably be expected to result in any person being in breach of any Sanctions;
- (ii) engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
- (iii) fund all or part of any payment in connection with a Finance Document out of the proceeds derived from illegal business or transactions with a Restricted Person, or from any other illegal activity.
- (c) Each member of the Group must ensure that appropriate controls and safeguards are in place designed to prevent any action being taken that would be contrary to paragraph (b) above.
- (d) Each Obligor shall, and the Company shall procure that any other member of the Group shall, to the extent permitted by law promptly upon becoming aware of them supply to the Facility Agent details of any claim, action, suit, or proceedings against it with respect to a breach of Sanctions by any Sanctions Authority.
- (e) The undertakings in this clause, remain in force from the date of this Agreement for as long as any amount is outstanding under the Finance Documents or any Commitment is in force.

27.20 EU residents and Restricted Finance Parties

- (a) The undertakings contained in clauses 27.18 (*Anti-corruption law*) and 27.19 (*Sanctions and Use of Proceeds*) are only given by, and/or (as applicable) shall only apply to, any national of or resident in any EU Member State or any legal person incorporated in any EU Member State insofar as the giving of and compliance with such undertakings do not result in a violation of or conflict with or liability any provision of Council Regulation (EC) 2271/96, any national legislation enacted pursuant to Council Regulation (EC) 2271/96 or any similar applicable anti-boycott law or regulation (including but not limited to § 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung, AWV*) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (*Außenwirtschaftsgesetz, AWG*))).
- (b) In relation to each Restricted Finance Party, the undertakings contained in clauses 27.18 (*Anti-corruption law*) and 27.19 (*Sanctions and Use of Proceeds*) only apply for the benefit of that Restricted Finance Party to the extent that such benefit and the exercise of any right based on such undertaking will not result in (i) any violation of, conflict with or liability under EU Regulation (EC) 2271/96 or (ii) violation of or conflict with or liability under § 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung, AWV*) (in conjunction with § 4 and § 19 (3) no. 1 a) of the German Foreign Trade Act (*Außenwirtschaftsgesetz, AWG*)) or (iii) a similar anti-boycott law or regulation. In connection with any amendment, waiver, determination or direction relating to any part of clause 27.18 (*Anti-corruption law*) and/or clause 27.19 (*Sanctions and Use of Proceeds*) of which a Lender which is a Restricted Finance Party does not have the benefit, the Commitments of that Restricted Finance Party will be disregarded for all purposes when determining whether the consent of

the Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders has been made.

28. EVENTS OF DEFAULT

Each of the events or circumstances set out in this clause 28 is an Event of Default (save for clause 28.16 (*Acceleration*)).

28.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document or fails to provide Credit Support required by it under any 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:
 - (i) in the case of clause 28.1(a)(i) above, three Business Days of its due date; or
 - (ii) in the case of clause 28.1(a)(ii) above, five Business Days of its due date.

28.2 Financial covenants

Any requirement of clause 26 (*Financial Covenants*) is not satisfied.

28.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 28.1 (*Non-payment*), clause 28.2 (*Financial covenants*) and clause 18.8(a) (*FATCA Information*)).
- (b) No Event of Default under clause 28.3(a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Facility Agent giving notice to the Company or relevant Obligor and (ii) the Company or an Obligor becoming aware of the failure to comply.

28.4 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, unless the circumstances giving rise to the misrepresentation or incorrect statement are capable of remedy and are remedied within 20 Business Days of the earlier of the date on which an Obligor becomes aware of the misrepresentation or incorrect statement and the date on which the Facility Agent gives notice to the Company requiring the same to be remedied.
- (b) The Company shall notify the Facility Agent promptly upon actually becoming aware of any misrepresentation or incorrect statement made by any Obligor as specified in paragraph (a) above.

28.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this clause 28.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £30,000,000 or its equivalent in other currencies in respect of any other Financial Indebtedness.

28.6 Insolvency

- (a)
 - (i) A Material Company or an Obligor is unable or admits inability to pay its debts as they fall due, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
 - (ii) The value of the assets of any Material Company or any Obligor is less than its liabilities (taking into account contingent and prospective assets and liabilities).
 - (iii) A moratorium is declared in respect of any indebtedness of any Material Company or any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- (b) No Event of Default shall be triggered under paragraph (a) above if such circumstances or events occur:
 - (i) as a result of a voluntary solvent reorganisation of any Material Company which is approved by the Facility Agent; or
 - (ii) solely as a result of any enforcement, attachment or taking possession of, or execution, sequestration or other process which is levied or enforced upon, any Item of Aircraft which is the subject of any Aircraft Financing.

28.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, protection, relief, winding-up, dissolution, administration, receivership, bankruptcy,

liquidation or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company or any Obligor or its debts;

- (ii) a composition, compromise, assignment or arrangement in respect of a Material Company or Obligor with the creditors of such Material Company or Obligor generally (or any class of them);
- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of any Material Company or Obligor or any of its assets; or
- (iv) enforcement of any Security over any assets of any Material Company or any Obligor,

or any analogous procedure or step is taken in any jurisdiction.

- (b) Clause 28.7(a) shall not apply to;
 - (i) steps or legal proceedings that are demonstrated (to the reasonable satisfaction of the Facility Agent) to be frivolous or vexatious or where they are discharged, stayed or dismissed within 21 days of commencement; or
 - (ii) any voluntary solvent reorganisation which is approved by the Facility Agent.

28.8 Creditors' process

- (a) Any expropriation, attachment, sequestration, distress or execution, or any analogous process in any other jurisdiction, affects the whole or any material part of the assets of a Material Company or an Obligor and is not discharged within 21 days (in the case of a Material Company or an Obligor which is incorporated in the UK) or 60 days (in the case of a Material Company or an Obligor which is incorporated in any country other than the UK).
- (b) Paragraph (a) above shall not apply to any attachment or taking possession of, or execution, sequestration or other process which is levied or enforced upon, any Item of Aircraft which is the subject of any Aircraft Financing.

28.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any guarantee or Security granted pursuant to a Finance Document or Credit Support granted pursuant to a Finance Document ceases to be legal, valid, binding and enforceable or becomes ineffective except, in the case of any guarantee provided under clause 23 (*Guarantee and Indemnity*), where, notwithstanding the ineffectiveness of that particular guarantee, the Company continues to comply with its obligations under clause 27.16 (*Guarantors*).

28.10 **Cessation of business**

Any Obligor ceases to carry on all or substantially all of that business that it carries on at the date of this Agreement which suspension or cessation has or is reasonably likely to have a Material Adverse Effect otherwise than (except, in each case, in relation to the Company):

- (a) as a result of a transfer of all or any part of its business to a member of the Group in the same jurisdiction which is, or upon such transfer becomes, an Obligor; or
- (b) for the purposes of a solvent reconstruction, amalgamation or other arrangement involving that Obligor previously approved by the Facility Agent in writing; or
- (c) the voluntary solvent winding-up of that Obligor on terms previously approved by the Facility Agent; or
- (d) with the prior written consent of the Facility Agent.

28.11 **Change of ownership**

The Company ceases to own directly or indirectly at least the same percentage of shares or other economic interest or voting rights of a Material Company or Obligor as the Company owned at the date of this Agreement or, if later, on the date the Material Company or Obligor was acquired by the Company or by a member of the Group, except as a result of a Permitted Disposal or a Permitted Transaction.

28.12 **Repudiation and rescission of agreements**

An Obligor or any member of the Group rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document to which it is a party.

28.13 **Litigation**

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

28.14 **Revocation of licence**

Any licence required by any Material Company or any Obligor in order to carry on its business from time to time is terminated, suspended or revoked and such event has or is reasonably likely to have a Material Adverse Effect.

28.15 **Material adverse change**

Any event or series of events (whether related or not) or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

28.16 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

- (a) cancel all or part of the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;

- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders;
- (d) declare all or any part of the amounts (or Credit Support in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable;
- (e) declare that all or any part of the amounts (or Credit Support in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders;
- (f) declare that Credit Support in respect of the Outstanding Amount of each BG Instrument is immediately due and payable, at which time it shall become immediately due and payable; and/or
- (g) declare that Credit Support in respect of the Outstanding Amount of each BG Instrument is payable on demand, at which time it will immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders.

**PART 9
CHANGES TO PARTIES**

29. CHANGES TO THE LENDERS

29.1 Assignments and transfers by the Lenders

Subject to this clause 29, a Lender (the “**Existing Lender**”) may:

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

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

29.2 Conditions of assignment or transfer

- (a) An Existing Lender must consult with the Company for no more than five Business Days before it may make an assignment or transfer of a Commitment (other than a Bonding Facility Commitment) unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of a Lender; or
 - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Company is required for an assignment or transfer by an Existing Lender of a Bonding Facility Commitment unless the assignment or transfer is to another Lender or an Affiliate of a Lender or an Event of Default is continuing. The consent of the Company to an assignment or transfer of its Bonding Facility Commitment must not be unreasonably withheld or delayed.
- (c) The Company will be deemed to have given its consent to an assignment or transfer of a Bonding Facility Commitment five Business Days after the Company is given notice of the request unless consent is expressly refused by the Company within that time. It will be deemed to be reasonable for the Company to withhold its consent to any transfer or assignment of a Bonding Facility Commitment to a transferee which would not be considered an acceptable Issuer to the Beneficiaries.
- (d) Unless the Company and the Facility Agent otherwise agree, a transfer of part of its rights and obligations under the Revolving Facility by the Existing Lender must be in a minimum Base Currency Amount of £5,000,000 or, as the case may be, €5,000,000.
- (e) Upon any assignment or transfer, the Company shall use all reasonable endeavours to obtain the release as soon as practicable of all BG Instruments issued by the Existing Lender in respect of the obligations to be so assigned or transferred.
- (f) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender;

- (ii) the performance by the Facility 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 Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (g) A transfer will only be effective if the procedure set out in clause 29.5 (*Procedure for transfer*) is complied with.
- (h) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office or an Affiliate of a Lender becomes an Ancillary Lender (an “**Affiliate Ancillary Lender**”) in accordance with clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*); 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, Affiliate Ancillary Lender or Lender acting through its new Facility Office under clause 18 (*Tax Gross Up and Indemnities*) or clause 19 (*Increased Costs*),

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

- (iii) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facilities; or
- (iv) in relation to clause 18.2 (*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 18.2(i)(ii)(B) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that UK Treaty Lender.
- (i) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility 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.

29.3 Assignment or transfer fee

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

29.4 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 or any other member of the Group 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 or any other Finance Party 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; 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.

29.5 Procedure for transfer

- (a) Subject to the conditions set out in clause 29.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with clause 29.5(c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to clause 29.5(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 Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to clause 29.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents,

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 or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (iii) the Facility Agent, the Arranger, the New Lender, the other Lenders and any relevant Ancillary Lender 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 Facility Agent, the Arranger and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents;
- (iv) the New Lender shall become a Party as a “**Lender**”; and
- (v) each Party agrees that in case of a transfer pursuant to clause 29.1 (*Assignments and transfers by the Lenders*), the guarantees granted by each Obligor under the Finance Documents shall be preserved for the benefit of the Facility Agent, the New Lender and the remaining Finance Parties.

29.6 Procedure for assignment

- (a) Subject to the conditions set out in clause 29.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with clause 29.6(c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to clause 29.6(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 Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to clause 29.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) 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 29.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with clause 29.5 (*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 29.2 (*Conditions of assignment or transfer*).
- (e) Each Party agrees that in case of a transfer or assignment pursuant to clause 29.1 (*Assignments and transfers by the Lenders*), the guarantees granted by each Obligor under the Finance Documents shall be preserved for the benefit of the Facility Agent, the New Lender and the remaining Finance Parties.

29.7 Copy of Transfer Certificate or Assignment Agreement to Company

The Facility 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.

29.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause, 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, governmental authority, governmental agencies or governmental departments (including without limitation HM Treasury); and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

29.9 Pro rata interest settlement

If the Facility 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 29.5 (*Procedure for transfer*) or any assignment pursuant to clause 29.6 (*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):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest

accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (b) 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:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 29.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

29.10 Restriction on Debt Purchase Transactions

- (a) The Company shall not, and shall procure that no other member of the Group shall (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this clause 29.10 or (ii) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.
- (b) A Borrower may purchase by way of assignment or transfer by novation, pursuant to this clause 29 (*Changes to the Lenders*) in accordance with paragraphs (c) or (d) below, a participation in any Loan in respect of which it is the borrower and any related Commitment where:
 - (i) such purchase is made for a consideration of not more than par;
 - (ii) such purchase is made at a time when no Default is continuing; and
 - (iii) the consideration for such purchase is funded solely from the proceeds of new equity issued by the Company.

No assignment or transfer of a participation under a Loan may be made pursuant to this clause 29.10 unless the related drawn Commitments is also assigned or transferred at the same time (and immediately extinguished in accordance with paragraph (f)(i) below). A Borrower may not have assigned or transferred to it any undrawn Commitment.

- (c) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a “**Solicitation Process**”) which is carried out as follows.
 - (i) Prior to 11.00 a.m. on a given Business Day (the “**Solicitation Day**”) the Company or a financial institution acting on its behalf (the “**Purchase Agent**”) will approach at the same time each Lender which participates in the relevant Facilities to enable them to offer to sell to the relevant Borrower(s) an amount of their participation in Loans under one or more Facilities. Any Lender wishing to make such an offer shall, by 11.00 a.m. on the second Business Day following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations in Loans, and under which Facilities, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 a.m. on the third Business Day following such Solicitation Day and shall be capable of

acceptance by the Company on behalf of the relevant Borrower(s) on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Company) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 11.00 a.m. on the fourth Business Day following such Solicitation Date, the Company shall notify the Facility Agent of the amounts of the participations in Loans purchased through the relevant Solicitation Process, the identity of the Loans and the Facilities to which they relate and the average price paid for the purchase of participations in Loans in each relevant Facility. The Facility Agent shall disclose such information to any Lender that requests such disclosure.

- (ii) Any purchase of participations in Loans under the Facilities pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.
 - (iii) In accepting any offers made pursuant to a Solicitation Process the Company shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in Loans under a particular Facility it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in Loans under a particular Facility it receives two or more offers at the same price it shall only accept such offers on a pro rata basis.
- (d) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an “**Open Order Process**”) which is carried out as follows.
- (i) The Company (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an “**Open Order**”) to purchase participations in Loans under one or more of the Facilities up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Facilities of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 a.m. on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations in Loans, and under which Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 a.m. on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Company on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender.
 - (ii) Any purchase of participations in Loans under the Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.
 - (iii) If in respect of participations in Loans under a Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Facility to which an Open Order relates would be exceeded, the Company shall only accept such offers on a pro rata basis.

- (iv) The Company shall, by 11.00 a.m. on the sixth Business Day following the date on which an Open Order is placed, notify the Facility Agent of the amounts of the participations in Loans purchased through such Open Order Process and the identity of the Facilities to which they relate. The Facility Agent shall disclose such information to any Lender that requests the same.
- (e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.
- (f) In relation to any Debt Purchase Transaction entered into pursuant to this clause 29.10, notwithstanding any other term of this Agreement or the other Finance Documents:
 - (i) on completion of the relevant assignment or transfer by novation pursuant to clause 29 (*Changes to the Lenders*), the portions of the Loans and Commitments to which it relates shall be extinguished;
 - (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;
 - (iii) the Borrower which is the assignee or transferee shall be deemed to be an entity which fulfils the requirements of clause 29.1 (*Assignments and transfers by the Lenders*) to be a New Lender (as defined in such clause);
 - (iv) clause 33 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
 - (v) for the avoidance of doubt, any extinguishment of any part of the Loans or Commitments shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

30. CHANGES TO THE OBLIGORS

30.1 Assignment and transfers by Obligor

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

30.2 Additional Borrowers

- (a) Subject to compliance with the provisions of clauses 25.9(c) and 25.9(d) (*Know your customer checks*), the Company may request that any of its wholly owned Subsidiaries becomes a Borrower. That Subsidiary shall become a Borrower if:
 - (i) (A) it is incorporated in the same jurisdiction as an existing Borrower, Germany or Sweden, or (B) all of the Lenders approve the addition of that Subsidiary, provided that, in each case, if following receipt of “know your customer” information, any Finance Party concludes (acting reasonably and on the basis of external legal advice) that the relevant Subsidiary constitutes a ‘relevant financial institution’ for the purposes of Article 2 of The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014, all the Finance Parties approve the decision;
 - (ii) that Subsidiary delivers to the Facility Agent a duly completed and executed Accession Deed;

- (iii) subject to clause 30.2(d) below, the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
 - (iv) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
 - (v) the Facility Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Facility Agent.
- (b) No person resident for tax purposes in a jurisdiction outside the UK, Germany or Sweden may become an Additional Borrower until amendments satisfactory to all Lenders have been made to the definition of “**Qualifying Lender**” in clause 18 (*Tax Gross Up and Indemnities*), to provide for appropriate classes of Lenders to be Qualifying Lenders by reference to the jurisdiction of incorporation of the Additional Borrower together with all necessary consequential amendments to clause 18 (*Tax Gross Up and Indemnities*), Schedule 4 (*Form of Transfer Certificate*), Schedule 5 (*Form of Assignment Agreement*) and Schedule 12 (*Form of Increase Confirmation*) (such consequential amendments reflecting the jurisdiction of incorporation of such person).
- (c) The Facility 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 2 of Schedule 2 (*Conditions Precedent*).
- (d) The relevant Subsidiary need only become an Additional Guarantor under clause 30.2(a)(iii) above if:
- (i) 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;
 - (ii) there are no contractual restrictions on that person becoming a Guarantor; and
 - (iii) the law of the jurisdiction of incorporation of the relevant person does not require that security is to be provided in respect of any guarantee to be given in respect of the Finance Documents.
- (e) The Company must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness, personal liability or contractual restrictions. This includes agreeing to a limit on the amount guaranteed and/or complying with the requirements of Sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in any other jurisdiction to enable that member of the Group to become a Guarantor. The Facility 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.
- (f) Upon becoming an Additional Borrower, that Subsidiary must make any filings (and provide copies of those filings) as required by paragraph (i) of clause 18.2 (*Tax gross-up*) in accordance with those provisions.

30.3 Resignation of a Borrower

- (a) The Company may request that a Borrower ceases to be a Borrower by delivering to the Facility Agent a Resignation Letter.

- (b) The Facility Agent shall accept a Resignation Letter and notify the Company and the other Finance Parties of its acceptance if:
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents; and
 - (iii) where the Borrower is also a Guarantor, its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Company has confirmed that this is not the case), unless:
 - (A) its resignation has been accepted in accordance with clause 30.5 (*Resignation of a Guarantor*); or
 - (B) the Company would remain in compliance with its obligations under clause 27.16 (*Guarantors*) without the inclusion of the Borrower as a Guarantor for the purposes of the test set out therein.
- (c) Upon notification by the Facility Agent to the Company of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower.

30.4 Additional Guarantors

- (a) Subject to compliance with the provisions of clauses 25.9(c) and 25.9(d) (*Know your customer checks*), the Company may request that any of its Subsidiaries which are members of the Group become a Guarantor.
- (b) A member of the Group shall become an Additional Guarantor if:
 - (i) the Company and the proposed Additional Guarantor deliver to the Facility Agent a duly completed and executed Accession Deed; and
 - (ii) the Facility Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Facility Agent.
- (c) The Facility 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 2 of Schedule 2 (*Conditions Precedent*).

30.5 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Facility Agent a Resignation Letter.
- (b) Subject to paragraph (c) below, the Facility Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no payment is due from the Guarantor under the terms of this Agreement;

- (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under clause 30.3 (*Resignation of a Borrower*);
 - (iv) the Resignation Letter confirms that clause 27.16 (*Guarantors*) will continue to be complied with after its release and that the relevant Guarantor (unless it is an Excluded Company) is not a Material Company; and
 - (v) either the Lenders have agreed to such resignation or immediately after such resignation, the Guarantor will cease to be a member of the Group as a result of a Permitted Disposal.
- (c) The Facility Agent may only accept a Resignation Letter if the Company confirms in that Resignation Letter that the Guarantor is not a guarantor under any Debt Capital Markets Issues, the Existing Debt Capital Market Issues or any other debt capital markets issue made by a member of the Group or where the Guarantor is a guarantor under a Debt Capital Markets Issue, the Existing Debt Capital Market Issues or any such other issue, that it will cease to be a guarantor under each such Debt Capital Markets Issue, Existing Debt Capital Market Issue and other issue no later than the date that its resignation as a Guarantor in accordance with this clause 30.5 becomes effective.
- (d) Upon the Facility Agent's acceptance of a Resignation Letter, such Guarantor shall automatically and irrevocably be released and relieved of any obligation under the Finance Documents.
- (e) At such time as the Facility Agent is satisfied (acting reasonably) that all amounts which are or may be payable by all Obligors under the Finance Documents have been irrevocably paid in full, the Facility Agent shall (at the expense of the Company) formally release each of the Obligors from the guarantees, indemnities and counter-indemnities given by it hereunder.

30.6 Repetition of representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in clause 24.20 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

**PART 10
THE FINANCE PARTIES**

31. ROLE OF THE FACILITY AGENT, THE ARRANGERS AND THE REFERENCE BANKS

31.1 Appointment of the Facility Agent

- (a) Each of the Arrangers and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arrangers and the Lenders authorises the Facility Agent to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Each of the Arrangers and the Lenders hereby releases the Facility Agent from any restrictions under § 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to the Arranger and/or such Lender. If the Arranger or a Lender is barred by its constitutional documents or by-laws from granting such exemption, it shall notify the Facility Agent accordingly.

31.2 Duties of the Facility Agent

- (a) Subject to paragraph (b) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (b) Without prejudice to clause 29.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (a) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Facility Agent shall provide to the Company within three Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and

the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Finance Documents.

- (g) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

31.3 **Role of the Arrangers**

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

31.4 **No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Facility Agent any Arranger as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, any Arranger or any Ancillary Lender 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.

31.5 **Business with the Group**

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

31.6 **Rights and discretions**

- (a) The Facility Agent may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Facility 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 28.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (iii) any notice or request made by the Company, TCGT and/or TCAT (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Facility Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Facility Agent may act in relation to the Finance Documents through its personnel and agents.

- (e) The Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Without prejudice to the generality of paragraph (e) above, the Facility Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Company and shall disclose the same upon the written request of the Company or the Majority Lenders.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor any 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.

31.7 **Majority Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Facility Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Facility Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Facility 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.

31.8 **Responsibility for documentation**

None of the Facility Agent, any Arranger or any Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, any Arranger, an Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document or the Information Package or the transactions contemplated in the Finance Documents;
- (b) is responsible for 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 or in connection with any Finance Document; or
- (c) is responsible for 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.

31.9 Exclusion of liability

- (a) Without limiting clause paragraph (b) below (and without prejudice to the provisions of clause 35.11(e) (*Disruption to payment systems etc.*)), none of the Facility Agent or any Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Facility Agent or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Facility Agent, or any Ancillary Lender, in respect of any claim it might have against the Facility Agent or an Ancillary Lender 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 Facility Agent or any Ancillary Lender may rely on this clause subject to clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or any Arranger to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and the Facility Lender confirms to each Agent and each Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or any Arranger.

31.10 Lenders’ indemnity to the Facility 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 Facility 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 Facility Agent (otherwise than by reason of the Facility Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 35.11 (*Disruption to payment systems etc.*) notwithstanding the Facility Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document)).

31.11 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Facility 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 clause 31.11(b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent.
- (d) 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.
- (e) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Part 10 (The Finance Parties). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Facility 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 Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under clause 18.8 (*FATCA Information*) and a Lender reasonably believes that the Facility 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 Facility Agent pursuant to clause 18.8 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Company and the Lenders that the Facility 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 Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

31.12 Replacement of the Facility Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Facility Agent by appointing a successor Facility Agent.
- (b) The retiring Facility 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 Facility Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.

- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Part 10 (The Finance Party) (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility 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.

31.13 Confidentiality

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

31.14 Relationship with the Lenders

- (a) Subject to clause 29.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility 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 five 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 Facility 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 and (where communication by electronic mail or other electronic means is permitted under clause 37.6 (*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, electronic mail address (or such other information), department and officer by that Lender for the purposes of clause 37.2 (*Addresses*) and paragraph (a)(ii) of clause 37.6 (*Electronic communication*) and the Facility 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.

31.15 Credit appraisal by the Lenders and Ancillary 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 and Ancillary Lender confirms

to the Facility Agent, each Arranger and each Ancillary Lender 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 Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the 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 and/or completeness of the Information Package and any other information provided by the Facility Agent, any Party or by any other person 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.

31.16 Facility Agent's Management Time

Any amount payable to the Facility Agent under clause 20.3 (*Indemnity to the Facility Agent*), clauses 22 (*Costs and Expenses*) and clause 31.10 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising that Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as Facility Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under clause 17 (*Fees*).

31.17 Deduction from amounts payable by the Facility Agent

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

31.18 Role of Base Reference Banks

- (a) No Base Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Base Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Base Reference Bank) may take any proceedings against any officer, employee or agent of any Base Reference Bank in respect of any claim it might have against that Base Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent

of each Base Reference Bank may rely on this clause 31.18 subject to clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

32. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

32.1 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.

33. SHARING AMONG THE FINANCE PARTIES

33.1 Payments to Finance Parties

- (a) Subject to paragraph (b) below and clause 33.6 (*Ancillary Lenders and Issuers*), if a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with clause 35 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:
 - (i) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
 - (ii) the Facility 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 Facility Agent and distributed in accordance with clause 35 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
 - (iii) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 35.6 (*Partial payments*).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuer or an Ancillary Lender in respect of any Credit Support provided for the benefit of that Issuer or that Ancillary Lender.

33.2 Redistribution of payments

The Facility 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 35.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

33.3 Recovering Finance Party's rights

On a distribution by the Facility Agent under clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Part, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

33.4 Reversal of redistribution

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

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); 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.

33.5 Exceptions

- (a) This clause 33 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant 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 the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

33.6 Ancillary Lenders and Issuers

- (a) This clause 33 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender or an Issuer at any time prior to service of notice under clause 28.16 (*Acceleration*).
- (b) Following service of a notice under clause 28.16 (*Acceleration*), this clause 33 shall apply to all receipts or recoveries by Ancillary Lenders and Issuers except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility to its Designated Net Amount.

34. LENDERS: LOSS SHARE

34.1 Exercise of set-offs

- (a) On or promptly after the Trigger Date, each Loss Share Lender must exercise all available Consolidation in respect of Liabilities against credit balances in the name of each relevant Obligor save that:
 - (i) any credit balances forming part of any cash management or cash pooling arrangement will first be set off, consolidated with or otherwise combined with debit balances forming part of the same arrangement; and
 - (ii) no Consolidation shall be required against any credit balance held as part of Credit Support except:
 - (A) to extinguish Liabilities in respect of which such Credit Support has been provided; and
 - (B) after the Liabilities referred to in paragraph (a) above have been satisfied in full, against other Liabilities.
- (b) Each Loss Share Lender must inform the Facility Agent (in reasonable detail) of its Applicable Liabilities after any Consolidation and of the amounts subject to that Consolidation.

34.2 Loss share

- (a) If, for any reason, any Applicable Liabilities remain unpaid after the Trigger Date and the resulting losses are not borne by the Loss Share Lenders in the proportions which their Aggregate Commitments bear to the total of the Aggregate Commitments, the Loss Share Lenders will make such payments amongst themselves as the Facility Agent shall require to put the Loss Share Lenders in such a position that (after taking into account such payments) those losses are borne in those proportions.
- (b) In this clause 34:

“**Aggregate Commitments**” means:

- (a) in respect of a Loss Share Lender which is an Original Lender, the aggregate amount of its Commitments on the date of this Agreement **less** the amount of any Commitment transferred by it under this Agreement **plus** the amount of any Commitment transferred to it under this Agreement; and
- (b) in respect of any other Loss Share Lender, the aggregate amount of Commitments transferred to it under this Agreement **less** the amount of any Commitment transferred by it under this Agreement.

“**Applicable Liability**” means a Liability but excluding:

- (a) any amount owed to a Loss Share Lender by an Obligor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by the relevant Ancillary Lender of any provision of clause 9 (*Ancillary Facilities*);
- (b) any amount owed to an Ancillary Lender by an Obligor in respect of any Ancillary Facility to the extent (and in the amount) that Credit Support has been provided by an Obligor in respect of that amount and is available to the relevant Ancillary Lender in accordance with this Agreement; and

- (c) any amount outstanding in respect of an Instrument or BG Instrument to the extent (and in the amount) that Credit Support has been provided by an Obligor in respect of that outstanding amount and is available to the relevant Loss Share Lender in accordance with this Agreement.

“Consolidation” means any rights of set-off, retention, consolidation and combination of accounts.

“Enforcement Date” means the first date (if any) on which a Loss Share Lender takes any enforcement action as set out below in relation to any Liabilities:

- (a) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Loss Share Lender to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Finance Documents); or
- (b) the making of a demand in relation to a Liability that is payable on demand (including under a guarantee under the Finance Documents).

“Liabilities” means all present and future liabilities and obligations at any time of any member of the Group to any Loss Share Lender under the Finance Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Obligor of a payment on the grounds of preference or otherwise,
- and any amounts which would be included in any of the above but for any discharge, non provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

“Loss Share Lender” means a Lender, other than Swiss Re International SE, Niederlassung Deutschland.

“Trigger Date” means the Enforcement Date, or, if no Enforcement Date occurs, any Termination Date on which all amounts due and payable from the Obligors under the Finance Documents are not paid or repaid in full.

34.3 Implementation of loss share

The provisions of this clause 34 shall be applied at such time or times after the Trigger Date as the Facility Agent shall consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this clause 34 have been applied before all the Liabilities have matured and/or been finally quantified, the Facility Agent may elect to re-apply those provisions on the basis of revised outstanding Applicable Liabilities and the Loss Share Lenders shall make appropriate adjustment payments amongst themselves.

34.4 Default in payment

If a Loss Share Lender fails to make a payment due from it under this clause 34, the Facility Agent shall be entitled (but not obliged) to take action on behalf of the Loss Share Lender(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Loss Share Lender(s) in respect of costs) but shall have no liability or obligation towards such Loss Share Lender(s) or any other Loss Share Lender as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

34.5 Calculation and determination by the Facility Agent

Any calculation or determination made by the Facility Agent under this clause 34 shall be made by the Facility Agent based on the information provided to it by the relevant Ancillary Lender and/or Loss Share Lender.

**PART 11
ADMINISTRATION**

35. PAYMENT MECHANICS

35.1 Payments to the Facility Agent

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

35.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to clause 35.3 (*Distributions to an Obligor*) and clause 35.4 (*Clawback*) be made available by the Facility 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 Facility Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

35.3 Distributions to an Obligor

The Facility Agent may (with the consent of the Obligor or in accordance with clause 36 (*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.

35.4 Clawback

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility 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 Facility Agent shall on demand refund the same to the Facility Agent together with interest on

that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

35.5 Impaired Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with clause 35.1 (*Payments to the Facility Agent*) may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of “**Acceptable Bank**” and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents. Where a payment is made directly to a recipient under this clause, the payer shall use reasonable endeavours to notify the intended recipient in advance of the details of that payment (including the account to which it is being paid).
- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this clause 35.5 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 31.12 (*Replacement of the Facility Agent*), each Party which has made a payment to a trust account in accordance with this clause 35.5 shall 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 in accordance with clause 35.2 (*Distributions by the Facility Agent*).

35.6 Partial payments

- (a) If the Facility Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of each Agent under those Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents (other than, until service of a notice under clause 28.16 (*Acceleration*), any Ancillary Document or any amounts owing to the Issuers);
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under the Finance Documents (other than, until service of a notice under clause 28.16 (*Acceleration*), any Ancillary Document or any amounts owing to the Issuers); and

- (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Lenders, vary the order set out in clauses 35.6(a)(ii) to 35.6(a)(iv) above.
- (c) Clauses 35.6(a) and 35.6(b) above will override any appropriation made by an Obligor.
- (d) If an Issuer receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor to that Issuer in respect of this Agreement or a BG Instrument, the Issuer shall apply that payment towards the obligations of that Obligor in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of that Issuer under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due to the Issuer in respect of the BG Instruments issued by that Issuer but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment of any amount due but unpaid under clause 7.6 (*Indemnity*); and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due to that Issuer under the Finance Documents but unpaid under the Finance Documents.
- (e) Paragraph (d) above will override any appropriation made by an Obligor.

35.7 **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.

35.8 **Business Days**

- (a) Any payment 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.

35.9 **Currency of account**

- (a) Subject to clauses 35.9(b) to 35.9(e) above, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when 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 the Base Currency shall be paid in that other currency.

35.10 **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 Facility 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility 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.

35.11 **Disruption to payment systems etc.**

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

- (a) the Facility Agent or that Issuer may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Facility Agent or that Issuer may deem necessary in the circumstances (but in the case of the Facility Agent, only the Revolving Facility and, in the case of an Issuer, only the Bonding Facility in respect of its Bonding Facility Commitment);
- (b) neither that Issuer nor the Facility Agent shall be obliged to consult with the Company in relation to any changes mentioned in clause 35.11(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent and/or an Issuer may consult with the Finance Parties in relation to any changes mentioned in clause 35.11(a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent, an Issuer 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 41 (*Amendments and Waivers*);

- (e) neither the Facility Agent nor an Issuer shall be liable for any damages, costs or losses 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 Facility Agent or that Issuer) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 35.11; and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to clause 35.11(d) above.

36. SET-OFF

- (a) After any Default arising in relation to clause 28.1 (*Non-payment*) or an Event of Default which is continuing, 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.
- (b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents or on any Termination Date on which all amounts due and payable from the Obligors under the Finance Documents are not paid or repaid in full (when due to be so paid or repaid) be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

37. NOTICES

37.1 Communications in writing

Subject to clause 37.6 (*Electronic communication*), 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 letter.

37.2 Addresses

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

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

37.3 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 if by way of

letter, when it has been left at the relevant address or five 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 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Facility Agent or an Issuer will be effective only when actually received by the Facility Agent or that Issuer and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent's or that Issuer's signature below (or any substitute department or officer as the Facility Agent or that Issuer shall specify for this purpose).
- (c) Other than in respect of the Bonding Facility, all notices from or to an Obligor shall be sent through the Facility Agent.
- (d) All notices in respect of the Bonding Facility from or to an Obligor or a Counterparty shall be sent to or by the relevant Issuer.
- (e) Any communication or document made or delivered to the Company in accordance with this clause 37.3 (*Delivery*) will be deemed to have been made or delivered to each of the Obligors.

37.4 **Notification of address**

Promptly upon receipt of notification of an address or change of address pursuant to clause 37.2 (*Addresses*) or changing its own address, the Facility Agent shall notify the other Parties.

37.5 **Communication when Agent is Impaired Agent**

If the Facility Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility 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 Facility 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 unless such replacement Agent becomes an Impaired Agent.

37.6 **Electronic communication**

- (a) The Parties agree that, unless and until notified to the contrary, any communication to be made between any of the Parties under or in connection with the Finance Documents may be made by unencrypted electronic mail or other electronic means (including, without limitation, by way of posting to a secure website), provided that the relevant Parties:
 - (i) notify the Facility Agent 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 the Facility Agent of any change to their address or any other such information supplied by them.
- (b) Any electronic communication 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.

- (c) Any electronic communication as specified in paragraph (a) above made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- (d) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement will be deemed only to become effective on the next working day in that place.
- (e) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this clause 37.6 (*Electronic communication*).

37.7 **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 Facility 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.

38. **CALCULATIONS AND CERTIFICATES**

38.1 **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.

38.2 **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.

38.3 **Day count convention**

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

39. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents 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.

40. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

41. AMENDMENTS AND WAIVERS

41.1 Required consents

- (a) Subject to clause 41.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 41.
- (c) Each Obligor agrees to any such amendment or waiver permitted by this clause 41 which is agreed to by the Company. This includes any amendment or waiver which would, but for this clause 41.1(c), require the consent of all of the Guarantors.

41.2 Exceptions

- (a) Subject to paragraph (c) of this clause 41.2, an amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of “**Majority Lenders**” in clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable (provided that the agreement of a replacement for LIBOR or EURIBOR shall be a Majority Lender decision);
 - (iv) other than in respect of a payment to be made under or in respect of an Ancillary Facility or the Bonding Facility, a change in currency of payment of any amount under the Finance Documents;
 - (v) an increase in or an extension of any Commitment or the Total Commitments or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
 - (vi) a change to the Borrowers or Guarantors other than in accordance with clause 30 (*Changes to the Obligors*);
 - (vii) any provision which expressly requires the consent of all the Lenders;
 - (viii) clause 2.3 (*Finance Parties’ rights and obligations*), clause 12.1 (*Change of Control*), clause 29 (*Changes to the Lenders*), clause 34 (*Lenders: Loss*

Share), clause 45 (*Governing Law*), clause 46 (*Enforcement*) or this clause 41; or

- (ix) the nature and the scope of the guarantee and indemnity granted under clause 23 (*Guarantee and Indemnity*),

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

- (b) An amendment or waiver which relates to the rights or obligations of the Facility Agent, an Arranger, an Issuer, any Ancillary Lender or a Base Reference Bank may not be effected without the consent of the Facility Agent, that Arranger, that Issuer, that Ancillary Lender or, as the case may be, that Base Reference Bank.
- (c) If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document or other vote of Lenders under the terms of this Agreement within 15 Business Days (unless the Company and the Facility Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request.
- (d) Subject to paragraph (a) of clause 41.2 (*Exceptions*), if any Screen Rate is not available for a currency which can be selected for a Loan, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to that currency in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Majority Lenders.

41.3 Replacement of Lender

- (a) If at any time:
 - (i) any Lender becomes a Non-Consenting Lender (as defined in clause 41.3(c) below);
 - (ii) an Obligor becomes obliged to repay any amount in accordance with clause 11.1 (*Illegality*), or to pay additional amounts pursuant to clause 19.1 (*Increased costs*) or clause 18 (*Tax Gross Up and Indemnities*) to any Lender; or
 - (iii) the Company or a Borrower exercises its option to replace an Issuer under the terms of this Agreement,

then Company may, on 15 Business Days' prior written notice to the Facility 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 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which is acceptable to the Facility Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 29 (*Changes to the Lenders*) (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price:

- (A) in the case of Loans, in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents; and
 - (B) in the case of BG Instruments, at the option of the transferring Lender, in consideration of an indemnity from the Replacement Lender in a form acceptable to the transferring Lender or the provision of Credit Support in a form acceptable to the transferring Lender, in each case in an amount equal to the Outstanding Amount of the relevant BG Instruments and all accrued other amounts payable in relation thereto under the Finance Documents.
- (b) The replacement of a Lender pursuant to this clause shall be subject to the following conditions:
- (i) the Company shall have no right to replace the Facility Agent;
 - (ii) neither the Facility 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 the earlier of:
 - (A) 20 days after the date on which a Lender becomes a Non-Consenting Lender as a result of its failure to respond to the relevant request for a consent, waiver or amendment to the Finance Documents; and
 - (B) 20 days after the date that the Non-Consenting Lender notifies the Company and the Facility Agent of its failure or refusal give a consent in relation to, or to agree to any waiver or amendment to the Finance Documents requested by the Company;
 - (iv) in no event shall the Lender replaced under this clause 41.3(b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied (acting reasonably and promptly) that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) In the event that:
- (i) the Company or the Facility Agent (at the request of the Company) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) 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**”.

41.4 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or Total Revolving Facility Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender’s Commitments will be reduced by the amount of its Available Commitments.
- (b) For the purposes of this clause 41.4, the Facility Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Facility 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 paragraphs (a), (b) or (c) of the definition of “**Defaulting Lender**” has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

41.5 **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 15 Business Days’ prior written notice to the Facility Agent and such Lender:
 - (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
 - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 29 (*Changes to the Lenders*) all (and not part only) of the undrawn Revolving Facility Commitment of the Lender; or
 - (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a “**Replacement Lender**”) selected by the Company, and which (unless the Facility Agent is an Impaired Agent) is acceptable to the Facility Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender’s participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this clause shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Facility Agent;
 - (ii) neither the Facility 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 15 Business Days after the notice referred to in paragraph (a) above; and
 - (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;
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied (acting reasonably and promptly) 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.

42. CONFIDENTIALITY

42.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 42.2 (*Disclosure of Confidential Information*) and clause 42.3 (*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.

42.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates 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 and of which succeeds (or which may potentially succeed) it as Facility Agent and, in each case, to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any subparticipation 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, Representatives and professional advisers;

- (iii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any securitisation or similar transaction in relation to one or more Finance Documents and/or one or more Obligors and/or any monoline insurer or verification agent in relation to any such transaction and, in each case, to any of those person's Affiliates, Representatives and professional advisers;
- (iv) appointed by any Finance Party or by a person to whom paragraph (b)(i), (ii) or (iii) 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 31.14(b) of clause 31.14 (*Relationship with the Lenders*));
- (v) 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), (ii) or (iii) above;
- (vi) 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;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 29.8 (*Security over Lenders' rights*);
- (viii) 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;
- (ix) who is a Party; or
- (x) 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) and (b)(ii) 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 (to the extent it relates to (b)(i) or (b)(ii) only), 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)(iii), (b)(iv) (to the extent it relates to (b)(iii) only), (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;
- (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.

42.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more 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 45 (*Governing Law*);
 - (vi) the names of the Facility Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facilities (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facilities;
 - (xi) type of Facilities;
 - (xii) ranking of Facilities;

- (xiii) applicable Termination Date;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Company, to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Facility Agent shall notify the Company and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facilities and/or one or more Obligor; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligor by such numbering service provider.

42.4 **Entire agreement**

This clause 42 (*Confidentiality*) 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.

42.5 **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.

42.6 **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 42.2 (*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 42 (*Confidentiality*).

42.7 **Continuing obligations**

The obligations in this clause 42 (*Confidentiality*) 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 the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

43. **CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

43.1 **Confidentiality and disclosure**

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Facility Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to clause 14.5 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Base Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is

informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Base Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this clause 43 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under clause 14.5 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b)(i) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

43.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Base Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of clause 43.1 (*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 43.

43.3 No Event of Default

No Event of Default will occur under clause 28.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this clause 43 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

44. 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.

PART 12
GOVERNING LAW AND ENFORCEMENT

45. GOVERNING LAW

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

46. ENFORCEMENT

46.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 46.1 is for the benefit of the Finance Parties only. As a result, to the extent allowed by law:
 - (i) no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction; and
 - (ii) Finance Parties may take concurrent proceedings in any number of jurisdictions.

46.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Company by its execution of this Agreement, accepts that appointment); and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must promptly (and in any event within 21 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

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

SCHEDULE 1
THE ORIGINAL PARTIES

Part 1
The Original Obligors

<u>Name of Original Borrower</u>	<u>Company Number</u>	<u>Jurisdiction of Incorporation</u>
Thomas Cook Group Treasury Limited	06575598	England and Wales
Thomas Cook Airlines Treasury Limited	11011161	England and Wales
<u>Name of Original Guarantor</u>	<u>Company Number</u>	<u>Jurisdiction of Incorporation</u>
Thomas Cook Group PLC	06091951	England and Wales
Thomas Cook Airlines Limited	02012379	England and Wales
Thomas Cook Group Treasury Limited	06575598	England and Wales
Thomas Cook Tour Operations Limited	03772199	England and Wales
TCCT Retail Limited	07397858	England and Wales
Thomas Cook UK Limited	02631252	England and Wales
Condor Flugdienst GmbH	HRB 83385	Germany

Part 2
The Original Lenders - other than UK Non-Bank Lenders

<u>Name of Original Lender</u>	<u>Revolving Facility Commitment (£)</u>	<u>Bonding Facility Commitment (£)</u>	<u>(€)</u>	<u>Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)</u>
DNB (UK) Limited	£60,000,000	£40,000,000		
UniCredit Bank AG, London Branch	£60,000,000	£40,000,000		
Bank of America Merrill Lynch International Limited	£75,000,000			
Barclays Bank PLC	£45,000,000	£30,000,000		
BNP Paribas London Branch	£50,000,000	£25,000,000		
Lloyds Bank plc	£75,000,000			
Societe Generale, London Branch	£50,000,000	£25,000,000		
The Royal Bank of Scotland plc	£45,000,000	£30,000,000		
AIB Group (UK) p.l.c.	£30,000,000			
Axis Bank Limited, DIFC Branch	£17,000,000			
Axis Bank UK Limited	£8,000,000			
Citibank N.A. London Branch	£25,000,000			
Credit Suisse AG, London Branch	£25,000,000			
Deutsche Bank Luxembourg S.A.	£25,000,000			
KBC Bank NV	£15,000,000	£10,000,000		
Morgan Stanley Senior Funding, Inc.	£25,000,000			
Credit Industriel et Commercial, London Branch	£20,000,000			
Swiss Re International SE, Niederlassung Deutschland			€28,000,000	
Total	£650,000,000	£200,000,000	€28,000,000	

Part 3
The Original Lenders - UK Non-Bank Lenders

<u>Name of Original Lender</u>	<u>Revolving Facility Commitment</u>	<u>Bonding Facility Commitment</u>	<u>Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)</u>
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SCHEDULE 2
CONDITIONS PRECEDENT

Part 1

Initial Conditions Precedent

1. Obligors

- (a) A copy of the constitutional documents of the Company and each Original Obligor, including, if such Obligor is incorporated in Germany:
 - (i) an electronically retrieved print-out from the internet-based commercial register (*Ausdruck von dem Handelsregisterportal der Länder*) pertaining to such company dated on the date of this Agreement;
 - (ii) a copy of its articles of association (*Satzung*);
 - (iii) a copy of its list of shareholders (*Gesellschafterliste*); and
 - (iv) a copy of any of its by-laws (*Geschäftsordnungen*) (if any).
- (b) If applicable, a copy of or extracts from a resolution of the board of directors of each Original Obligor (other than an Original Obligor incorporated in Germany) or, in the case of the Company, a duly appointed committee of the board of directors (with a separate power of attorney, if required under the laws of the country of incorporation of the Relevant Group Member):
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of an Obligor other than the Company, authorising the Company to act as its agent in connection with the Finance Documents.
- (c) In the case of the Company, an extract from the resolutions of the board of directors delegating authority to the Finance & Administration Committee in relation to matters set out in paragraph 1(b) of this Schedule.
- (d) In the case of an Original Obligor incorporated in Germany, a resolution of the holders of all its shares, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
- (e) In the case of an Original Obligor incorporated in Germany, if required, a resolution of a supervisory or advisory board, the board of directors or the management of such Original Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.

- (f) In the case of an Original Obligor incorporated in England and Wales (other than the Company), a copy of a resolution signed by all the holders of the issued shares in each Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which such Guarantor is a party.
- (g) A specimen of the signature of each person authorised by the resolution referred to in paragraphs 1(a) and 1(b) above in relation to the Finance Documents and related documents (certified by an authorised signatory) and which has signed a Finance Document and/or related documents.
- (h) A certificate of each Original Obligor (other than an Original Obligor incorporated in Germany) (signed by an authorised signatory) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- (i) A certificate of an authorised signatory of the Company or other relevant Original Obligor certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2. Finance Documents

- (a) A fully executed copy of this Agreement.
- (b) Any other Finance Document executed by Obligor(s) party to it (other than any Ancillary Document).

3. Legal opinions

A legal opinion of the following legal advisers to the Facility Agent and Arrangers, each addressed to the Facility Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities:

- (a) Allen & Overy LLP as to English law; and
- (b) Allen & Overy LLP as to German law,

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

4. Other documents and evidence

- (a) Evidence that any process agent referred to in clause 46.2 (*Service of process*), if not the Company, has accepted its appointment.
- (b) A copy of the Group Structure Chart.
- (c) A copy, certified by an authorised signatory of the Company or other relevant Original Obligor to be a true copy, of the Original Financial Statements of each Original Obligor.
- (d) A certificate from an authorised signatory of the Company listing the Material Companies by reference to the audited consolidated financial statements for its financial year ended 30 September 2016.

- (e) Evidence that the fees, costs and expenses due from the Company under the Finance Documents on the date of this Agreement have been paid (or will be on the Closing Date) in full.
- (f) Evidence of compliance with customary Know Your Customer and other similar checks under applicable laws.
- (g) A copy of the Financial Projections.
- (h) A copy of any other authorisation or other document, opinion or assurance which the Facility Agent reasonably considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document, provided that it has notified the Company that it is required at least seven Business Days prior to the date of this Agreement.
- (i) Evidence that the Existing Facilities have been or will be prepaid and cancelled in full by no later than the first date upon which amounts are drawn down under this Agreement.
- (j) Evidence of the termination (before or on the Closing Date) by the parties thereto of the hedging intercreditor agreement originally dated 16 May 2013 as amended or amended and restated from time to time, including pursuant to the supplemental agreement dated 19 May 2015.

Part 2
Conditions Precedent required to be delivered by an Additional Obligor

1. An Accession Deed executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor, including:
 - (a)
 - (i) if such Obligor is incorporated in Denmark, the articles of association (in Danish: vedtægter) and an online transcript (in Danish: fuld visning) from the Danish Business Authority;
 - (ii) if such Additional Obligor is incorporated in Germany:
 - (A) as a limited liability company (*Gesellschaft mit beschränkter Haftung*):
 - (1) an electronically retrieved print-out from the internet-based commercial register (*Ausdruck von dem Handelsregisterportal der Länder*) pertaining to such company dated on the date on which such company becomes an Additional Obligor;
 - (2) a copy of its articles of association (*Satzung*);
 - (3) a copy of its list of shareholders (*Gesellschafterliste*); and
 - (4) a copy of any of its by-laws (*Geschäftsordnungen*) (if any), or
 - (B) as a stock corporation (*Aktiengesellschaft – AG*):
 - (1) an electronically retrieved print-out from the internet-based commercial register (*Ausdruck von dem Handelsregisterportal der Länder*) pertaining to such AG dated on the date on which the AG becomes an Additional Obligor;
 - (2) a copy of the articles of association (*Satzung*) of such AG; and
 - (3) a copy of any of its by-laws (*Geschäftsordnungen*) (if any).
 - (b) If applicable, a copy of or extracts from a resolution of the board of directors of each Additional Obligor (other than an Additional Obligor incorporated in Germany):
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and

- (iv) in the case of an Additional Obligor other than the Company, authorising the Company to act as its agent in connection with the Finance Documents.
- (c) In the case of an Additional Obligor incorporated as a limited liability company (GmbH) or organised as a limited partnership of which the general partner is a limited liability company (GmbH & Co. KG), a resolution of the holders of all its shares/partnership interests, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
 - (d) In the case of an Additional Obligor incorporated in Germany, if required, a resolution of a supervisory or advisory board or the board of directors or the management of such Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
 - (e) In the case of each Additional Guarantor incorporated in England and Wales (other than the Company), a copy of a resolution signed by all the holders of the issued shares in each Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
 - (f) In the case of an Additional Obligor incorporated in Sweden, a resolution of the holders of all its shares (or the relevant corporate body in such shareholder), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
 - (g) If applicable, evidence of a filing for registration of change (Sw. ändringsanmälan) of the board of directors of each Additional Obligor incorporated under Swedish law having been duly received by the Swedish Companies Registration Office (Sw. ankomststämplat ändringsanmälan), including a copy of the application and any resolutions.
3. A specimen of the signature of each person authorised by the resolution referred to in paragraph 2 above (certified by a director).
 4. A certificate of the Additional Obligor (other than an Additional Obligor incorporated in Germany) (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
 5. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed and listing the directors of the Additional Obligor.
 6. A copy of any other authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration or other document, opinion or assurance which the Facility Agent reasonably considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document, provided that it has notified the Company that it is required at least seven Business Days prior to the date of the relevant Accession Deed.
 7. If available, the latest audited financial statements of the Additional Obligor certified by an authorised signatory of the Additional Obligor to be a true copy.

8. The following legal opinions, each addressed to the Facility Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facilities:
 - (a) A legal opinion of the legal advisers to the Facility Agent and the Arrangers, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
 - (b) If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Facility Agent and the Arrangers in the jurisdiction in which the Additional Obligor is incorporated, and in the form distributed to the Lenders prior to signing the Accession Deed.
9. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 46.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
10. A certificate from an authorised signatory of the Additional Obligor confirming that it is a subsidiary of the Company and whether it is a Material Company.
11. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
12. If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Facility Agent may reasonably require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
13. Evidence of compliance with customary Know Your Customer and other similar checks under applicable laws.

SCHEDULE 3
UTILISATION REQUEST

From: [Borrower]

To: [Agent]/[Issuer]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Borrower:
 - (b) Proposed Utilisation Date: (or, if that is not a Business Day, the next Business Day)
 - (c) Currency of Loan: [●]
 - (d) Amount: [●] or, if less, the Available Facility
 - (e) Interest Period: [●]
3. [We wish you to issue a BG Instrument as follows:

Counterparty:	[●]
Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Currency of BG Instrument:	[●]
Amount of BG Instrument required:	[●]
[Expiry Date:	[●]]
Beneficiary:	[●]]
Beneficiary address:	[●]
4. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request and the Utilisation Date.
5. [We confirm that the currency and amount of the BG Instrument complies with clause 6.4 (*Currency and amount for BG Instruments*).]
6. We set out below the calculations establishing the figures set out above:

7. [The proceeds of this Loan should be credited to [account]].[Our delivery instructions are:
[●]]
8. [We attach a copy of the proposed BG Instrument.]
9. This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for the Company

authorised signatory for

[Insert name of Borrower]

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: [●] as Agent

From: [*The Existing Lender*] (the “Existing Lender”) and [*The New Lender*] (the “New Lender”)

Dated:

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This agreement (the “Agreement”) shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 29.5 (*Procedure for transfer*) of the Facilities Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender’s Commitment, rights and obligations referred to in the Schedule in accordance with clause 29.5 (*Procedure for transfer*).
 - (b) The proposed Transfer Date is ●.
 - (c) The Facility Office and address and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in clause 29.4(c) (*Limitation of responsibility of Existing Lenders*).
4. [The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in the United Kingdom to the extent that it is a Lender in respect of such Advances, it is:
 - (a) [a UK Qualifying Lender (other than a UK Treaty Lender);]
 - (b) [a UK Treaty Lender;]
 - (c) [not a UK Qualifying Lender]]¹.
5. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in Germany to the extent that it is a Lender in respect of such Advances, it is:
 - (a) [a German Qualifying Lender (other than a German Treaty Lender);]
 - (b) [a German Treaty Lender;]
 - (c) [not a German Qualifying Lender]]².

¹ Delete as applicable - each New Lender is required to confirm which of these categories it falls within.

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 made to or in respect of a Borrower incorporated in the United Kingdom, to the extent that it is a Lender in respect of such an Advance, 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.]³
7. [The New Lender confirms, that, in relation to all Advances made to or in respect of a Borrower incorporated in Sweden to the extent that it is a Lender in respect of such Advances, it is:
- (a) [a Sweden Qualifying Lender (other than a Sweden Treaty Lender);]
 - (b) [a Sweden Treaty Lender;]
 - (c) [not a Sweden Qualifying Lender]]⁴.
8. [The New Lender confirms that it is a Treaty Lender that holds a passport under the HM Revenue & Customs DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify (a) each Borrower which is a Borrower as at the Transfer Date, and (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date that it wishes the scheme to apply.⁵
9. It is expressly agreed that the guarantees granted by each Obligor under the Finance Documents shall be preserved for the benefit of the Facility Agent, the New Lender and the remaining Finance Parties.

² Delete as applicable - each New Lender is required to confirm which of these categories it falls within.

³ Include only if New Lender comes within paragraph (a)(ii) of the definition of UK Qualifying Lender in clause 17.1 (*Definitions*). NB update paragraph numbering as appropriate.

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

⁵ This confirmation must be included if the New Lender holds a passport under the HM Revenue & Customs DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

10. The New Lender hereby releases the Facility Agent from any restrictions under § 181 of the German Civil Code (Bürgerliches Gesetzbuch) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to the Arranger and/or such New Lender. If the New Lender is barred by its constitutional documents or by-laws from granting such exemption, it shall notify the Facility Agent accordingly.
11. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
12. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Agreement has been entered into on the date stated at the beginning of this Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address and attention details for notices and account details for payments.]

[Existing Lender] [New Lender]

By: By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Facility Agent, and the Transfer Date is confirmed as [●].

[Agent]

By:

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: [●] as Agent and [●], [●] as Company, for and on behalf of each Obligor

From: [the *Existing Lender*] (the “**Existing Lender**”) and [the *New Lender*] (the “**New Lender**”)⁶

Dated:

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is an Assignment Agreement. This agreement (the “**Agreement**”) shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 29.6 (*Procedure for assignment*) of the Facilities Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement and the other Finance Documents which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule;
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes Party to the relevant Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) 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 29.4 (*Limitation of responsibility of Existing Lenders*).
7. [The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in the United Kingdom to the extent that it is a Lender in respect of such Advances, it is:
 - (a) [a UK Qualifying Lender (other than a UK Treaty Lender);]
 - (b) [a UK Treaty Lender;]
 - (c) [not a UK Qualifying Lender]]⁷.

⁶ The New Lender’s attention is drawn to clause 28.6(e) of the Facilities Agreement.

8. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in Germany to the extent that it is a Lender in respect of such Advances, it is:
- (a) [a German Qualifying Lender (other than a German Treaty Lender);]
 - (b) [a German Treaty Lender;]
 - (c) [not a German Qualifying Lender]⁸.
9. [The New Lender confirms, that, in relation to all Advances made to or in respect of a Borrower incorporated in Sweden to the extent that it is a Lender in respect of such Advances, it is:
- (a) [a Sweden Qualifying Lender (other than a Sweden Treaty Lender);]
 - (b) [a Sweden Treaty Lender;]
 - (c) [not a Sweden Qualifying Lender]]⁹
10. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an Advance under a Finance Document made to or in respect of a Borrower incorporated in the United Kingdom, to the extent that it is a Lender in respect of such an Advance, 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.]¹⁰

⁷ Delete as applicable - each New Lender is required to confirm which of these categories it falls within.

⁸ Delete as applicable - each New Lender is required to confirm which of these categories it falls within.

⁹ Delete as applicable – each New Lender is required to confirm which of these categories it calls within

¹⁰ Include only if New Lender comes within paragraph (a)(ii) of the definition of UK Qualifying Lender in clause 17.1 (*Definitions*). NB update paragraph numbering as appropriate.

11. [The New Lender confirms that it is a Treaty Lender that holds a passport under the HM Revenue & Customs DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify (a) each Borrower which is a Borrower as at the Transfer Date, and (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date that it wishes the scheme to apply.¹¹
12. The New Lender hereby releases the Facility Agent from any restrictions under § 181 of the German Civil Code (Bürgerliches Gesetzbuch) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to the Arranger and/or such New Lender. If the New Lender is barred by its constitutional documents or by-laws from granting such exemption, it shall notify the Facility Agent accordingly.
13. This Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 29.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.
14. It is expressly agreed that the guarantees granted by each Obligor under the Finance Documents shall be preserved for the benefit of the Facility Agent, the New Lender and the remaining Finance Parties.
15. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
16. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
17. This Agreement has been entered into on the date stated at the beginning of this Agreement.

¹¹ This confirmation must be included if the New Lender holds a passport under the HM Revenue & Customs DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address and attention details for notices and account details for payments]

[Existing Lender] [New Lender]

By: By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Facility Agent, and the Transfer Date is confirmed as [●].

Signature of this Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Facility Agent receives on behalf of each Finance Party.

[Agent]

By:

SCHEDULE 6

FORM OF ACCESSION DEED

To: [●] as Agent

From: [Subsidiary] and [Company]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This deed (the “**Accession Deed**”) shall take effect as an Accession Deed for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to clause [30.2 (*Additional Borrowers*)]/[clause 30.4 (*Additional Guarantors*)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [●].
3. [Subsidiary’s] administrative details for the purposes of the Facilities Agreement are as follows:

Address:

Attention:
4. [Subsidiary] (for the purposes of this paragraph 4, the “**Acceding Debtor**”) intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the “**Relevant Documents**”.
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

THIS ACCESSION DEED has been signed on behalf of the Company and executed as a deed by [Subsidiary] and is delivered on the date stated above.

[Subsidiary]

[Subsidiary]

[EXECUTED AS A DEED)]

By: [Subsidiary])]

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: [*Subsidiary*]

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

The Company

[Company]

By:

SCHEDULE 7

FORM OF RESIGNATION LETTER

To: [●] as Agent

From: [resigning Obligor] and [Company]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [clause 30.3 (*Resignation of a Borrower*)]/[clause 30.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this Resignation Letter;
 - (b) no payment is due from [*the resigning Obligor*] under the terms of the Facilities Agreement;
 - (c) where [*the resigning Obligor*] is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under clause 30.3 (*Resignation of a Borrower*);
 - (d) clause 27.16 (*Guarantors*) will continue to be complied with after this resignation becomes effective, and that [*the resigning Obligor*] is not a Material Company;
 - (e) clause 30.5(c) (*Resignation of a Guarantor*) will be complied with on the date this resignation becomes effective; and
 - (f) [the Lenders have agreed to such resignation]/[on the date this resignation becomes effective, [*the resigning Obligor*] will cease to be a member of the Group as a result of a Permitted Disposal].
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

authorised signatory for the Company

authorised signatory for

[Insert name of resigning Obligor]

SCHEDULE 8

FORM OF COMPLIANCE CERTIFICATE

To: [●] as Agent

From: [Company]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that, as at the relevant testing date:
 - (a) Consolidated Adjusted Net Debt was [●] and Leverage EBITDAR was [●], therefore the Leverage Ratio was [●]:1;
 - (b) Fixed Charge EBITDAR was [●] and Fixed Charges was [●], therefore the Fixed Charge Ratio was [●]:1.
3. [We confirm that no Event of Default is continuing.]¹²
4. We set out below the calculations establishing the figures set out above:
[●]

Signed

Director/Authorised
Signatory

Of

[Company]

Director/Authorised
Signatory

Of

[Company]

¹² 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

SCHEDULE 9

FORM OF MATERIAL COMPANY CERTIFICATE

To: [●] as Agent

From: [Company]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is a Material Company Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Material Company Certificate unless given a different meaning in this Material Company Certificate.
2. We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement:

[●]
3. We confirm that the aggregate Leverage EBITDAR (as defined in clause 26 (*Financial Covenants*)) of the Guarantors who are members of the Group represents [●] per cent. of Leverage EBITDAR (as defined in clause 26 (*Financial Covenants*)) of the Group (excluding any Regulated Entity) and is therefore not less than 80 per cent. of Leverage EBITDAR (as defined in clause 26 (*Financial Covenants*)) of the Group (excluding any Regulated Entity).
4. We confirm that the aggregate gross assets of the Guarantors who are members of the Group (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents [●] per cent. of consolidated gross assets of the Group (excluding any Regulated Entity) and is therefore not less than 70 per cent. of the consolidated gross assets of the Group (excluding any Regulated Entity).

Signed

Director/Authorised
Signatory

Of

[Company]

Director/Authorised
Signatory

Of

[Company]

SCHEDULE 10

LMA FORM OF CONFIDENTIALITY UNDERTAKING

[Letterhead of Seller]

To: *[insert name of Potential Purchaser]*

Re: **The Agreement**

Company: (the “**Company**”)

Date:

Amount:

Agent:

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a subparticipation 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 or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, subparticipation or other transaction (the “**Acquisition**”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. **Confidentiality Undertaking**

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2. **Permitted Disclosure**

We agree that you may disclose:

- (a) to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you 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) subject to the requirements of the Agreement, to any person:
 - (i) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire

under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this subparagraph (i) of paragraph (b) has delivered a letter to you in equivalent form to this letter;

(ii) with (or through) whom you enter into (or may potentially enter into) any subparticipation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this subparagraph (ii) of paragraph (b) has delivered a letter to you in equivalent form to this letter;

(iii) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and

(c) notwithstanding paragraphs (a) and (b) above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3. **Notification of Disclosure**

You agree (to the extent permitted by law and regulation) to inform us:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to subparagraph (iii) of paragraph (b) above 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 letter.

4. **Return of Copies**

If you do not enter into the Acquisition and we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under subparagraph (iii) of paragraph (b) above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in your becoming a party to the Agreement as a lender of record, the date

falling [twelve] months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling [twelve] months after the date of this letter your final receipt (in whatever manner) of any Confidential Information.

6. No Representation; Consequences of Breach, etc

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. Entire Agreement: No Waiver; Amendments, etc

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise nor any delay in exercising any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. Inside Information

You acknowledge 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 you undertake not to use any Confidential Information for any unlawful purpose.

9. Nature of Undertakings

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

10. Third Party Rights

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this letter.

10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.

10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **Governing Law and Jurisdiction**

11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the “**Letter**”) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Finance Documents, [the/a] Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or [the/a] Facility by us or any of our affiliates or 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 information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“**Group**” means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

“**Permitted Purpose**” means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of

[Seller]

To: [Seller]

The Company and each other member of the Group

We acknowledge and agree to the above:

For and on behalf of

[Potential Purchaser]

SCHEDULE 11

TIMETABLES

	<u>Loans in Euro</u>	<u>Loans in Sterling</u>	<u>Loans in US dollar</u>	<u>Loans in other currencies</u>
Agent notifies the relevant Borrower if a currency is approved as an Optional Currency in accordance with clause 4.3 (<i>Conditions relating to Optional Currencies</i>)	-	-	-	U-4
Delivery of a duly completed Utilisation Request (clause 5.1 (<i>Delivery of a Utilisation Request</i>))	U-3 9.30 a.m.	U-3 4.30 p.m.	U-3 9.30 a.m.	U-3 9.30 a.m.
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under clause 5.4 (<i>Lenders' participation</i>) and notifies the Lenders to the Loan in accordance with clause 5.4 (<i>Lenders' participation</i>)	U-3 Noon	U-2 10.30 a.m.	U-3 Noon	U-3 Noon
Agent receives a notification from a Lender under clause 8.2 (<i>Unavailability of a currency</i>)	Quotation Day 9.30 a.m.	Quotation Day 9.30 a.m.	Quotation Day 9.30 a.m.	Quotation Day 9.30 a.m.
Agent gives notice in accordance with clause 8.2 (<i>Unavailability of a currency</i>)	Quotation Day 5.30 p.m.	-	-	Quotation Day 5.30 p.m.
LIBOR or EURIBOR is fixed	Quotation Day as of 11.00 a.m. (Brussels time)	Quotation Day as of 11.00 a.m.	Quotation Day as of 11.00 a.m.	Quotation Day as of 11.00 a.m.
Base Reference Bank Rate calculated by reference to available quotations in accordance with clause 16.2 (<i>Calculation of Base Reference Bank Rate</i>)	Noon on the Quotation Day in respect of LIBOR and Quotation Day, 11:30 a.m. (Brussels time) in respect of EURIBOR	Noon on the Quotation Day	Noon on the Quotation Day in respect of LIBOR	Noon on the Quotation Day

U = date of utilisation.

U - X = X Business Days prior to date of utilisation

Timetable – BG Instruments

	<u>BG Instruments in euro</u>	<u>BG Instruments in Sterling or US\$</u>	<u>BG Instruments in other currencies</u>
Issuer notifies TCGT if a currency is approved as an Optional Currency in accordance with clause 4.3 (<i>Conditions relating to Optional Currencies</i>)	n/a	n/a	By U-5 at noon
Delivery of a duly completed Utilisation Request under clause 5.1 (<i>Delivery of a Utilisation Request</i>) or a notice of renewal under clause 6.6 (<i>Renewal of a BG Instrument</i>)	By U-4 at 11a.m.	By U-4 at 11.a.m.	By U-4 at 11.a.m.
Issuer determines (in relation to a Utilisation) the Base Currency Amount of the BG Instrument	By U-3 at 4p.m.	By U-3 at 4p.m.	By U-3 at 4p.m.
Issuer notifies TCGT under clause 8.2 (<i>Unavailability of a currency</i>)	n/a	By U-3 at 4p.m.	By U-3 at 4p.m.

U = date of utilisation or, if applicable, extension.

U - X = X Business Days prior to date of utilisation or extension

SCHEDULE 12

FORM OF INCREASE CONFIRMATION

To: [●] as Agent and Thomas Cook Group Treasury Limited [and Thomas Cook Airlines Treasury Limited], for and on behalf of each Obligor

From: [the Increase Lender] (the **Increase Lender**)

Dated:

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This agreement (the “**Agreement**”) shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the “**Relevant Commitment**”) as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the “**Increase Date**”) is [].
5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender.
6. The Facility Office and address and attention details for notices to the Increase Lender for the purposes of clause 37.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders’ obligations referred to in paragraph (e) of clause 2.2(a)(i).
8. [The Increase Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in the United Kingdom to the extent that it is a Lender in respect of such Advances, it is:
 - (a) [a UK Qualifying Lender (other than a UK Treaty Lender);]
 - (b) [a UK Treaty Lender;]
 - (c) [not a UK Qualifying Lender]]¹³.
9. The Increase Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that, in relation to all Advances made to or in respect of a Borrower incorporated in Germany to the extent that it is a Lender in respect of such Advances, it is:
 - (a) [a German Qualifying Lender (other than a German Treaty Lender);]
 - (b) [a German Treaty Lender;]

¹³ Delete as applicable - each Increase Lender is required to confirm which of these categories it falls within..

- (c) [not a German Qualifying Lender]¹⁴.
10. [The New Lender confirms, that, in relation to all Advances made to or in respect of a Borrower incorporated in Sweden to the extent that it is a Lender in respect of such Advances, it is:
- (a) [a Sweden Qualifying Lender (other than a Sweden Treaty Lender);]
- (b) [a Sweden Treaty Lender;]
- (c) [not a Sweden Qualifying Lender]]¹⁵
11. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an Advance under a Finance Document made to or in respect of a Borrower incorporated in the United Kingdom, to the extent that it is a Lender in respect of such an Advance, 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.]¹⁶
12. [The Increase Lender confirms that it is a Treaty Lender that holds a passport under the HM Revenue & Customs DT Treaty Passport scheme (reference number []) and is tax resident in [], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify (a) each Borrower which is a Borrower as at the Increase Date; and (b) each Additional Borrower which becomes an Additional Borrower after the Increase Date, that it wishes that scheme to apply].¹⁷
13. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
15. This Agreement has been entered into on the date stated at the beginning of this Agreement.

¹⁴ Delete as applicable - each Increase Lender is required to confirm which of these categories it falls within.

¹⁵ Delete as applicable – each New Lender is required to confirm which of these categories it falls within

¹⁶ Include only if Increase Lender comes within paragraph (a)(ii) of the definition of UK Qualifying Lender in clause 18.1 (*Definitions*). NB update paragraph numbering as appropriate.

¹⁷ This confirmation must be included if the Increase Lender holds a passport under the HM Revenue & Customs 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 and attention details for notices and account details for payments]

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Facility Agent and the Increase Date is confirmed as [].

Agent

By:

SCHEDULE 13

FORM OF ANCILLARY NOTICE

To: [●] as Facility Agent

From: Thomas Cook Group Treasury Limited/Thomas Cook Airlines Treasury Limited

Dated:

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to clause 9.3 (*Availability*) of the Facilities Agreement. This notice constitutes a request for the establishment of an Ancillary Facility.
2. Capitalised terms used in this notice but not defined in this notice have the same meaning as given to them in the Facilities Agreement.
3. We request that an amount of [*currency*] [*amount*] of the Revolving Facility Commitment of [Lender] under the Facilities Agreement be converted into an Ancillary Commitment to be provided to [Borrower] by [Ancillary Lender(s)] as Ancillary Lender (the “**Ancillary Facility**”).
4. The Ancillary Facility will be [*type of facility*] for [*purpose*].
5. The Ancillary Facility will commence on [●] and will expire on [●].
6. The proposed maximum amount of the Ancillary Facility is [●].
7. [The Designated Gross Amount is [●] and the Designated Net Amount is [●].]

Yours faithfully

for

THOMAS COOK GROUP TREASURY LIMITED/ THOMAS COOK AIRLINES TREASURY LIMITED

SCHEDULE 14

ORIGINAL COUNTERPARTIES

1. Condor Flugdienst GmbH
2. Hotels4u.com Limited
3. OY Tjareborg AB
4. Spies A/S
5. TCCT Holdings UK Limited
6. TCCT Retail Limited
7. Thomas Cook Airlines Balearics SL
8. Thomas Cook Airlines Limited
9. Thomas Cook Airlines Scandinavia AS
10. Thomas Cook Belgium N.V
11. Thomas Cook Brok Air Services
12. Thomas Cook Brok Air Services SAS
13. Thomas Cook Group plc
14. Thomas Cook Group Treasury Limited
15. Thomas Cook Airlines Treasury Limited
16. Thomas Cook Group UK Limited
17. Thomas Cook Nederland BV
18. Thomas Cook Northern Europe AS
19. Thomas Cook Retail Limited
20. Thomas Cook SAS
21. Thomas Cook Services AG
22. Thomas Cook Services Limited
23. Thomas Cook Signature Limited
24. Thomas Cook Tour Operations Limited
25. Thomas Cook Touristik GmbH
26. Thomas Cook Vertriebs GmbH
27. Ving Norge AS

28. Ving Sverige AB

SCHEDULE 15
SANCTIONS DISCLOSURE

Schedule 15 - Sanctions Disclosure:

Further to paragraph (A) of Clause 24.18 (*Sanctions and Restricted Persons*), the Company discloses the following:

- (a) On 3 October 2014, the Company provided a voluntary disclosure to the Office of Foreign Assets Control of the US Department of Treasury ("**OFAC**") (the "**Voluntary Disclosure Letter**") regarding the re-exports of US-origin IT equipment to Cuba. Like many non-US travel operators, Thomas Cook provides holidays to Cuba and has provided IT support (including IT equipment) to enable the running of in-resort services. The Company has not removed any equipment subject to an inadvertent infringement and is setting up further policies to ensure compliance with OFAC laws and regulations. The Company has received official notification (the "**Responses**") that this matter has since been closed. A copy of the Voluntary Disclosure Letter and the Responses are attached hereto as Exhibit A.

- (b) On 23 February 2015, Thomas Cook Group UK Limited ("**TCG UK**") was notified by HM Treasury (in its capacity as the UK financial sanctions authority) that it understood that TCG UK was making payments to the Laico Atlantic Hotel in the Gambia. It appears that the Laico Atlantic Hotel is owned by the Libyan Arab African Investment Company, which remains designated under the vestigial EU sanctions directed against Libya (adopted in 2011, which have largely been lifted). The Libyan Arab African Investment Company is not designated under the UN or US sanctions, and is not on the OFAC Specially Designated Nationals list, and it is unclear why it is still listed in the EU. TCG UK promptly ceased payments to the Laico Atlantic Hotel and other hotels that appear to belong to the same hotel group, and has sent a letter (the "**HM Treasury Letter**") to HM Treasury confirming this with details of historical payments to these hotels. A copy of the HM Treasury Letter is attached hereto as Exhibit B.

CONFIDENTIAL

Lawrence Panigot
Special Agent, The Bureau of Industry and Security
Office of Export Enforcement
Suite 170, 15109 Heathrow Forest Parkway
Houston, TX 77032

Julie M. Malec
Enforcement Officer, Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

3 October 2014

Re: **Final Notification of Voluntary Disclosure by Thomas Cook Regarding Reexports of IT Equipment to Cuba**

Dear Mr. Panigot and Ms. Malec:

Pursuant to Section 764.5 of the Export Administration Regulations ("EAR") and the Economic Sanctions Enforcement Guidelines (Appendix A to 31 C.F.R. Part 501), Thomas Cook Group plc ("Thomas Cook"), hereby submit our final voluntary self-disclosure ("Final Notification") to the Office of Export Enforcement ("OEE") and the Office of Foreign Assets Control ("OFAC"). This Final Notification concerns the subject referenced in our initial notification of 16 December 2013 (12 Dell commercial laptops exported from the UK to Cuba) and all relevant additional items and information gathered through our internal audit review and associated investigations on this subject.

As you are aware, Thomas Cook is a UK headquartered company, listed on the London Stock Exchange and is one of the world's leading leisure travel groups. We are very proud to serve the 20 million customers who chose to travel with us annually and are transforming our business so that we can serve even more customers in ways that deliver better the most important weeks of their year.

In this Final Notification we have not repeated the preliminary facts that were set out in our initial notification, as no information has changed in respect of those specific facts. Since submitting our initial notification we have however conducted a thorough investigation and audit across the Thomas Cook Group and have further information to disclose.

Thomas Cook Geographies

For the purposes of our past IT service provision model, the Thomas Cook Group can be split into four geographic areas: UK & Ireland, Central Europe, Northern Europe and Eastern Europe.

As noted in our initial disclosure, Accenture (UK) Limited ("Accenture") currently provides our IT infrastructure and network related services for the UK & Ireland and Central Europe under an agreement known as 'GIST'. Accenture does not provide these services for Thomas Cook in the other geographic areas. Accenture liaised with Dell directly in the provision of the laptops to Cuba that were disclosed in our initial notification. This behavior was not in accordance with the agreed

processes and procedures in place between Thomas Cook and Accenture, pursuant to the GIST terms and conditions. We are in the process of exiting from the GIST agreement, having entered into an Exit Terms Agreement with Accenture on 20 December 2013. This exit is part of Thomas Cook's IT transformation and new 'One IT' solution. The One IT solution will provide the same IT services and support across the Thomas Cook Group, and in doing this we will provide a single consolidated approach to supporting our in-resort services required for our customers travelling to Cuba, as further described below.

Northern Europe has previously operated separate IT infrastructure and entered into its own IT agreements as necessary. Significant changes will be made to the Northern Europe ways of working as part of the One IT solution. As part of our investigations in respect of this matter we learned that certain IT equipment had been reexported to Cuba for the provision of in-resort services and we set out further detail in respect of this equipment below.

Our Eastern European operations historically also enter into their own IT support arrangements. Again, significant changes will be made to the Eastern Europe ways of working as part of the One IT solution. As part of our investigations we received confirmation that no IT equipment has been exported or reexported to Cuba from, or pursuant to an instruction from, our Eastern European business.

Our Investigations

To ensure we have a full and accurate Group-wide picture of the IT equipment used in the operation of our in-resort services in Cuba, we conducted an internal audit of this equipment across our resorts in Cuba. Our Group Destination Manager for Cuba who is a UK national conducted this audit. The audit confirmed the number and locations of the laptops identified in our initial notification, being those laptops obtained from Dell through Accenture, and also identified certain additional US origin IT equipment that was being used. The full details of the identified equipment are set out in Appendix A to this letter.

Our Northern European business requested a similar internal audit and confirmed that two US origin laptops, an Ethernet router and a switch had been provided to Cuba for the purposes of our in-resort business operations. Full details of this equipment are set out in Appendix A to this letter.

All of the identified equipment is being held in Cuba, as we understand this to be the required course of action at this stage. We await your instruction in terms of the immediate next steps we should take in respect of this equipment. In the event that we receive your instruction and license to

reexport the identified equipment, we will remove the equipment and return it all to the UK, from where we can continue to operate under our new processes so that no US origin IT equipment is exported or reexported to Cuba.

As part of our investigatory process, we also held meetings with our IT colleagues, to understand the procedures that were previously used to request IT equipment for in-resort services and how such requests were fulfilled. As part of the One IT solution all of these requests, for any geography, will be processed by Red International (UK) Limited, as further described below.

One IT Solution

Under our One IT solution we will be using Red International for the supply, installation and maintenance of all of our in-resort IT equipment on behalf of the Thomas Cook Group, so that we, and any of our other third party IT suppliers, remain compliant with the requirements of the EAR and the Economic Sanctions Enforcement Guidelines. Under our commercial agreement with Red International, the company has given a representation and warranty to comply with all applicable laws and regulations. Thomas Cook will also receive monthly service reports to ensure we are able to carefully monitor the service provision.

Whilst we are in the process of our transition from our disparate IT model to our single Group-wide solution, we have put in place a requirement that any requests for IT equipment or support from our resorts in Cuba must be made by copy to the Group Legal team, so that there are no inadvertent infringements during this transition period. We have also required that no action is taken to remove any of the identified equipment that has already been reexported until we receive consent to do so, or an instruction to take any alternative action.

We have held a number of meetings and/or telephone conferences with those members of the IT team who are directly involved in the provision of IT equipment to enable our in-resort services in Cuba, or the support of that equipment, and the Heads of Legal across our geographies, so that each individual is aware of the legal regime to which we are subject, its applicability to our business operations and the consequences of non-compliance. Key messages are required to be cascaded to all members of their teams. We are also working on information updates and reminders that will be delivered to the IT team and notified to Red International, so that we are able to maintain the new standards that have been introduced.

Certification

I hereby certify that the representations made in connection with this voluntary disclosure are true and correct to the best of my knowledge and belief. I make this voluntary disclosure with the full knowledge and authorization of the senior management of Thomas Cook.

Please be advised that this letter contains sensitive information about Thomas Cook and its business and commercial activities that is proprietary and confidential, and not customarily released publicly, which is, therefore, exempt from the public access provisions of the Freedom of Information Act, 5

Thomas Cook Group plc
3rd floor, South Building
200 Aldersgate
London
EC1A 4HD

T +44 (0)20 7557 6400
F +44 (0)20 7557 6401
w thomascookgroup.co.uk

Company registration number
08051951
VAT Registration Number
239 3841 42



Thomas Cook Group

U.S.C. § 552. Such information, if disclosed, could adversely affect the financial and competitive position of Thomas Cook and the normal conduct of its business operations. Accordingly, Thomas Cook requests that this letter be withheld in the event of a demand for its disclosure. Thomas Cook requests that in the event of such a demand, your office will give Thomas Cook prompt notice and an opportunity to be heard prior to taking any action to disclose.

If you have any questions about this Initial Notification, or require additional information, please contact me on +44(0) 207 557 6469 or email: craig.stoehr@thomascook.com.

Yours sincerely,

Craig Stoehr

PP

Group General Counsel
Thomas Cook Group plc

Appendix A
Thomas Cook Audit Findings
UK&I and Central Europe

#	Equipment	CI Number	Supplier	Model Version	Serial Number
1.	Laptop	CS2005159	Dell	Latitude E5420	36NH5S1
2.	Laptop	CS2005152	Dell	Latitude E5420	36NL4S1
3.	Laptop	CS2005156	Dell	Latitude E5420	36QF5S1
4.	Laptop	CS2005158	Dell	Latitude E5420	36QC5S1
5.	Laptop	CS2005157	Dell	Latitude E5420	36P25S1
6.	Laptop	CS2005161	Dell	Latitude E5421	36Q45S1
7.	Laptop	CS2005154	Dell	Latitude E5420	36QD4S1
8.	Laptop	CS2010101	Dell	Latitude E5420	GDMM4S1
9.	Laptop	CS2010102	Dell	Latitude E5420	GDN15S1
10.	Laptop	CS2005155	Dell	Latitude E5420	36PC4S1
11.	Laptop	CS2005151	Dell	Latitude E5420	36PC5S1
12.	Laptop	102748	Dell	Latitude D410	FP61W1J
13.	Laptop	004913	Dell	Latitude D430	7M9FF3J
14.	Laptop	CS2005162	Dell	Latitude E5420	36PL4S1
15.	Laptop	CS2005153	Dell	Latitude E5420	36Q95S1
16.	Laptop	CS2005150	Dell	Latitude E5420	36NX4S1
17.	Laptop	102744	Dell	D410	GP61W1J
18.	Laptop	102344	Dell	D430	36NR33J
19.	Laptop	CS1003132	Dell	D430	H6NR33J
20.	Laptop	102311	Dell	D430	J4NR33J

Thomas Cook Group plc.
3rd floor, South Building
200 Aldersgate
London
EC1A 4HD

T +44 (0)20 7557 6400
F +44 (0)20 7557 6401
w thomascookgroup.co.uk

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21.	Laptop	CS1003010	Dell	D410	DQ61W1J
22.	Laptop	102800	Dell	D410	DH71W1J
23.	Scanner	4701	HP	ScanJet 3670	CN48NS6169
24.	Printer	CS1003103	HP	LaserJet 4250N	CNGXD58065
25.	Printer	4705	HP	LaserJet 2015	CNB1601530
26.	Printer		HP	LaserJet Pro 400 color M451dw	CNB1203293
27.	Printer	CS1003112	HP	LaserJet 1200	W2V0065512
28.	Scanner	CS2010175	HP	ScanJet 5590	CN1CCVH1VB
29.	Printer	-	HP	LaserJet 1320	CNRJ6CJ0H1
30.	Printer		HP	LaserJet M401dne	VN64X02524
31.	Scanner	4703	HP	ScanJet 4370	CN55SA218Q
32.	MFD	101880	HP	PhotoSmart 2610 Q5542B	MY53MK71QS
33.	Printer		HP	LaserJet Pro 400 color M451dw	CNDF0602200
34.	Printer	4606	HP	LaserJet HP1300	CNB1F99399
35.	MFD	101877	HP	PhotoSmart 2610	MY53GK64QB
36.	MFD	101881	HP	PhotoSmart 2610	MY53GK64BV
37.	External back up	CS1003070	Buffalo	Linkstation LS-WXL Series	1LSWXL091103741
38.	External Hard Drive		Buffalo		85298425164822
39.	NAS Drive	CS2010086	Buffalo	LinkStation LS-WX2.0TL	65850124900833
40.	HDD	CS2010087	Buffalo	MiniStation 500GB HDD	25596626587357
41.	NAS Drive	CS2010096	Buffalo	LS-WX2	1LSWXL120803589
42.	HDD	CS2010097	Buffalo	MiniStation 500GB USB 2.0	The serial number is 85596625145178
43.	Switch	CS1003102	3Com (HP)	BaseLine 2024	LNZQ6A0100204

Northern Europe

#	Organisation Id	CI Type Id	Equipment	Id	Serial No.	Supplier	Manufactured In	Purchased in
44.	VRA	PCLAPTOP-MINI	Laptop	HP ELITEBOOK 2170P CI5 2.6 4GB/128 11,6' MINI	2CE2300RXV	Hewlett-Packard	China	Sweden
45.	VRA	PCLAPTOP	Laptop	HP ELITEBOOK 8460P CI5 2.6 4GB/320 14'	CZC23175N4	Hewlett-Packard	Czech	Sweden
46.	VRA	COMM	Router	Cisco 881	FCZ154694HG	Cisco Systems	Czech	Sweden
47.	VRA	COMM	Switch	HP Switch (8) V1410	CN1198J1V7	Hewlett-Packard	China	Sweden

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F +44 (0)20 7557 6401
w thomascookgroup.co.uk

Company registration number
06091951
VAT Registration Number
739 3841 42



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

CAUTIONARY LETTER

ENF 41724

Craig Stoehr
Group General Counsel
Thomas Cook Group plc
3rd floor, South Building
200 Aldersgate
London, United Kingdom
EC1A 4HD

MAR 11 2015

Dear Mr. Stoehr:

Thank you for your disclosures, dated December 16, 2013, and October 3, 2014, on behalf of Thomas Cook Group plc ("Thomas Cook").

This letter serves as notice that the United States Department of the Treasury's Office of Foreign Assets Control (OFAC) has completed its review of Thomas Cook's exportation of laptops, an Ethernet cable, and a switch, which are property or interests in property subject to the jurisdiction of the United States, to Cuba in March 2012 (the "transactions").

OFAC administers and enforces comprehensive economic sanctions against Cuba as set forth in the Cuban Assets Control Regulations, 31 C.F.R. part 515 (the "Regulations"), under the authority of the Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44, and other statutes. The Regulations generally prohibit virtually all direct or indirect transactions of any nature with Cuba or Cuban nationals by any person subject to the jurisdiction of the United States, including by any foreign entity that is owned or controlled by U.S. persons, or that occur within the United States, except as authorized by OFAC or exempted by statute. For more information, please see the Regulations, as well as other information specific to each sanctions program, on our Web site at www.treasury.gov/ofac.

Specifically, § 515.201 of the Regulations prohibits all transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States, such as the above-referenced transactions. Accordingly, Thomas Cook's exports to Cuba of laptops, an Ethernet cable, and a switch, which are property or interests in property subject to the jurisdiction of the United States, appear to have violated the Regulations.

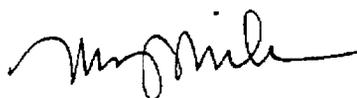
OFAC has decided to address this matter by issuing this Cautionary Letter instead of pursuing a civil monetary penalty. This Cautionary Letter represents a final enforcement response to the

apparent violations, but does not constitute a final agency determination as to whether violations have occurred. This letter does not preclude OFAC from taking future enforcement action should new or additional information warrant renewed attention. Under applicable law, each violation of the Regulations is subject to a civil monetary penalty of up to \$65,000.

OFAC considers compliance with its sanctions programs to be a critical part of the effectiveness of U.S. economic sanctions, and trusts that Thomas Cook will act in accordance with all such regulations in the future. Please note that Thomas Cook's compliance history with regard to economic sanctions administered by OFAC will be considered if other apparent sanctions program violations come to OFAC's attention, which may result in the imposition of civil monetary penalties.

Should you have any questions, you may contact, Enforcement Officer Julie M. Malec, at (202) 622-2430.

Sincerely,



Molly J. Miller
Enforcement Section Chief
Office of Foreign Assets Control



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Office of Export Enforcement
DALLAS FIELD OFFICE
225 E. John Carpenter Freeway, Suite 820
Irving, Texas 75062

Thomas Cook Group
3rd Floor, South Building
200 Aldersgate
London, U.K.
EC1A 4HD
ATTN: Alice Marsden

In reply refer to Case Number: EE/01109379/14

WARNING LETTER

Dear Miss Marsden:

The Bureau of Industry and Security ("BIS"), Office of Export Enforcement ("OEE"), is responsible for the enforcement of the Export Administration Act of 1979, as amended, 50 U.S.C. App. Sections 2401-2420 (2000) (the Act), and the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2014) (the Regulations). OEE investigates violations of the Act and Regulations and pursues penalties, both criminal and administrative, that can result from violations of the Act and Regulations. Violations of the Regulations are set forth in Section 764.2 of the Regulations and the penalties are set forth in Section 764.3.

The Dallas Field Office has completed an investigation of the export of the Dell laptop computers to an embargoed destination:

- In December 2011, computers were purchased and subsequently exported to the company operations in Cuba without a required export license in violation of U.S. Law. The Thomas Cook Group has as its core business the sale of chartered holiday packages as well as customized independent travel for both retail and wholesale customers.

The Dallas Field Office has determined that the Thomas Cook Group failed to do its due diligence in ensuring a license was obtained prior to the export.

We have reviewed the findings of this investigation and believe that the referenced conduct constitutes violations(s) of the Act and/or Regulations. However, based upon the facts and circumstances known to OEE at this time, OEE has decided not to refer this matter for criminal or administrative prosecution and is closing this matter with the issuance of this Warning Letter. This Warning Letter will become part of Thomas Cook's record and will be considered if future violations occur. OEE may reopen its investigation of this matter should additional evidence be received or if it appears that incorrect information was provided to OEE during the course of our investigation. If additional investigation is warranted, OEE may then pursue criminal prosecution and/or administrative sanctions.



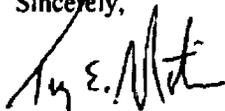
This letter also advises the Thomas Cook Group, that you are required to comply with the Act and Regulations when engaged in export activities involving items subject to the Regulations. Persons involved in export transactions subject to the Regulations are expected to be familiar with the Regulations and the application of the Regulations to their activities, including the classification of the items being exported, knowing customers (see Supplement 3 to Part 732), intended end-use, end-user and destination of the exported goods.

Information on the Regulations and compliance with export requirements may be found at the BIS website at www.bis.doc.gov. Further information on the Regulations and the latest amendments thereto, are available at the Government Printing Office at <http://access.gpo.gov/bis/>. Assistance on export licensing may be obtained from BIS' Office of Outreach and Educational Services in Washington, DC at (202) 482-4811 or from BIS' Western Regional Office in Newport Beach, California at (949) 660-0144.

Should the Thomas Cook Group believe it has committed or in the future commits violations of the Regulations not at issue here, BIS encourages you to submit a Voluntary Self Disclosure to OEE Headquarters in accordance with the requirements set forth in Section 764.5 of the Regulations. A voluntary self-disclosure is considered a 'great weight' mitigating factor in the settlement of BIS administrative cases.

If you have any questions regarding the findings of this investigation, please contact Special Agent Lawrence Panigot at (214) 296-1067. If you have any questions about the Act or Regulations, or their applicability to your export activities, please contact BIS' Office of Outreach and Educational Services or Western Regional Office.

Sincerely,



Tracy E. Martin
Special Agent in Charge
Dallas Field Office

*BIS Office of Export Enforcement: Keeping the most sensitive goods out of the most dangerous hands.
To Report Export Violations: 1-800-424-2980 or www.bis.doc.gov*



Financial Sanctions
HM Treasury
1/33, 1 Horse Guards Road
London SW1A 2HQ

6 May 2015

By email: FinancialSanctions@hmtreasury.gsi.gov.uk

Re. Laico Atlantic Hotel

Dear Sirs

I refer to your email dated 23 February 2015 advising us of potential sanctions implications related to payments by Thomas Cook to the Laico Atlantic Hotel in the Gambia.

Upon receipt of your email, Thomas Cook Group UK Limited ("TCG UK") promptly retained external counsel and implemented measures to ensure that TCG UK complies with Council Regulation (EU) No. 204/2011 (as amended) and the Libya (Asset-Freezing) Regulations 2011.

TCG UK has accordingly ceased payments to all entities that we understand are owned by Libyan Arab African Investment Company ("LAAICO"), including Laico Atlantic Hotel Limited, which operates the Laico Atlantic Hotel in the Gambia, and Laico Tunisie SA, which operates the Laico Hammamet (also known as Karthago Hammamet) and Laico Djerba Hotels in Tunisia, which we understand to form part of the same hotel group as Laico Atlantic Hotel Limited (the "Laico Hotel Group").

However, we have learned that, by taking these steps, TCG UK has put itself at a material disadvantage to its competitors (including one or more of the largest European tour operators) which we understand are continuing to do business with the Laico Hotel Group.

We are extremely disappointed that it appears to be the case that HM Treasury is taking a different position than the competent authorities of other EU Member States. For example, in another EU source market, representatives for the relevant foreign ministry, justice ministry and central bank have all confirmed that they regard the political situation in respect of LAAICO and the Gaddafi family to be closed and in the past, and that the relevant sanctions legislation for the EU has not caught up with the factual situation. In this jurisdiction, we understand that the relevant competent authority is not implementing these sanctions, unlike HM Treasury.

In light of the circumstances in which the Libya sanctions were adopted and the fact that they have been largely lifted, the position adopted in that other jurisdiction appears to be pragmatic. We understand that LAAICO and its parent, the Libyan Investment Authority, were on 19 September 2011 removed from the OFAC Specially Designated Nationals and Blocked Persons List, and that the EU sanctions have permitted payments to the Libyan Investment Authority since 28 September 2011. In light of the fact that LAAICO is no longer subject to the US sanctions, is not targeted by any United Nations sanctions, and given that the EU sanctions have been partially lifted in respect of the Libyan Investment Authority, we fail to understand why LAAICO continued to be targeted under the EU sanctions, and why HM Treasury appears to be actively enforcing these sanctions in the UK.

Given the divergent positions that different EU Member States appear to be taking regarding the implementation of these sanctions and the material competitive disadvantage that this divergence is causing TCG UK, we should be grateful if senior officials at HM Treasury could be available for a meeting with TCG UK at the earliest opportunity to discuss the steps that can be taken in light of this

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situation, or would otherwise confirm that we may recommence our working relationship with the Laico Hotel Group for TCG UK customers, as appears to be the direction in other EU source markets.

The remainder of this letter is structured as follows:

Section 1 describes the steps that TCG UK took upon receipt of your email dated 23 February 2015.

Section 2 explains the background of our relationship with the Laico Hotel Group, which predates both its ownership by LAAICO and LAAICO's designation under the EU sanctions.

Section 3 describes the steps that TCG UK has taken to ensure compliance with similar sanctions laws.

1. Steps taken upon receipt of your email

Upon receipt of your email, TCG UK promptly instructed external counsel and, following an initial call with a HM Treasury staff member called Emma on 3 March 2015, took the following steps:

- a. Ceased all payments by TCG UK to any company forming part of the Laico Hotel Group;
- b. Put in place measures to ensure that TCG UK customers should stop travelling to Laico Atlantic Hotel, Laico Hammamet Hotel or Laico Djerba Hotel (the "**Hotels**") with immediate effect. We emphasise once again that this has placed us at a material disadvantage to our competitors because we understand that our major competitors are continuing to supply travel guests to these hotels;
- c. Initiated internal enquiries to establish the circumstances in which TCG UK's historical business with the Laico Hotel Group originated, in particular in light of LAAICO's apparent ownership of the Laico Hotel Group;
- d. Notified the TCG UK hotel contracting team to ensure that TCG UK hotel business partners are screened against the 'Consolidated list of persons, groups and entities subject to EU financial sanctions' available at http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm.

Our attempts to establish full details in respect of Point 3 above are ongoing. However, in order to disclose to HM Treasury in a full and frank manner the nature of our historical relationship with the Laico Hotel Group, we have set out the current status of our findings below.

2. TCG UK's relationship with the Laico Hotel Group

TCG UK has been doing business with the hotels forming part of the Laico Hotel Group since 2007, which is before its acquisition by LAAICO.

We understand that at that time the Laico Hotel Group was owned and managed by the Corinthia Group (CHI Hotels & Resorts) and that in around August 2009 ownership of the Laico Hotel Group was transferred to LAAICO. TCG was not provided with an express notification of this change in ownership.

As of the date of the change of ownership, LAAICO was not designated under the EU sanctions.

We understand that on 21 March 2011 the EU designated LAAICO under the EU asset freeze sanctions and included it in Annex III to Council Regulation (EU) No 204/2011 by Council Implementing Regulation (EU) No 272/2011 which entered into force on 22 March 2011.

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In light of the internal enquiries that we have undertaken to date, we understand that TCG UK was not aware that the Laico Hotel Group was from that time owned by an entity designated under the EU sanctions. Following our initial enquiries, we are unaware that any TCG UK employee was aware of the fact that the Laico Hotel Group was owned by a sanctioned entity, or that payments to the Laico Hotel Group risked violating the EU sanctions.

TCG UK accordingly continued to make payments to the individual hotels (Laico Djerba, Karthago Hammamet and Laico Atlantic Hotel) by standard payment mechanisms. No payments were made directly to LAAICO and we have no knowledge that any of the funds paid to any of the Hotels were transferred to or otherwise made available to or for the benefit of LAAICO.

3. Steps taken to ensure compliance with similar sanctions laws

We note that none of the Laico Hotel Group companies is located in Libya. The Laico Atlantic Hotel is located in the Gambia, a country not subject to EU sanctions. Laico Djerba and Laico Hammamet, on the other hand, are located in Tunisia. Although Tunisia is subject to limited financial sanctions, these are irrelevant with regard to the Laico Hotel Group. Accordingly, the Hotels are not located in countries ordinarily associated with significant sanctions risks.

TCG UK does not conduct business with hotels or tour operators in countries historically subject to broad EU sanctions (notably, Iran, Iraq, Libya, North Korea and Syria).

We are discussing with external counsel further procedures (including implementation of commercially available screening software applications) that TCG UK may adopt in order to avoid the risk that TCG UK may, even inadvertently, make funds available to persons, entities or bodies designated under EU, US or other applicable sanctions, and to ensure that our business is compliant with all applicable sanctions.

As discussed above, the ongoing situation in which we are operating at a competitive disadvantage to our European competitors is of serious and immediate concern to our business, and for the reasons stated above we request a meeting with HM Treasury at the earliest opportunity.

If you require any further information regarding TCG UK's relationship with the Laico Hotel Group or any other matters raised in this letter, please contact Alice Marsden (Head of Legal – UK&I; alice.marsden@thomascook.com; 020 7294 7007) in the first instance.

Yours faithfully

Salman Syed

Managing Director
Thomas Cook - UK&I

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SCHEDULE 16

FORM OF COUNTERPARTY NOTICE

From: [Company/TCGT/TCAT]

To: [Issuer]

Dated:

Dear Sirs

Thomas Cook Group plc – syndicated revolving credit facilities and bonding and guarantee facilities agreement dated [●] 2017 (as amended and restated from time to time) (the “Facilities Agreement”)

1. We refer to the Facilities Agreement. This is a Counterparty Notice. Terms defined in the Facilities Agreement have the same meaning in this Counterparty Notice unless given a different meaning in this Counterparty Notice.
2. We nominate [●] as a Counterparty for the purposes of the Bonding Facility.
3. We confirm that [●] is a Subsidiary of Thomas Cook Group plc and a member of the Group.
4. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Counterparty Notice.
5. We confirm that on the date of this letter:
 - (a) no Default is continuing [or would result from the proposed Utilisation]; and
 - (b) the Repeating Representations to be made by each Obligor are true in all material respects.
6. We confirm that on the date of this Counterparty Notice, clause 7.16 (*Additional Counterparty*) of the Facilities Agreement is complied with and will be complied with on [] becoming a Counterparty.
7. This Counterparty Notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

authorised signatory for

[COMPANY/THOMAS COOK GROUP TREASURY LIMITED/THOMAS COOK AIRLINES TREASURY LIMITED]

SCHEDULE 17

EXISTING ANCILLARY FACILITIES

Name of Existing Ancillary Lender	Existing Ancillary Commitment (£)	Existing Ancillary Document
Barclays Bank PLC	30,000,000	Facility agreements dated 14 November 2016 between Barclays Bank PLC as lender and Thomas Cook Group Treasury Limited as borrower for the provision of a business overdraft facility and a bonds, guarantees and/or indemnities facility (as amended and/or restated from time to time)
BNP Paribas	50,000,000	Multi-option uncommitted facility agreement dated 24 June 2013 between BNP Paribas as lender and Thomas Cook Group Treasury Limited as borrower for the provision of an overdraft facility and guarantees (as amended and/or restated from time to time)
DNB Bank ASA, London Branch	40,135,608	Multi-option uncommitted facility agreement dated 19 June 2013 between DNB Bank ASA, London Branch as lender and Thomas Cook Group Treasury Limited as borrower for the provision of an overdraft facility, guarantees and certain documentary letters of credit (as amended and/or restated from time to time)
The Royal Bank of Scotland plc	26,205,109	Multi-option uncommitted facility agreement dated 24 June 2013 between The Royal Bank of Scotland plc as lender and Thomas Cook Group Treasury Limited as borrower for the provision of an overdraft facility, guarantees and certain documentary letters of credit (as amended and/or restated from time to time)

SCHEDULE 18

EXISTING BG INSTRUMENTS

The Existing BG Instruments are (a) as set out below in this Schedule 18 (*Existing BG Instruments*), and (b) any other bond, letter of credit, guarantee, financial guarantee or other instrument notified by the Company (with the agreement of the applicable Issuer) to the Facility Agent as an “Existing BG Instrument” on or before the Closing Date.

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
1	Barclays Bank PLC	4845271	Accommodation	29,954	16/06/2006
	Barclays Bank PLC	4859531	Accommodation	1,677,400	15/06/2016
	Barclays Bank PLC	55010355	Security - aircraft	205,931	17/05/2016
4	Barclays Bank PLC	55010356	Security - aircraft	205,931	17/05/2016
5	Barclays Bank PLC	UKT1200000610	Accommodation	374,420	03/08/2016
6	Barclays Bank PLC	55021113	Public liability insurance claims reimbursement guarantee	1,500,000	02/02/2011
7	Barclays Bank PLC	UKT1200000109	Accommodation	37,442	01/07/2015
8	Barclays Bank PLC	55027516	Accommodation	4,843,255	28/12/2016
9	Barclays Bank PLC	UKT1200000221	Maintenance - aircraft	2,246,518	08/10/2015
10	Barclays Bank PLC	UKT1200000222	Maintenance - aircraft	2,246,518	08/10/2015
11	Barclays Bank PLC	4710234	Accommodation	730,118	08/11/2017
12	Barclays Bank PLC	55036392	Security - aircraft	149,768	24/03/2014
13	Barclays Bank PLC	55037555	Security - aircraft	438,071	05/10/2017
14	Barclays Bank PLC	55037557	Security - aircraft	438,071	05/10/2017
15	Barclays Bank PLC	55037561	Security - aircraft	476,262	25/06/2014
	Barclays Bank PLC	55037562	Security - aircraft	451,550	25/06/2014
17	Barclays Bank PLC	55037564	Security - aircraft	438,071	25/06/2014
18	Barclays Bank PLC	55037566	Security - aircraft	487,494	25/06/2014
19	Barclays Bank PLC	55039214	Security - aircraft	374,420	19/11/2014
20	Barclays Bank PLC	55039216	Security - aircraft	374,420	19/11/2014
21	Barclays Bank PLC	55039372	Security - aircraft	342,968	10/12/2014
22	Barclays Bank PLC	55039376	Maintenance - aircraft	1,684,888	15/12/2015
23	Barclays Bank PLC	55039402	Security - aircraft	342,968	10/12/2014
24	Barclays Bank PLC	55039408	Maintenance - aircraft	1,684,888	12/12/2014
25	Barclays Bank PLC	55041174	Maintenance - aircraft	2,721,126	29/07/2016
26	Barclays Bank PLC	UKT1200000108	Accommodation	37,442	17/07/2015
27	Barclays Bank PLC	UKT1200000315	Accommodation	18,721	17/12/2015
28	Barclays Bank PLC	UKT1200000330	Maintenance - aircraft	132,466	08/03/2017
29	Barclays Bank PLC	4879698	Security - aircraft	333,982	25/05/2016
30	Barclays Bank PLC	UKT1200000409	BOS Airport	189,456	27/03/2017

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
31	Barclays Bank PLC	55035612	Bookings	53,168	08/11/2017
32	Barclays Bank PLC	UKT1200000551	Security - aircraft	936,798	08/11/2017
33	Barclays Bank PLC	UKT1000017693	Maintenance Services Contract Guarantee	1,056,710	08/11/2017
34	Barclays Bank PLC	UKT1200000699	Accommodation Deposit	18,721	08/11/2017
35	Barclays Bank PLC	55018318	Employer's liability insurance claims reimbursement guarantee	50,000	06/11/2017
36	Barclays Bank PLC	55018265	Flying operation in Spain	7,308,912	31/10/2017
37	Barclays Bank PLC	UKT1200000820	Airline Operating and Lease Agreement	124,967	08/11/2017
38	BNP Paribas	16/505	Maintenance - aircraft	2,246,518	22/10/2016
39	BNP Paribas	15/139	Security - aircraft	1,405,197	04/11/2015
40	BNP Paribas	15/264	Security - aircraft	149,768	02/03/2015
41	BNP Paribas	15/351	Security - aircraft	149,768	20/03/2015
42	BNP Paribas	16/507	Maintenance - aircraft	1,123,259	24/06/2016
43	BNP Paribas	15/486A	Maintenance - aircraft	1,684,888	03/05/2016
44	BNP Paribas	15/546	Maintenance - aircraft	1,684,888	06/05/2016
45	BNP Paribas	16/600	Maintenance - aircraft	1,684,888	12/09/2016
46	BNP Paribas	16/506	Maintenance - aircraft	1,123,259	18/07/2016
47	BNP Paribas	15/951	Maintenance - aircraft	561,629	09/08/2015
48	BNP Paribas	15/952	Maintenance - aircraft	561,629	09/08/2015
49	BNP Paribas	16/266	Maintenance - aircraft	1,684,888	08/06/2016
50	BNP Paribas	16/093	Maintenance - aircraft	474,463	05/12/2016
51	BNP Paribas	16/347	Performance Guarantee	147,323	07/12/2016
52	BNP Paribas	16/617	NMBS	96,865	01/09/2016
53	DNB Bank ASA, London Branch	00460-02-0003400	Maintenance - aircraft	1,497,679	16/10/2016
54	DNB Bank ASA, London Branch	00460-02-0003393	Security - aircraft	333,982	16/10/2017
55	DNB Bank ASA, London Branch	00460-02-0003419	Maintenance - aircraft	1,497,679	04/04/2015
56	DNB Bank ASA, London Branch	00460-02-0005756	Maintenance - aircraft	1,497,679	08/12/2016
57	DNB Bank ASA, London Branch	00460-02-0005505	Maintenance - aircraft	1,347,911	06/11/2017
58	DNB Bank ASA, London Branch	00460-02-0005514	Maintenance - aircraft	1,347,911	06/11/2017
59	DNB Bank ASA, London Branch	00460-02-0005925	Maintenance - aircraft	561,629	06/11/2017
60	DNB Bank ASA, London Branch	00460-02-0003525	Security - aircraft	321,181	15/04/2014
61	DNB Bank ASA, London	00460-02-0005916	Maintenance - aircraft	561,629	06/11/2017

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
62	Branch DNB Bank ASA, London Branch	00460-02-0005943	Maintenance - aircraft	673,955	06/11/2017
63	DNB Bank ASA, London Branch	00460-02-0005747	Security - aircraft	318,822	08/12/2016
64	DNB Bank ASA, London Branch	00460-02-0005998	Maintenance - aircraft	748,839	06/11/2017
65	DNB Bank ASA, London Branch	00460-02-0006167	Maintenance - aircraft	673,955	06/11/2017
66	DNB Bank ASA, London Branch	00460-02-0006265	Maintenance - aircraft	748,839	06/11/2017
67	DNB Bank ASA, London Branch	00460-02-0006390	Maintenance - aircraft	673,955	15/05/2017
68	DNB Bank ASA, London Branch	00460-02-0006942	Security - engine	59,785	12/09/2017
69	DNB Bank ASA, London Branch	00460-02-0006292	Maintenance - aircraft	673,955	06/11/2017
70	DNB Bank ASA, London Branch	00460-02-0007059	Travel Guarantee Fund	1,661,780	06/11/2017
71	DNB Bank ASA, London Branch	00460-02-0007095	Travel Agent Guarantee	4,109,879	06/11/2017
72	DNB Bank ASA, London Branch	00460-02-0007200	Payment Guarantee	1,104,000	10/11/2017
73	DNB Bank ASA, London Branch	00460-02-0007246	Travel Agent Guarantee	1,280,882	17/11/2017
74	KBC Bank NV, London Branch	TCG0002	Maintenance Services Contract Guarantee	1,320,888	05/09/2016
75	Lloyds Bank plc	SBYA131002129	Maintenance - aircraft	2,546,054	23/12/2015
76	Lloyds Bank plc	GTYA131010572	HCAA	667,928	06/06/2013
77	Lloyds Bank plc	SBYA080003251	Maintenance - aircraft	1,497,679	31/10/2017
	Lloyds Bank plc	SBYA110005231	Security - aircraft	332,585	14/04/2016
79	Lloyds Bank plc	SBYA110005232	Maintenance - aircraft	4,195,813	22/06/2017
80	Lloyds Bank plc	SBYA151003122	Security - aircraft	299,536	01/10/2015
81	Lloyds Bank plc	SBYA131001716	Security - aircraft	411,862	28/05/2013
82	Lloyds Bank plc	SBYA131001717	Maintenance - aircraft	2,246,518	28/05/2013
83	Lloyds Bank plc	SBYA131001724	Security - aircraft	187,210	19/08/2016
84	Lloyds Bank plc	SBYA151003121	Security - aircraft	299,536	01/10/2015
85	Lloyds Bank plc	SBYA131002060	Security - aircraft	149,768	11/11/2013
86	Lloyds Bank plc	SBYA141002248	Security - aircraft	149,768	20/03/2014
87	Lloyds Bank plc	SBYA141002251	Security - aircraft	149,768	26/03/2014
88	Lloyds Bank plc	SBYA141002321	Security - aircraft	149,768	01/05/2014
89	Lloyds Bank plc	SBYA141002322	Security - aircraft	149,768	24/04/2014
90	Lloyds Bank plc	SBYA161003577	Maintenance - aircraft	561,629	28/06/2016
91	Lloyds Bank plc	SBYA161003578	Security - aircraft	936,798	28/06/2016

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
92	Lloyds Bank plc	SBYA151003120	Maintenance - aircraft	561,629	01/10/2015
93	Lloyds Bank plc	SBYA151003119	Security - aircraft	936,798	01/10/2015
94	Lloyds Bank plc	SBYA161003579	Maintenance - aircraft	1,123,259	28/06/2016
95	Lloyds Bank plc	SBYA161003581	Security - aircraft	936,798	28/06/2016
96	Lloyds Bank plc	SBYA161003689	Maintenance - aircraft	561,629	21/09/2016
97	Lloyds Bank plc	SBYA141002683	Security - aircraft	374,420	15/04/2015
98	Lloyds Bank plc	SBYA161003582	Maintenance - aircraft	1,123,259	28/06/2016
99	Lloyds Bank plc	SBYA151002754	Maintenance - aircraft	1,123,259	07/02/2016
100	Lloyds Bank plc	SBYA151002755	Maintenance - aircraft	1,123,259	07/02/2016
101	Lloyds Bank plc	SBYB141002397	Security - aircraft	300,433	03/10/2017
102	Lloyds Bank plc	SBYB141002400	Security - aircraft	149,768	25/06/20
103	Lloyds Bank plc	SBYA161003392	Security - aircraft	936,798	11/03/2016
104	Lloyds Bank plc	SBYA161003391	Maintenance - aircraft	561,629	11/03/2016
105	Lloyds Bank plc	SBYA080003252	Security - aircraft	187,210	31/10/2017
106	The Royal Bank of Scotland plc	G116288	IATA	25,000	31/10/2008
107	The Royal Bank of Scotland plc	G105310	Duty and VAT	70,000	28/05/1991
108	The Royal Bank of Scotland plc	G107404	Security - aircraft	333,982	07/03/2016
109	The Royal Bank of Scotland plc	G127483	Security - aircraft	187,210	26/08/2016
110	The Royal Bank of Scotland plc	G127482	Security - aircraft	187,210	26/08/2016
111	The Royal Bank of Scotland plc	G119523	Customs Bond	30,093	19/07/2010
112	The Royal Bank of Scotland plc	G119524	Customs Bond	438,071	08/05/2017
113	The Royal Bank of Scotland plc	G127315	Travel Agent Guarantee	12,227,017	13/06/2016
114	The Royal Bank of Scotland plc	G123446	Maintenance - aircraft	1,639,201	11/02/2013
115	The Royal Bank of Scotland plc	G125624	Duty and VAT	11,123,211	26/09/2014
116	The Royal Bank of Scotland plc	G125773	Security - aircraft	894,114	06/05/2015
117	The Royal Bank of Scotland plc	G127487	Security - aircraft	894,114	23/08/2016
118	The Royal Bank of Scotland plc	G125775	Security - aircraft	894,114	06/11/2014
119	The Royal Bank of Scotland plc	G125809	Maintenance - aircraft	1,684,888	10/12/2014
120	The Royal Bank of Scotland plc	G125810	Security - aircraft	342,968	10/12/2014
121	The Royal Bank of Scotland	G125811	Maintenance - aircraft	1,684,888	23/12/2015

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
	plc				
122	The Royal Bank of Scotland plc	G125812	Security - aircraft	342,968	10/12/2014
123	The Royal Bank of Scotland plc	G125813	Security - aircraft	342,968	10/12/2014
124	The Royal Bank of Scotland plc	G125814	Maintenance - aircraft	1,684,888	10/12/2014
125	The Royal Bank of Scotland plc	G125815	Maintenance - aircraft	1,684,888	10/12/2014
126	The Royal Bank of Scotland plc	G125816	Security - aircraft	342,968	10/12/2014
127	The Royal Bank of Scotland plc	G126883	MIA Security Deposit	51,027	09/02/2015
128	The Royal Bank of Scotland plc	G126888	Security Deposit - ASIP4	24,733	18/03/2015
129	The Royal Bank of Scotland plc	G126494	Security - engine	56,163	08/09/2015
130	The Royal Bank of Scotland plc	G126495	Security - engine	56,163	08/09/2015
131	The Royal Bank of Scotland plc	G127372		411,862	28/06/2016
132	The Royal Bank of Scotland plc	G128435	SFO Operating and Space Permit	294,208	15/11/2017
133	Société Générale, London Branch	02002-0008257GDP	Security Deposit	385,652	01/05/2015
134	Société Générale, London Branch	02002-0007793GDP	Accommodation Deposit	880,592	03/04/2014
135	Société Générale, London Branch	02002-0008159GDP	Maintenance - engine	1,347,911	21/05/2016
136	Société Générale, London Branch	02002-0008168GDP	Security - engine	42,684	09/12/2014
137	Société Générale, London Branch	02002-0008300GDP	Maintenance - aircraft	3,369,777	16/06/2015
138	Société Générale, London Branch	02002-0008177GDP	Travel Agent Guarantee	658,526	04/03/2015
139	Société Générale, London Branch	02002-0008854GDP	Security - aircraft	277,071	12/10/2016
140	Société Générale, London Branch	K665345	Travel Agent Guarantee	2,082,600	27/03/2017
141	Société Générale, London Branch	02002-0008649GDP	Maintenance - aircraft	673,955	10/02/2016
142	Société Générale, London Branch	02002-0008836GDP	Security - aircraft	662,184	08/09/2016
143	Société Générale, London Branch	02002-0008827GDP	Security - aircraft	653,234	08/09/2016
144	Société Générale, London Branch	02002-0008684GDP	Security - aircraft	633,518	31/03/2016
145	Société Générale, London	02002-0008685GDP	Maintenance - aircraft	673,955	31/03/2016

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
146	Branch Société Générale, London Branch	02002-0008676GDP	Security - aircraft	627,902	03/03/2016
147	Branch Société Générale, London Branch	02002-0008907GDP	Maintenance - aircraft	1,123,259	09/06/2017
148	Branch Société Générale, London Branch	SB6/0006	Security - aircraft	614,048	14/07/2016
149	Branch Société Générale, London Branch	SB6/0005	Maintenance - aircraft	2,246,518	20/08/2017
150	Branch Société Générale, London Branch	02002-0008863GDP	Maintenance - aircraft	1,310,469	05/11/2017
151	Branch Société Générale, London Branch	02002-0008881GDP	Maintenance - aircraft	1,310,469	13/11/2017
152	Branch UniCredit Bank AG, London Branch	560 LI1200071	US Customs Bond	280,815	23/03/2017
153	Branch UniCredit Bank AG, London Branch	560 LI1200111	Maintenance - aircraft	1,684,888	17/07/2012
154	Branch UniCredit Bank AG, London Branch	560 LI1200114	Security - aircraft	441,815	17/07/2012
155	Branch UniCredit Bank AG, London Branch	560 LI1400057	Security - aircraft	342,968	10/08/2012
156	Branch UniCredit Bank AG, London Branch	560 LI1400058	Security - aircraft	342,968	10/08/2012
157	Branch UniCredit Bank AG, London Branch	560 LI1400059	Security - aircraft	342,968	10/08/2012
158	Branch UniCredit Bank AG, London Branch	560 LI1400060	Maintenance - aircraft	1,684,888	10/08/2012
159	Branch UniCredit Bank AG, London Branch	560 LI1400061	Security - aircraft	342,968	10/08/2012
160	Branch UniCredit Bank AG, London Branch	560 LI1400062	Maintenance - aircraft	2,246,518	10/08/2012
161	Branch UniCredit Bank AG, London Branch	560 LI1400063	Maintenance - aircraft	1,684,888	10/08/2012
162	Branch UniCredit Bank AG, London Branch	560 LI1400064	Maintenance - aircraft	2,246,518	10/08/2012
163	Branch UniCredit Bank AG, London Branch	560 LI1400065	Security - aircraft	342,968	10/08/2012
164	Branch UniCredit Bank AG, London Branch	560 LI1400066	Maintenance - aircraft	1,684,888	10/08/2012
165	Branch UniCredit Bank AG, London Branch	560 LI1600010	Maintenance - aircraft	748,839	09/02/2016
166	Branch UniCredit Bank AG, London Branch	560 LI1600019	Security - aircraft	583,071	15/03/2016
167	Branch UniCredit Bank AG, London Branch	560 LI1600021	Maintenance - aircraft	748,839	21/03/2016
168	Branch UniCredit Bank AG, London Branch	560 LI1600020	Security - aircraft	591,199	21/03/2016
169	UniCredit Bank AG, London	560 LI1600045	Security - aircraft	333,982	20/09/2016

No	Name of Existing BG Instrument Lender	Existing BG Instrument Bank Reference	Nature of Existing BG Instrument	Existing Exposure (£) as of the date of this Agreement	Existing BG Instrument Issue Date
170	Branch UniCredit Bank AG, London	560 LI1600048	Security - aircraft	325,745	13/09/2016
171	Branch UniCredit Bank AG, London	560 LI1600049	Security - aircraft	325,745	13/09/2016
172	Branch UniCredit Bank AG, London	560 LI1600046	Security - aircraft	281,564	13/09/2016
173	Branch UniCredit Bank AG, London	560 LI1600059	Maintenance - aircraft	1,684,888	08/11/2017
174	Branch UniCredit Bank AG, London	560 LI1600066	Maintenance - aircraft	823,723	24/11/2016
175	Branch UniCredit Bank AG, London	560 LI1600047	Security - aircraft	333,982	13/09/2016
176	Branch UniCredit Bank AG, London	560 LI1700016	Maintenance - aircraft	748,839	24/10/2017
177	Branch UniCredit Bank AG, London	560 LI1600068	Maintenance - aircraft	1,123,259	01/06/2017
178	Branch UniCredit Bank AG, London	560 LI1700015	Maintenance - aircraft	1,644,751	10/07/2017
179	Branch UniCredit Bank AG, London	560 LI1600071	Maintenance - aircraft	1,123,259	20/07/2017
180	Branch UniCredit Bank AG, London	560 LI1600041	Maintenance - aircraft	1,123,259	09/08/2017
181	Branch UniCredit Bank AG, London	560 LI1600040	Maintenance - aircraft	1,123,259	09/08/2017
182	Branch UniCredit Bank AG, London	560 LI1700029	Maintenance - aircraft	667,515	13/09/2017

SIGNATORIES

The Company

For and on behalf of

THOMAS COOK GROUP PLC



By: Rebecca Symondson

Title: Authorised Signatory

The Original Borrowers

For and on behalf of

THOMAS COOK GROUP TREASURY LIMITED



By: Rebecca Symondson
For and on behalf of
Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

THOMAS COOK AIRLINES TREASURY LIMITED



By: Rebecca Symondson
For and on behalf of
Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

The Original Guarantors

For and on behalf of

THOMAS COOK GROUP PLC

Rebecca Symondson

By: Rebecca Symondson

Title: Authorised Signatory

For and on behalf of

THOMAS COOK AIRLINES LIMITED



By: Rebecca Symondson
For and on behalf of

Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

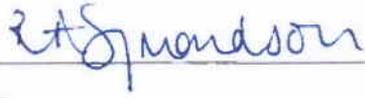
THOMAS COOK GROUP TREASURY LIMITED



By: Rebecca Symondson
For and on behalf of
Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

THOMAS COOK TOUR OPERATIONS LIMITED



By: Rebecca Symondson
For and on behalf of
Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

TCCT RETAIL LIMITED

RSymondson

By: Rebecca Symondson
For and on behalf of

Title: THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

THOMAS COOK UK LIMITED



By: Rebecca Symondson
Title: For and on behalf of
THOMAS COOK GROUP MANAGEMENT
SERVICES LIMITED

For and on behalf of

CONDOR FLUGDIENST GMBH



By: ANTHONY LEUNG

Title: Authorised Signatory

Bookrunning Mandated Lead Arrangers and Original Lenders

DNB (UK) LIMITED

as Bookrunning Mandated Lead Arranger and Original Lender

By:



Danielle Eastop
Authorised Signatory



Candice Ryan
Authorised Signatory

UNICREDIT BANK AG

as Bookrunning Mandated Lead Arranger

By:


Andreas Hartung
Director


Tim Brammer
Associate Director

UNICREDIT BANK AG, LONDON BRANCH

as Original Lender

By:


STUART WIMBUSH
DIRECTOR


SUSANNA PALLÉN
DIRECTOR

Mandated Lead Arrangers and Original Lenders

BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED

as Mandated Lead Arranger and Original Lender

By:

Dr. Shubhashis De, Vice President

[Handwritten signature], MP

VIPUL KUMAR

BARCLAYS BANK PLC

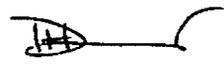
as Mandated Lead Arranger and Original Lender

By: 

BNP PARIBAS LONDON BRANCH

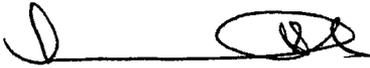
as Mandated Lead Arranger and Original Lender

By: 
SIMON GATES


HITEN DAVE

LLOYDS BANK PLC

as Mandated Lead Arranger and Original Lender

By: 

SOCIETE GENERALE, LONDON BRANCH

as Mandated Lead Arranger and Original Lender

By:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

THE ROYAL BANK OF SCOTLAND PLC

as Mandated Lead Arranger and Original Lender

By:

A handwritten signature in blue ink, appearing to be 'L. P. A.', is written above the signature line.

Arrangers and Original Lenders

AIB GROUP (UK) P.L.C.

as Arranger and Original Lender

By:  KIERAN O'RIORDAN

AXIS BANK LIMITED, DIFC BRANCH

as Arranger and Original Lender

By:



G.S. KUMAR BABJI
Employ ID 1974
Vice President
Deputy CEO & Head Operations
AXIS BANK - DIFC BRANCH

AXIS BANK UK LIMITED

as Arranger and Original Lender

By:



AXIS BANK LIMITED, DIFC BRANCH

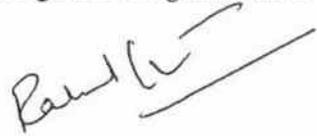
as Arranger and Original Lender

By:

AXIS BANK UK LIMITED

as Arranger and Original Lender

By:



RAHUL GUPTA
HEAD-CB



Sidharth Mishra
Head - ops



CITIBANK N.A. LONDON BRANCH

as Arranger and Original Lender

By: 
Erik Savola
Managing Director

CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH

as Arranger and Original Lender

By:



Ben Travers
Corporate Finance Manager



Alexandre Berthier
Corporate Finance Manager

CREDIT SUISSE AG, LONDON BRANCH

as Arranger and Original Lender

By:



Brian Fitzgerald
Authorised Signatory



A. MAZZA
DIR

DEUTSCHE BANK LUXEMBOURG S.A.

as Arranger and Original Lender

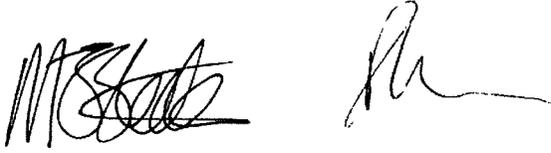
By:


S. KOCH
F. G. G. G.

KBC BANK NV

as Arranger and Original Lender

By:

Two handwritten signatures in black ink. The first signature is a dense, cursive scribble, and the second is a more fluid, stylized signature.

MORGAN STANLEY SENIOR FUNDING, INC.

as Arranger and Original Lender

By: 
JULIE LILIENFELD



SWISS RE INTERNATIONAL SE, NIEDERLASSUNG DEUTSCHLAND

as Arranger and Original Lender

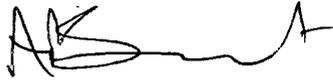
By:


Julia Borges




Jan Richter

Facility Agent



LLOYDS BANK PLC

By: Andrew Butt

Name:

Address: 28 CRESHAM ST EC2N 7HN

Fax number: 020 7158 3198

Attention: