

# Common Terms Agreement

Dated 29 December 2023

Neptune Project Holding 3 Limited

as the Company  
with

First Abu Dhabi Bank PJSC, Abu Dhabi Commercial Bank PJSC, and Standard Chartered Bank, Dubai International Financial Centre Branch

as Bookrunners

First Abu Dhabi Bank PJSC, Abu Dhabi Commercial Bank PJSC, Dubai Islamic Bank PJSC, Commercial Bank of Dubai PJSC, Gulf International Bank B.S.C., Gulf International Bank B.S.C. – Abu Dhabi, National Bank of Bahrain B.S.C., The National Bank of Ras Al Khaimah (P.S.C.), and Standard Chartered Bank, Dubai International Financial Centre Branch

as Mandated Lead Arrangers

Abu Dhabi Commercial Bank PJSC

as Global Agent, Conventional Facility Agent and Security Agent

Dubai Islamic Bank PJSC

as Murabaha Investment Agent

First Abu Dhabi Bank PJSC

as Account Bank

Standard Chartered Bank, Dubai International Financial Centre Branch

as Documentation Bank

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THIS AGREEMENT is dated 29 December 2023 and made between:

- (1) NEPTUNE PROJECT HOLDING 3 LIMITED a company registered in the Abu Dhabi Global Market with registration number 000010017 and having its registered office at 2471ResCowork03, 24, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates (the "**Company**");
- (2) FIRST ABU DHABI BANK PJSC, ABU DHABI COMMERCIAL BANK PJSC, and STANDARD CHARTERED BANK, DUBAI INTERNATIONAL FINANCIAL CENTRE BRANCH, whether acting individually or together, as bookrunners;
- (3) FIRST ABU DHABI BANK PJSC, ABU DHABI COMMERCIAL BANK PJSC, DUBAI ISLAMIC BANK PJSC, COMMERCIAL BANK OF DUBAI PJSC, GULF INTERNATIONAL BANK B.S.C., GULF INTERNATIONAL BANK B.S.C. – ABU DHABI, NATIONAL BANK OF BAHRAIN B.S.C., THE NATIONAL BANK OF RAS AL KHAIMAH (P.S.C.) and STANDARD CHARTERED BANK, DUBAI INTERNATIONAL FINANCIAL CENTRE BRANCH, whether acting individually or together, as mandated lead arrangers (the "**Mandated Lead Arrangers**");
- (4) THE FINANCIERS listed in Part I of Schedule 1 (*The Original Financiers*) as Original Lenders (the "**Original Lenders**");
- (5) THE FINANCIER listed in Part II of Schedule 1 (*The Original Financiers*) as Original Islamic Participants (the "**Original Islamic Participants**");
- (6) ABU DHABI COMMERCIAL BANK PJSC as global agent of the other Global Finance Parties (the "**Global Agent**");
- (7) ABU DHABI COMMERCIAL BANK PJSC as Agent under and as defined in the Conventional Facilities Agreement (the "**Conventional Facility Agent**");
- (8) DUBAI ISLAMIC BANK PJSC as Investment Agent under and as defined in the Murabaha Investment Agency Agreement (the "**Murabaha Investment Agent**"); and
- (9) ABU DHABI COMMERCIAL BANK PJSC as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

**"Acceptable Bank"** means:

- (a) a bank or financial institution which has a long term unsecured credit rating of at least BBB- by S&P or Fitch or at least Baa3 by Moody's or a comparable rating from an internationally recognised credit rating agency, or any bank or financial institution which (having previously satisfied such requirement) ceases to satisfy the foregoing ratings requirement for a period of not more than six Months;
- (b) any Financier or any Affiliate of a Financier;
- (c) any other bank or financial institution included in the list of banks provided by the Company to the Global Agent in the agreed form or which otherwise provides banking services to



the Group (including the Neptune Group and/or (as applicable) Moon Group) and is notified in writing to the Global Agent from time to time; and

- (d) any other bank or financial institution approved by the Global Agent (acting reasonably) or providing banking services to a business or entity acquired by a member of the Group.

**"Acceptable Funding Sources"** means, in each case to the extent not otherwise applied:

- (a) any Equity Contributions received by the Group following the Closing Date;
- (b) any Closing Overfunding;
- (c) any Excess Cashflow or Net Proceeds received by the Group not required to be applied in early payment of the Facilities (including in respect of any prior period);
- (d) Permitted Financial Indebtedness; and
- (e) any Waived Amount.

**"Acceptance Condition"** means, in relation to an Offer, a condition such that the Offer may not be declared unconditional as to acceptances until the Company has received acceptances in respect of a certain percentage or number of shares in Neptune.

**"Accession Deed"** means a document substantially in the form set out in Schedule 5 (*Form of Accession Deed*) or any other form agreed between the Global Agent and the Company (each acting reasonably).

**"Accounting Principles"** means, in respect of the Company, a member of the Group or a Reporting Entity, in each case, at its election:

- (a) the accounting principles applied by Neptune as at the date of this Agreement;
- (b) IFRS (as prevailing from time to time); or
- (c) generally accepted accounting principles prevailing from time to time applicable to it in its jurisdiction of incorporation,

in each case as determined and applied by the Company, that member of the Group or Reporting Entity from time to time.

**"Accounting Reference Date"** means the financial year-end date of Neptune as at the date of this Agreement (or such other date which corresponds to the financial year-end date of the relevant entity), in each case, as the same may be changed from time to time pursuant to paragraph (b) of Clause 21.3 (*Agreed Accounting Principles*).

**"Acquired Indebtedness"** means indebtedness (a) of a member of the Group or any of its Subsidiaries existing at the time such Person becomes a member of the Group, or (b) assumed in connection with the acquisition of assets from such Person, in each case whether or not incurred by such Person in connection with such Person becoming a member of the Group or such acquisition, or (c) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Company or any member of the Group. Acquired Indebtedness shall be deemed to have been incurred on the Relevant Transaction Test Date.

**"Acquisition Commitment Date"** means, at the Company's election, the date on which a legally binding commitment is entered into or offer is made by a member of the Group for the acquisition by a member of the Group of a controlling interest in a limited liability company, business or undertaking.

**"Additional Borrower"** means a person which becomes a Borrower in accordance with Clause 27 (*Changes to the Obligors*).

**"Additional Business Day"** has the meaning given to such term in the Conventional Facilities Agreement.

**"Additional Guarantor"** means a person which becomes an Additional Guarantor in accordance with Clause 27 (*Changes to the Obligors*).

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

**"Administrative Party"** means a Mandated Lead Arranger or an Agent.

**"Affiliate"** means:

- (a) in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company; and
- (b) in the case of any limited partnership, any entity (including any other limited partnership) which owns or controls, or is owned or controlled by, the first limited partnership or is under common ownership or control with the first limited partnership.

**"Agency Fee Letter"** means any fee letter entered into between an Agent or the Security Agent and the Company.

**"Agent"** means:

- (a) the Global Agent;
- (b) the Conventional Facility Agent; or
- (c) the Murabaha Investment Agent.

**"Agent's Spot Rate of Exchange"** means (as selected by the Company in its sole discretion):

- (a) an Agent's spot rate of exchange; or
- (b) any other publicly available 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. (local time) on a particular day.

**"Agreed Certain Funds Obligor"** means the Company (unless specified otherwise by the Company in the relevant notice delivered in respect of the Agreed Certain Funds Utilisation) and/or any other member of the Group designated as an Agreed Certain Funds Obligor by the Company and specified in a notice delivered by the Company to the Global Agent in respect of an Agreed Certain Funds Utilisation.

**"Agreed Certain Funds Period"** means, in respect of the relevant Revolving Facility, the period specified in a notice delivered by the Company to the Conventional Facility Agent in accordance

with the provisions of paragraph (c) of Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*).

**"Agreed Certain Funds Utilisation"** means, in respect of the relevant Revolving Facility, a Utilisation made or to be made under the relevant Revolving Facility during the Agreed Certain Funds Period which, in each case, the Company has notified the Conventional Facility Agent is to be made available on a "*certain funds basis*" in accordance with the provisions of paragraph (c) of Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*).

**"Agreed Security Principles"** means the principles set out in Schedule 8 (*Agreed Security Principles*).

**"Ancillary Commencement Date"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ancillary Commitment"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ancillary Document"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ancillary Facility"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ancillary Lender"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ancillary Outstandings"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Announcement"** means one or more announcements made (or to be made) to shareholders of Neptune in accordance with Rule 2.7 of the Takeover Code regarding the firm intention to enter into the Neptune Acquisition pursuant to a Scheme and/or an Offer (as applicable) (including any subsequent announcement and any amendment, replacement, revision, restatement, supplement or modification from time to time).

**"Annual Business Plan"** has the meaning given to that term in Clause 21.4 (*Annual Business Plan*).

**"Annual Compliance Certificate"** means a certificate substantially in the form set out in Part II of Schedule 7 (*Compliance Certificates*) (or in any other form agreed between the Company and the Global Agent (each acting reasonably)) and delivered by the Company to the Global Agent under paragraph (b) of Clause 21.2 (*Provision and contents of Compliance Certificates*).

**"Annual Financial Statements"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Annual Financial Statements (Company)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Annual Financial Statements (Moon)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Annual Financial Statements (Neptune)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Anti-Corruption Laws"** means, in respect of an Obligor, the laws, rules, and regulations in its jurisdiction of incorporation, and to which it is subject concerning or relating to bribery or corruption (including the Bribery Act 2010 or the United States Foreign Corrupt Practices Act of 1977).

**"Anti-Money Laundering Laws"** means applicable financial record keeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder, which, in each case, are issued, administered or enforced by any governmental authority having jurisdiction over any Obligor in its jurisdiction of incorporation and to which it is subject.

**"Applicable Accounting Principles"** means the relevant Accounting Principles in effect as at the date of this Agreement or (at the option of the Company) as in effect from time to time.

**"Applicable Metric"** means any basket, test, condition, requirement, permission, threshold, incurrence based permission, ratio, financial definition (or components thereof), financial metric (including, without limitation, any based on the calculation of EBITDA, Consolidated EBITDA and/or the Total Net Leverage Ratio), Financial Covenant and/or whether any breach or misrepresentation or Default or Event of Default has occurred, is continuing or would result.

**"Arrangement Fee Letter"** means each fee letter dated on or about the date of this Agreement between, amongst others, a Mandated Lead Arranger and the Company (or, in the case of Dubai Islamic Bank PJSC in its capacity as Mandated Lead Arranger, the fee letter dated on or about the date of this Agreement described as the documentation and structuring fee letter between Dubai Islamic Bank PJSC in such capacity and the Company).

**"Assignment Agreement"** means an agreement substantially in the form set out in Schedule 4 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee, the Global Agent and the Company (each acting reasonably), **provided that** if that other form does not contain an undertaking substantially similar to the undertaking set out in the form set out in Schedule 4 (*Form of Assignment Agreement*) it shall not be a Creditor/Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, in each case required by any applicable law or regulation.

**"Availability Period"** has the meaning given to that term in each of the Conventional Facilities Agreement and the Murabaha Facility Agreement.

**"Available Ancillary Commitment"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Available Commitment"** has the meaning given to that term in each of the Conventional Facilities Agreement and the Murabaha Investment Agency Agreement.

**"Available Facility"** means, in relation to a Facility, the aggregate for the time being of:

- (a) the Available Facility (as defined in the Conventional Facilities Agreement); and
- (b) the Available Facility (as defined in the Murabaha Investment Agency Agreement).

**"Bank Levy"** means any amount payable by any Global Finance Party or any of its Affiliates on the basis of, or in relation to:

- (a) its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof (including, without limitation, (a) the United Kingdom bank levy as set out in the Finance Act 2011 (as amended)) and (b) any Tax in any jurisdiction levied on a similar basis or for a similar purpose; or
- (b) any financial activities Taxes (or other Taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011 or the Single Resolution Mechanism established by EU Regulation no. 806/2014 of 15 July 2014), in each case, as in force as at the date of this Agreement.

**"Bank Products"** means any clearinghouse, overdraft protections, returned check concentration, electronic funds transfer, foreign exchange, account reconciliation and reporting services, any SWIFT or BACS facilities and/or any daylight or overnight facilities or exposures, in each case entered into in the ordinary course of the Group's treasury, internal funding and/or cash management activities.

**"Base Case Model"** means the financial model prepared by the Company or (as the case may be) an Investor in connection with the Facilities, or as otherwise agreed between the Company and the Mandated Lead Arrangers (acting reasonably and in good faith).

**"Base Currency"** means:

- (a) for Facility B and the Original Revolving Facility, US Dollars; and
- (b) in relation to any Incremental Facility, the currency agreed between the Company and the applicable Incremental Facility Financiers.

**"Base Currency Amount"** means:

- (a) in relation to a Utilisation (other than under an Ancillary Facility), the amount specified in the Request delivered by a Borrower or the Purchaser for that Utilisation (or, if the amount requested is not denominated in the Base Currency for that Facility, that amount converted into the Base Currency at the relevant Agent's Spot Rate of Exchange at the time specified by the relevant Agent in Schedule 3 (*Timetables*) of the Conventional Facilities Agreement or, if later, on the date the relevant Agent receives the Request in accordance with the terms of the Conventional Facilities Agreement or the Murabaha Facility Agreement (as applicable)); and
- (b) in relation to an Ancillary Commitment, Fronted Ancillary Commitment or Fronting Ancillary Commitment, the amount specified as such in the notice delivered to the Conventional Facility Agent by the Company pursuant to clause 9.2 (*Availability*) of the Conventional Facilities Agreement (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the relevant Agent's Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or Fronted Ancillary Facility or, if later, the date the Global Agent receives the notice of the Ancillary Commitment or Fronted Ancillary Commitment and Fronting Ancillary Commitment in accordance with the terms of this Agreement),

as adjusted to reflect any repayment, early payment, consolidation or division of a Utilisation, or utilisation under an Ancillary Facility or Fronted Ancillary Facility or (as the case may be) cancellation or reduction of an Ancillary Facility or Fronted Ancillary Facility.

**"Blacklisted Jurisdiction"** means any sanctioned jurisdiction or country or territory not allowing for an adequate exchange of information with any governmental or taxing authority of any jurisdiction of incorporation of any Obligor.

**"Board of Directors"** means:

- (a) with respect to the Company or any company or corporation, the board of directors or managers, as applicable, of that company or corporation, or any duly authorised committee thereof;
- (b) with respect to any limited liability entity, the sole member, sole manager, board of managers or other governing body, as applicable, of that limited liability entity, or any authorised committee thereof;
- (c) with respect to any partnership, the board of directors or other governing body of the general partner of that partnership or any duly authorised committee thereof, except if a manager or a board of managers has been appointed in accordance with the constitutional documents of such partnership, in which case paragraph (a) above shall apply; and
- (d) with respect to any other person, the board or any duly authorised committee of that person serving a similar function.

Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors, managers, governing body or committee or equivalent (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting (or equivalent) or as a formal board approval (or equivalent)).

**"Bona Fide Debt Fund"** means, in respect of any person, a debt fund that is engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit that has customary information barriers between it and that person (and the Affiliates and Related Funds of that person), and that person (and its Affiliates and Related Funds) does not make or influence investment decisions for that debt fund.

**"Borrower"** has the meaning given to that term in the Conventional Facilities Agreement.

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

**"Break Costs"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Bridge Commitment Documents"** means the Commitment Documents as defined in the Bridge Commitment Letter.

**"Bridge Commitment Letter"** means the commitment letter dated 9 June 2023 between, among others, BCP VI Neptune Bidco Holdings Limited and the mandated lead arrangers named therein.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and the UAE 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;
- (b) (in relation to any date for payment by an Obligor) in that Obligor's jurisdiction of incorporation;
- (c) New York;
- (d) (in relation to rate fixing for US Dollars) which is a US Government Securities Business Day; and
- (e) in relation to:
  - (i) any date for payment or purchase of an amount relating to a Compounded Rate Currency;
  - (ii) the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan;
  - (iii) the determination of the length of an Interest Period for a Compounded Rate Loan; or
  - (iv) the determination of the length of a Lookback Period for an amount in respect of a Compounded Rate Currency,

which is an Additional Business Day relating to the relevant Compounded Rate Currency, or Compounded Rate Loan.

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

**"Capital Stock"** of any Person means any and all shares of, rights to purchase or acquire, warrants, options or depositary receipts for, or other equivalents of, or partnership or other interests in (however designated), equity of such Person, but excluding any debt securities convertible into, or exchangeable for, such equity.

**"Cash Equivalent Investments"** means, at any time when held by a member of the Group:

- (a) securities or other obligations issued, insured or guaranteed by the United States of America, the United Kingdom, Canada, Switzerland, Japan, the EU, any Participating Member State or member state of the European Union (including any member state prior to a Withdrawal Event), European Economic Area or Gulf Cooperation Council, Australia or any other government or state which has a rating for its short term unsecured and non-credit enhanced debt obligations of A 1 or higher by S&P or F1 or higher by Fitch or P 1 or higher by Moody's or by an instrumentality or agency of any such government having an equivalent credit rating, or any agency thereof (each an **"Approved Nation"**) and having not more than 24 months to final maturity;
- (b) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances maturing within one year after the relevant date of calculation and issued by an Acceptable Bank or issued by any lender or any bank or trust company (i)

whose commercial paper is rated A-1 by S&P, F-1 by Fitch or P-1 by Moody's (or if at the time neither is issuing comparable ratings, then a comparable rating of another nationally recognised statistical rating organisation) or (ii) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of USD 250,000,000 (or its equivalent in another currency);

- (c) any investment in marketable debt obligations issued, insured or guaranteed by any government of an Approved Nation or by an instrumentality or agency of any such government having an equivalent credit rating, maturing within 24 months after the relevant date of calculation and not convertible or exchangeable to any other security;
- (d) commercial paper and variable or fixed rate notes:
  - (i) issued by an issuer incorporated in an Approved Nation;
  - (ii) which matures within one year after the relevant date of calculation; and
  - (iii) which has a credit rating of either A-1 or higher by S&P 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 short term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) bills of exchange issued in an Approved Nation or any agency thereof and eligible for rediscount at the relevant central bank and accepted by a bank (or their dematerialised equivalent);
- (f) any investment in money market funds which: (i) have a credit rating of either A 1 or higher by S&P 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 (e) above; or (iii) can be turned into cash on not more than 30 days' notice;
- (g) any money market investment (including repurchase agreements) and substantially all of the assets or collateral in respect of that investment have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's;
- (h) securities maturing within one year after the relevant date of calculation backed by standby letters of credit issued by any person referenced in paragraph (b) above (or by any parent entity thereof);
- (i) any marketable securities portfolio owned by the Company and its Subsidiaries on the Closing Date; or
- (j) any other debt security approved by the Majority Financiers (acting reasonably),

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

**"Cash Management Services"** means any of the following: cash management, cash pooling or netting or setting off arrangements or arrangements for the honouring of checks, drafts or similar instruments, including automated clearing house transactions, treasury, depository, credit or debit card, purchasing card, stored value card, electronic fund transfer services, operational intra-group



balances and/or cash management services, payments lines, electronic funds transfer, netting or setoff arrangements, contingent obligation lines, letters of credit, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services or other cash management arrangements in the ordinary course of business or consistent with past practice.

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

**"CEO"** means the chief executive officer of the Group or, if no chief executive officer is appointed, such other person fulfilling the functions of chief executive officer of the Group.

**"Certain Funds Obligor"** means the Company.

**"Certain Funds Period"** means, in relation to each Facility, the period from (and including) the date of this Agreement to (and including):

- (a) in respect of Facility B1, 11:59pm (London time) on the earlier to occur of:
  - (i) the date falling 10 Business Days after the earlier of:
    - (A) the Neptune Completion Date; and
    - (B) the date on which Facility B1 has been utilised in full;
  - (ii) the Longstop Date if, as at such date and time, neither the Scheme Effective Date nor the Offer Unconditional Date has occurred (or such later date as may be agreed between the Company and the Mandated Lead Arrangers, each acting reasonably and in good faith);
  - (iii) if the Neptune Acquisition is consummated by way of Scheme and the Scheme Effective Date has occurred, the next Business Day to occur after the date falling 20 Business Days after the Scheme Effective Date;
  - (iv) the next Business Day to occur after the date (if any) on which the Company notifies the Mandated Lead Arrangers in writing, expressly referring to paragraph (a) of this definition, that:
    - (A) (if the Neptune Acquisition is to be effected by way of a Scheme and, as at such date, the Scheme Effective Date has not occurred) the Scheme has lapsed (after exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or has been permanently withdrawn with the consent of the Panel, cancelled or terminated without success (in each case) in accordance with its terms as set out in the relevant Announcement or Scheme Document or otherwise with the consent of the Panel or by order of the Court and (in each case) the Transaction is no longer proceeding (except in circumstances where (x) such lapse, withdrawal, cancellation or termination is in connection with a switch or other change from a Scheme to an Offer (provided that, in the case of any such switch or other change from a Scheme to an Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition) or other form of Neptune Acquisition or (y) within 20 Business

Days of (but excluding) the date of any such lapse, withdrawal, cancellation or termination, the Company makes an Announcement that the Neptune Acquisition is to be undertaken or otherwise implemented by way of a new, revised, amended, relaunched, reissued or replacement Scheme or Offer (provided that, in the case of any such Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition) or other Neptune Acquisition (in each case, whether or not recommended)); or

- (B) (if the Neptune Acquisition is to be effected by way of an Offer and, as at such date, the Offer has not become or been declared unconditional) the applicable Offer has lapsed or has been permanently withdrawn with the consent of the Panel, cancelled or terminated without success (in each case) in accordance with its terms as set out in the relevant Announcement or Offer Document or otherwise with the consent of the Panel and (in each case) the Transaction is no longer proceeding (except in circumstances where (x) such lapse, withdrawal, cancellation or termination is in connection with a switch or other change from an Offer to a Scheme or other form of Neptune Acquisition or (y) within 20 Business Days of (but excluding) the date of any such lapse, withdrawal, cancellation or termination, the Company makes an Announcement that the Neptune Acquisition is to be undertaken or otherwise implemented by way of a new, revised, amended, relaunched, reissued or replacement Scheme or Offer (provided that, in the case of any such Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition) or other Neptune Acquisition (in each case, whether or not recommended)),

and, for the avoidance of any doubt, a switch or other change from a Scheme to an Offer (provided that, in the case of any switch or other change from a Scheme to an Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition) or from an Offer to a Scheme shall not in any circumstances constitute a lapse, withdrawal, cancellation or termination of a Scheme or an Offer (respectively) nor itself otherwise cause the Certain Funds Period applicable to Facility B1 to end; and

- (b) in respect of Facility B2, the date which is 12 months after the Neptune Completion Date; and
- (c) in respect of an Incremental Facility, such period for certain funds agreed with the relevant Incremental Facility Financier(s) in accordance with paragraph (c) of Clause 4.4 (*Utilisations During the Certain Funds Period/Agreed Certain Funds Period*),

in each case, unless otherwise agreed between the Company and the Financiers and, in each case, provided that if such date is not a Business Day, the relevant date will instead be the next Business Day thereafter.

**"Certain Funds Utilisation"** means a Utilisation made or to be made under a Conventional Facility or the entry into an Initial Murabaha Contract, in each case, during the Certain Funds Period (including, for the avoidance of doubt, any Loan to be made available in accordance with Clause 10.3 (*Pre-funding*) of the Conventional Facilities Agreement).

**"CFO"** means the chief financial officer or finance director of the Group or, if no chief financial officer or finance director is appointed, such other person fulfilling the functions of chief financial officer or finance director of the Group.

**"Change of Control"** has the meaning given to that term in Clause 9.1 (*Exit*).

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

**"Clean-Up Period"** has the meaning given to that term in Clause 24.14 (*Clean-up Period*).

**"Closing Date"** means the date of the first Utilisation.

**"Closing Overfunding"** means, without prejudice to the Minimum Equity Condition, the aggregate amount invested in the Company by way of Equity Contribution on or around each Utilisation Date of Facility B and which represents the excess of specific transaction sources over specific transaction uses detailed in the Funds Flow Statement as at such date (or as at the Neptune Completion Date or as separately identified by the Company as at the Moon Completion Date), plus (without double counting) the amount of unrestricted cash (or Cash Equivalent Investments) on the balance sheet of the Group (including the Neptune Group) as at the Closing Date (or the balance sheet of the Moon Group as separately identified by the Company as at the Moon Completion Date) but with such cash balance determined disregarding any (direct or indirect) Original Revolving Facility Utilisations where the relevant proceeds are held as cash on the balance sheet of the Group, in each case, as determined by the Company, acting reasonably and in good faith.

**"Commitment"** means:

- (a) a Commitment as defined in the Conventional Facilities Agreement; or
- (b) a Murabaha Commitment as defined in the Murabaha Investment Agency Agreement.

**"Commodity Exchange Act"** means the US Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**"Compliance Certificate"** means an Annual Compliance Certificate or a Semi-Annual Compliance Certificate.

**"Compounded Rate Currency"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Compounded Rate Loan"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Confidential Information"** means all information relating to the Company, any Obligor, the Group (and any Affiliate of the Group), any Parent Entity, the Neptune Group, the Moon Group, the Investors, the Transaction Documents, the Reports, the Base Case Model, the Transaction, the

Global Finance Documents or a Facility of which a Global Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Global Finance Party or which is received by a Global Finance Party in relation to, or for the purpose of becoming a Global Finance Party under, the Global Finance Documents or a Facility from:

- (a) the Company, any member of the Group (or any Affiliate of the Group), any Investor, a Parent Entity, the Neptune group, the Moon Group or any of their respective advisers; or
- (b) another Global Finance Party, if the information was obtained by that Global Finance Party directly or indirectly from any person referred to in paragraph (a) above,

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:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Global Finance Party of Clause 39 (*Confidentiality*);
- (ii) is identified in writing at the time of delivery as non-confidential by the Company, any member of the Group, the Neptune group, the Moon Group or any of its advisers; or
- (iii) is known by that Global Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Global Finance Party after that date, from a source which is, as far as that Global Finance Party is aware, unconnected with the Company, the Group, the Neptune Group, the Moon Group, any Investor, a Parent Entity or any of their respective advisers and which, in either case, as far as that Global Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA on the date of this Agreement or in any other form agreed between the Company and the Global Agent, and in any case capable of being relied upon by, and not capable of being materially amended without the consent of, the Company.

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

**"Contingent Obligations"** means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that does not constitute Financial Indebtedness ("primary obligations") of any other Person (the "primary obligor"), including any obligation of such Person, whether or not contingent:

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (b) to advance or supply funds;
- (c) for the purchase or payment of any such primary obligations;
- (d) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

- (e) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

**"Conventional Facility"** means the Conventional Facility B and/or the Original Revolving Facility.

**"Conventional Facilities Agreement"** means the facilities agreement dated on or about the date hereof between, amongst others, the Company, the Conventional Facility Agent as agent and the financial institutions named therein as lenders.

**"Conventional Facility B"** means Facility B as defined in the Conventional Facilities Agreement.

**"Conventional Facility B Commitment"** means a Facility B Commitment as defined in the Conventional Facilities Agreement.

**"Conventional Facility B Lender"** means Conventional Facility B1 Lender and/or, as the context requires, Conventional Facility B2 Lender.

**"Conventional Facility B Loan"** means Conventional Facility B1 Loan and/or, as the context requires, Conventional Facility B2 Loan.

**"Conventional Facility B1"** means Facility B1 as defined in the Conventional Facilities Agreement.

**"Conventional Facility B1 Borrower"** means a Facility B1 Borrower as defined in the Conventional Facilities Agreement.

**"Conventional Facility B1 Commitment"** means a Facility B1 Commitment as defined in the Conventional Facilities Agreement.

**"Conventional Facility B1 Financier"** means any Financier who makes available a Conventional Facility B1 Commitment or a Conventional Facility B1 Loan.

**"Conventional Facility B1 Lender"** means a Facility B1 Lender as defined in the Conventional Facilities Agreement.

**"Conventional Facility B1 Loan"** means a Facility B1 Loan as defined in the Conventional Facilities Agreement.

**"Conventional Facility B2"** means Facility B2 as defined in the Conventional Facilities Agreement.

**"Conventional Facility B2 Borrower"** means Facility B2 Borrower as defined in the Conventional Facilities Agreement.

**"Conventional Facility B2 Commitment"** means a Facility B2 Commitment as defined in the Conventional Facilities Agreement.

**"Conventional Facility B2 Financier"** means any Financier who makes available a Conventional Facility B2 Commitment or a Conventional Facility B2 Loan.

**"Conventional Facility B2 Lender"** means a Facility B2 Lender as defined in the Conventional Facilities Agreement.

**"Conventional Facility B2 Loan"** means a Facility B2 Loan as defined in the Conventional Facilities Agreement.

**"Conventional Finance Documents"** means the Finance Documents as defined in the Conventional Facilities Agreement.

**"Conventional Finance Party"** has the meaning given to the term "Finance Party" in the Conventional Facilities Agreement.

**"Conventional Lender"** has the meaning given to the term "Lender" in the Conventional Facilities Agreement.

**"Court"** means any applicable court of England and Wales, including the High Court of Justice in England and Wales."

**"Court Order"** means any applicable court of England and Wales, including the High Court of Justice in England and Wales.

**"Court Order"** means the order of the Court sanctioning the Scheme.

**"CP Satisfaction Letter"** means the letter from, amongst others, a Global Finance Party addressed to the Company (and/or, as applicable, an Affiliate) and referring to the status of certain conditions precedent under the Agreement.

**"Current Assets"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Current Liabilities"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"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 the Global Finance Documents.

**"Declared Default"** means the occurrence of an Event of Default which has resulted in the giving of notice by the Global Agent under paragraph (a)(ii) of Clause 24.13 (*Acceleration*) and such notice has not been withdrawn, cancelled or otherwise ceased to have effect.

**"Default"** means an Event of Default or an event or circumstance which would (with the expiry of a grace period, the making of a determination, or the giving of notice provided for in Clause 24 (*Events of Default*) or any combination of the foregoing) be an Event of Default, **provided that** any such event or circumstance which requires the satisfaction of a condition or determination (including as to materiality) before it becomes an Event of Default shall not be a Default unless that condition or that determination is satisfied.

**"Defaulting Financier"** means:

- (a) a Defaulting Lender (as defined in the Conventional Facilities Agreement); and
- (b) a Defaulting Participant (as defined in the Murabaha Investment Agency Agreement).

**"Deferred Instalment Payment Date"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Deferred Instalment Payment Price"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Deferred Payment Date"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Deferred Payment Price"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Delegate"** means any delegate, agent, attorney, co-trustee or co-security agent appointed by the Security Agent.

**"Disposal Proceeds"** means the Net Proceeds from a disposal pursuant to paragraph (s) of the definition of "Permitted Disposal".

**"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 Global 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 Global Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Global Finance Documents,

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

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

**"Equity Contribution"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Equity Documents"** means any document providing for or evidencing any Equity Contribution.

**"Equity Investment"** means the aggregate investment in cash in the form of (i) any subscription for, investment in or issue of shares by, or other equity in or issue of shares by or capital contributions (including by way of share capital, premium and/or contribution to capital reserve) made to and other any investment in, the Company and/or (ii) any loan or other capital injection made to, or indebtedness or other amount owing by, the Company constituting or giving rise to Investor Liabilities (as defined in the Intercreditor Agreement).

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

**"Excess Cashflow"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Excess Cashflow Proceeds"** means, in respect of a Financial Year:

- (a) an amount equal to the applicable percentage of Excess Cashflow set out in the below table generated during such Financial Year:

<b>Total Net Leverage Ratio</b>	<b>Percentage of Excess Cashflow</b>
Greater than 4.50:1	50%
Less than or equal to 4.50:1 but greater than 3.50:1	35%
Less than or equal to 3.50:1	Nil

less,

- (b) (on a one-for-one basis) any voluntary early payment of Facility B Utilisations made during such Financial Year (or after such Financial Year and prior to the time early payment is required to be made pursuant to Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*)),

provided that any voluntary early payment under paragraph (b) above in excess of the amount contemplated by paragraph (a) above year shall be carried forward and deducted from the "Excess Cashflow Proceeds" in the subsequent Financial Year.

**"Excluded Financier"** has the meaning given to that term in paragraph 37.6(a) of Clause 37.6 (*Excluded Commitments*).

**"Excluded Matters"** means each or any (or any ancillary or related matter) of those matters set out in Clause 24.15 (*Excluded Matters*).

**"Excluded Security Jurisdiction"** has the meaning given to that term in Schedule 8 (*Agreed Security Principles*).

**"Existing Financier"** has the meaning given to that term in Clause 25.2 (*Assignments and Transfers by Financiers*).

**"Existing Target Debt"** means any indebtedness or financial accommodation of the Group or the Neptune Group in existence at any time prior to the Neptune Completion Date and/or (as applicable) any indebtedness or financial accommodation of the Moon Group in existence at any time prior to the Moon Completion Date.

**"Facility"** means as the context requires:

- (a) the Conventional Facility;
- (b) the Murabaha Facility; and/or
- (c) any Incremental Facility.

**"Facility B"** means Conventional Facility B and/or, as the context requires, the Murabaha Facility.

**"Facility B Commitment"** means a Facility B1 Commitment and/or, as the context requires, Facility B2 Commitment.



**"Facility B Financier"** means, as the context requires:

- (a) a Conventional Facility B1 Financier;
- (b) a Conventional Facility B2 Financier; and/or
- (c) an Islamic Participant.

**"Facility B Utilisation"** means, as the context requires:

- (a) a Conventional Facility B1 Loan;
- (b) a Conventional Facility B2 Loan;
- (c) a Murabaha Facility B1 Murabaha Contract;
- (d) a Murabaha Facility B2 Murabaha Contract; and/or
- (e) an Incremental Facility B Utilisation.

**"Facility B1"** means Conventional Facility B1 and Murabaha Facility B1.

**"Facility B1 Commitment"** means a Conventional Facility B1 Commitment and a Murabaha Facility B1 Commitment.

**"Facility B1 Financier"** means any Financier who makes available a Facility B1 Commitment or a Facility B1 Utilisation.

**"Facility B1 Utilisation"** means a Conventional Facility B1 Loan and a Murabaha Facility B1 Murabaha Contract.

**"Facility B2"** means Conventional Facility B2 and Murabaha Facility B2.

**"Facility B2 Commitment"** means a Conventional Facility B2 Commitment and a Murabaha Facility B2 Commitment.

**"Facility B2 Financier"** means any Financier who makes available a Facility B2 Commitment or a Facility B2 Utilisation.

**"Facility B2 Utilisation"** means a Conventional Facility B2 Loan and a Murabaha Facility B2 Murabaha Contract.

**"Facility Office"** means the office or offices notified by a Financier, Global Finance Party or the Issuing Bank to the Global Agent in writing on or before the date it becomes a Financier, Global Finance Party or the Issuing Bank (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.

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Internal Revenue 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, regulation or guidance referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (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 Internal Revenue Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "*passthru payment*" described in section 1471(d)(7) of the Internal Revenue Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

**"FATCA Deduction"** means a deduction or withholding from a payment under a Global 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) each Arrangement Fee Letter;
- (b) an Agency Fee Letter;
- (c) any letter or letters dated on or before the Closing Date between any of (i) the Mandated Lead Arrangers and the Company, (ii) an Agent and the Company, (iii) the Issuing Bank and the Company, or (iv) the Security Agent and the Company (in each case, designated as Fee Letter by the Company) or otherwise setting out any of the fees referred to in Clause 13 (*Fees*); and
- (d) any Incremental Facility Commitment Fee Letter.

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

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

**"Financial Covenant"** means the financial undertaking given by the Company in paragraph (b) of Clause 22.2 (*Financial Condition*).

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

**"Financial Indebtedness"** means, (without double counting) any indebtedness in relation to or arising under or in connection with:

- (a) any money borrowed (including any overdraft) and any moneys raised through conventional or Shari'a compliant financing arrangements;
- (b) any debenture, bond (other than a performance bond issued in the ordinary course of trading in respect of the obligations of any member of the Group), note or loan stock or other similar instrument;
- (c) any amount raised by acceptance under any acceptance credit facility (or dematerialised equivalent);

- (d) any receivable sold or discounted (otherwise than on a non-recourse basis);
- (e) the purchase price of any asset or service to the extent payable by a member of the Group after the time of sale or delivery to a member of the Group, where the deferred payment is:
  - (i) arranged as a method of raising finance; or
  - (ii) paid more than six (6) months after the sale or delivery date (save where the payment deferral results from non or delayed satisfaction of contract terms by the supplier or from contract terms establishing payment schedules tied to total or partial contract completion and/or the results of operational testing procedures provided that, in each case, the relevant member of the Group is disputing in good faith the underlying reason for continuing the payment deferral);
- (f) the sale price of any asset or service to the extent paid to a member of the Group before the time of sale or delivery by the member of the Group that is liable to effect that sale or delivery, where the advance payment is arranged as a method of raising finance;
- (g) any lease or hire purchase contract, a liability under which would, in accordance with Accounting Principles, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with Accounting Principles in force prior to 1 January 2019 have been treated as an operating lease);
- (h) for the purposes of Clause 24.6 (*Cross-default*) only, any Treasury Transaction entered into in the ordinary course of business and not for speculative purposes (and when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that Treasury Transaction, that amount) shall be taken into account);
- (i) any Treasury Transaction, other than those contemplated by paragraph (h) above (and when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that Treasury Transaction, that amount) shall be taken into account);
- (j) any indemnity or counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability which would fall within one of the other paragraphs of this definition;
- (k) any amount raised by any member of the Group by the issue of redeemable shares or other securities, other than amounts payable to an Obligor;
- (l) any amount raised under any other transaction having the commercial effect of a borrowing or treated as a borrowing by the Accounting Principles; or
- (m) (without double counting) any guarantee of indebtedness of any person of a type referred to in paragraphs (a) to (f) above,

but not any liability in respect of (x) any lease that is not a Finance Lease, (y) any unpaid earn outs and/or deferred consideration relating to any Permitted Acquisition where in each case (and

for so long as) such liability is related to the financial performance of the acquired entity, business or undertaking after completion of the relevant Permitted Acquisition (to be assessed at the end of each Financial Half Year and no such liability to constitute "Financial Indebtedness" until the last day of the Financial Half Year during which any such condition is satisfied), and so that, where the amount of Financial Indebtedness falls to be calculated, no amount shall be taken into account more than once in the same calculation and, where the amount is to be calculated on a consolidated basis in respect of the Group, monies borrowed or raised, or other indebtedness, as between members of the Group shall be excluded.

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

**"Financial Statements"** means Annual Financial Statements or Semi-Annual Financial Statements.

**"Financier"** means:

- (a) a Conventional Lender; or
- (b) an Islamic Participant.

**"Financier Illegality Notice"** has the meaning given to such term in paragraph (a)(i) of Clause 8.1 (*Illegality*).

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

**"First Test Date"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Fitch"** means Fitch Ratings, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organisation.

**"Fixed Applicable Metric"** means any Applicable Metric that is not a Ratio-Based Applicable Metric.

**"Forward-Looking Period"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Fronted Ancillary Commitment"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Fronted Ancillary Facility"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Fronted Ancillary Lender"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Fronting Ancillary Commitment"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Fronting Ancillary Lender"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Funding Rate"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Funds Flow Statement"** means the sources and uses or funds flow statement (or similar) prepared by or on behalf of the Investors, the Company, Neptune or Moon in relation (among other

things) to the Neptune Acquisition, provided that, for the avoidance of any doubt, the Funds Flow Statement will be (a) in such form and substance as the Company may, at its sole discretion, determine and (b) for information purposes only and shall not require the approval of, or be required to be in form and substance satisfactory to, the Global Agent or any other Global Finance Party.

**"Global Finance Document"** means this Agreement, the Conventional Finance Documents, the Murabaha Transaction Documents, any Accession Deed, any Compliance Certificate, any Fee Letter, any Incremental Facility Document, each Increase Confirmation, the Intercreditor Agreement, any Resignation Letter, any Transaction Security Document, any Request, any Methodology Supplement and any other document designated as a Global Finance Document by the Global Agent and the Company.

**"Global Finance Party"** means a Conventional Finance Party, a Murabaha Finance Party, an Agent, the Security Agent, a Mandated Leader Arranger, the Issuing Bank, or any Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender.

**"Group"** means the Company and each of its Subsidiaries from time to time (including, on and from the Neptune Completion Date, the Neptune Group and, on and from the Moon Completion Date, the Moon Group).

**"Group Initiative"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Guarantee Limitations"** means, in respect of any Obligor and any payments such Obligor is required to make in its capacity as a guarantor or as the provider of an indemnity or as debtor of costs or disbursements or with respect to any other payment obligations under this Agreement or any other Global Finance Document, the limitations and restrictions applicable to such entity pursuant to Clause 19.11 (*Guarantee Limitations: General*) to Clause 19.14 (*Additional Guarantee Limitations (Egypt)*) (inclusive) and the relevant Accession Deed applicable to such Additional Guarantor or any other Global Finance Document.

**"Guarantor"** means the Company or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 27 (*Changes to the Obligors*).

**"Guarantor Coverage Test"** means the aggregate earnings before interest, tax, depreciation and amortisation (calculated on a LTM basis on the same basis as Consolidated EBITDA (with any adjustments permitted to be made thereto being applied or not applied at the Company's discretion), but calculated on a stand-alone unconsolidated basis and excluding goodwill, intra-Group items (including investments in other members of the Group)) ("**Unconsolidated EBITDA**") of the Obligors (and deeming the Unconsolidated EBITDA of any Obligor which is negative in any calculation period to be zero for the purposes of the numerator of the Guarantor Coverage Test) being not less than 85 per cent. of the aggregate Unconsolidated EBITDA of the wholly-owned members of the Group incorporated in any jurisdiction other than an Excluded Security Jurisdiction (but excluding from the denominator of the Guarantor Coverage Test (to the extent positive) the Unconsolidated EBITDA of any person which (i) would otherwise be included but which person is (as determined by the Company acting reasonably and in good faith) unable or not required to become a Guarantor in accordance with the Agreed Security Principles or (ii) would otherwise increase Unconsolidated EBITDA but which is attributable to an on-balance sheet joint venture or

associate or other investment), in each case, as at the date so determined and by reference to the applicable financial statements permitted to be used as contemplated in this Agreement.

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

**"Hedge Counterparty"** means each person which is party to the Intercreditor Agreement as a *"Hedge Counterparty"*.

**"Hedging Agreement"** means any master agreement, confirmation, schedule or other agreement entered into by an Obligor with a Hedge Counterparty:

- (a) for the purpose of hedging interest rate and cross currency risks in relation to the Facilities, any Ancillary Facility or Fronted Ancillary Facility, any Permitted Acquired Indebtedness or any Permitted Financial Indebtedness; or
- (b) in respect of (i) interest rate hedging transactions in the ordinary course of business, (ii) spot and forward foreign exchange hedging transactions and (iii) other hedging transactions, in each case, not for speculative purposes (as determined in good faith by the Company).

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

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

**"Impaired Agent"** has the meaning given to that term in each of the Conventional Facilities Agreement (in respect of the Conventional Facility Agent) and the Murabaha Investment Agency Agreement (in respect of the Murabaha Investment Agent) and in respect of the Global Agent means 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 Global Finance Documents by the due date for payment;
- (b) the Global Agent otherwise disaffirms, rescinds or repudiates a Global Finance Document or any term thereof;
- (c) (if the Global Agent is also a Financier) it is a Defaulting Financier under paragraphs (a) or (c) of the respective definition of Defaulting Lender (in the Conventional Facilities Agreement) and Defaulting Participant (in the Investment Agency Agreement); or
- (d) an Insolvency Event has occurred and is continuing with respect to the Global Agent, unless, in the case of paragraph (a) above:
  - (i) its failure to pay is caused by administrative or technical error or a Disruption Event and payment is made within three Business Days of its due date; or
  - (ii) the Global Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

**"Incentive Plan"** means any management, employment, consulting or collective bargaining benefit plan, program, agreement or arrangement (including any stock option plan, restricted stock plan, long-term incentive plan, stock appreciation rights plan or participation plan and any

valuation, health, insurance, deferred compensation, severance, retirement or savings plans, programs or arrangements) and other compensatory arrangements (as amended and/or modified from time to time and including any successor plans thereto).

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 9 (*Form of Increase Confirmation*) or in any other form agreed between the Global Agent and the Company (acting reasonably).

**"Increase Financier"** has the meaning given to that term in Clause 2.6 (*Increase*).

**"Incremental Facility"** means an Incremental Facility B or an Incremental Revolving Facility.

**"Incremental Facility B"** means an Incremental Facility established pursuant to Clause 2.7 (*Incremental Facility*) that is a term facility that ranks *pari passu* with Facility B with respect to the application of proceeds from enforcement of Transaction Security.

**"Incremental Facility B Commitment"** means:

- (a) in relation to an entity identified as a Financier in an Incremental Facility Commitment Notice which established an Incremental Facility B, the amount set opposite its name under the heading Incremental Facility Commitment in such Incremental Facility Commitment Notice and the amount of any other Incremental Facility B Commitment transferred to it under the Global Finance Documents; and
- (b) in relation to any other Financier, in respect of an Incremental Facility B, the amount of any Incremental Facility B Commitment transferred to it under the Global Finance Documents,

to the extent not cancelled, reduced or transferred by it under the Global Finance Documents.

**"Incremental Facility B Utilisation"** means a loan made or Murabaha contract (as applicable) to be made under an Incremental Facility B or, in the case of a loan, the principal amount outstanding for the time being of that loan.

**"Incremental Facility Commitment"** means the Incremental Facility B Commitment and/or the Incremental Revolving Facility Commitment, as the context requires.

**"Incremental Facility Commitment Cancellation Notice"** means a notice delivered by the Company to the relevant Agent and the Global Agent and which cancels all or part of an unutilised Incremental Facility Commitment.

**"Incremental Facility Commitment Fee Letter"** means each fee letter in respect of an Incremental Facility Commitment entered into between the Company and the Financiers or other bank or financial institutions which commit Incremental Facility Commitments.

**"Incremental Facility Commitment Notice"** means a notice substantially in the form set out in Schedule 10 (*Form of Incremental Facility Commitment Notice*) delivered by the Company to the Global Agent in accordance with Clause 2.7 (*Incremental Facility*).

**"Incremental Facility Documents"** means any Incremental Facility Commitment Cancellation Notice, any Incremental Facility Commitment Fee Letter and any Incremental Facility Commitment Notice.

**"Incremental Facility Financier"** means a Financier under an Incremental Facility.

**"Incremental Facility Utilisation"** means an Incremental Facility B Utilisation or an Incremental Revolving Facility Loan.

**"Incremental Revolving Facility"** means an Incremental Facility established pursuant to Clause 2.7 (*Incremental Facility*) that is a revolving facility that ranks *pari passu* with the Original Revolving Facility with respect to the application of proceeds from enforcement of Transaction Security.

**"Incremental Revolving Facility Commitment"** means:

- (a) in relation to an entity identified as a Financier in an Incremental Facility Commitment Notice which established an Incremental Revolving Facility, the amount set opposite its name under the heading Incremental Facility Commitment in such Incremental Facility Commitment Notice and the amount of any other Incremental Revolving Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Financier, in respect of an Incremental Revolving Facility the amount of any Incremental Revolving Facility Commitment transferred to it under this Agreement,

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

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

**"Industry Competitor"** means:

- (a) any person or entity which is a competitor, supplier or sub-contractor of a member of the Group, the Neptune Group, Moon Group, or any Affiliate of the Group, in any of the material activities or businesses of the Group, the Neptune Group, Moon Group or any Affiliate of the Group (or any person that is an Affiliate or Related Fund of, or is connected with or controlled by, or is acting (in relation to this Agreement) on behalf of, such a person or entity); and/or
- (b) any private equity fund or infrastructure fund (including any fund which is managed or advised by it or any person or entity that is an Affiliate or Related Fund of, or is connected with or controlled by, or is acting (in relation to this Agreement) on behalf of such a person or entity) excluding any Bona Fide Debt Fund of any such private equity fund (and who, for the avoidance of any doubt, is managed independently of the private equity business of that private equity fund)), but excluding (in each case) any bona fide bank or financial institution whose primary business is investing in debt and who is managed separately from any such Industry Competitor.

**"Initial Murabaha Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Insolvency Event"** means, in relation to a Global Finance Party, the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, custodian or other similar officer in respect of that Global Finance Party or all or substantially all of that Global Finance



Party's assets or any analogous procedure or step being taken in any jurisdiction with respect to that Global Finance Party.

**"Intellectual Property"** means all patents and patent applications, trade and service marks and trade and service mark applications, all brand and trade names, all copyrights and rights in the nature of copyright, all design rights, all registered designs and applications for registered designs, all trade secrets, know-how and all other intellectual property rights owned by members of the Group throughout the world or the interests of any member of the Group in any of the foregoing, and all rights under any agreements entered into by or for the benefit of any member of the Group relating to the use or exploitation of any such rights.

**"Intercreditor Agreement"** means the intercreditor agreement to be entered into on or around the date of this Agreement and made between, among others, the Company, the Original Debtors (as defined therein), the Global Agent, the Security Agent and the Original Financiers.

**"Interest Period"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Interim Document"** has the meaning given to that term in the Interim Facilities Agreement.

**"Interim Facilities Agreement"** means the interim facilities agreement dated 9 June 2023 between, among others, BCP VI Neptune Bidco Holdings Limited, Kroll Agency Services Limited and the Original Interim Lenders (as defined therein) provided in connection with the Bridge Commitment Letter.

**"Interim Facility"** has the meaning given to that term in the Interim Facilities Agreement.

**"Internal Revenue Code"** means the United States Internal Revenue Code of 1986.

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

**"Islamic Participant"** has the meaning given to the term "Participant" in the Murabaha Investment Agency Agreement.

**"Issuing Bank"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Joint Venture"** or **"joint venture"** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity but excludes any such person or entity established with a nominee arrangement in order to comply with foreign ownership requirements of its jurisdiction of incorporation.

**"Legal Opinion"** means any legal opinion delivered to the Global Agent under Clause 4.1 (*Initial conditions precedent*) or under Clause 27 (*Changes to the Obligors*) or at any other time in connection with the Global Finance Documents.

**"Legal Reservations"** means:

- (a) the principle that certain remedies may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and secured creditors and similar principles or limitations under the laws of any applicable jurisdiction;

- (b) the time barring of claims under applicable limitation laws (including the Limitation Acts) and defences of acquiescence, set-off or counterclaim and the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void and defences of set-off, counterclaim or acquiescence, and similar principles or limitations under the laws of any applicable jurisdiction;
- (c) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterised as a floating charge or that Security purported to be constituted as an assignment may be recharacterised as a charge;
- (d) the principle that additional or default interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging, or any asset not beneficially owned by the relevant charging company, may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (g) the possibility that a court may strike out a provision of a contract for rescission or oppression, undue influence or similar reason;
- (h) the principle that a court may not give effect to any parallel debt provisions, covenants to pay the Security Agent or other similar provisions;
- (i) the principle that certain remedies in relation to regulated entities may require further approval from government or regulatory bodies or pursuant to agreements with such bodies;
- (j) the possibility that any person, including a Global Finance Party and/or any of its Related Funds and/or Affiliates may at any time be or become a Sanctioned Entity;
- (k) similar principles, rights and defences under the laws of any relevant jurisdiction;
- (l) the principles of private and procedural laws of the Relevant Jurisdiction which affect the enforcement of a foreign court judgment;
- (m) the principle that in certain circumstances pre-existing Security purporting to secure further advances or any Facility following a Structural Adjustment may be ineffective, invalid or unenforceable; and
- (n) any other matters which are set out as qualifications or reservations (however described) as to matters of law in the Legal Opinions.

**"Letter of Credit"** means:

- (a) a letter of credit, substantially in the agreed form set out in Schedule 4 (*Form of Letters of Credit*) of the Conventional Facilities Agreement or in any other form requested by the Company and agreed by the Issuing Bank (acting reasonably and in good faith);

- (b) any other letter of credit, guarantee, bond, indemnity, documentary or like credit or any other instrument of suretyship or payment in a form requested by a Borrower (or the Company on its behalf) and agreed by the Issuing Bank (acting reasonably and in good faith, and deemed agreed if substantially in the same form as a letter of credit, bank guarantee, documentary credit or other instrument issued by that Issuing Bank (or any of its Affiliates) to any member of the Neptune Group immediately prior to the Closing Date or Moon Group immediately prior to the Moon Completion Date); or
- (c) any instrument issued (or to be issued) or guarantee or suretyship provided (or to be provided) in connection with the Neptune Acquisition and any Squeeze-Out and agreed between the Company and the relevant Issuing Bank (acting reasonably and in good faith).

**"Liabilities"** has the meaning given to that term in the Intercreditor Agreement.

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

**"Listing"** means the listing or the admission to trading of all or any part of the share capital of any member of the Group or any Holding Company (the only material assets of which are shares or other investments (directly or indirectly in the Group)) of a member of the Group (other than the Investors) on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any other exchange or market in any jurisdiction or country or any other sale or issue by way of listing, flotation or public offering or any equivalent circumstances in relation to any member of the Group or any such Holding Company of any member of the Group (other than the Investors and their Holding Companies) in any jurisdiction or country.

**"Listing Proceeds"** means the Net Proceeds received by members of the Group or any Holding Company of the Company (other than an Investor) from a Listing or a primary issue of shares in connection with such a Listing.

**"LMA"** means the Loan Market Association.

**"Loan"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Loan to Own/Distressed Investor"** means a person whose principal or stated or a material investment strategy or activity is:

- (a) investing in or trading or acquisition of distressed debt;
- (b) the purchase of loans or other debt securities with the intention of (or view to) owning the equity or gaining control of a business (directly or indirectly);
- (c) the pursuance of loan to own strategies;
- (d) investing in equity and/or acquiring control of, or an equity stake in, a business (directly or indirectly); and/or
- (e) exploiting holdout or blocking positions (or which is regarded as a 'vulture fund'),

and (in each case) any Affiliate or Related Fund of any such person and any person connected with or controlled by any such person, but **excluding**:

- (i) any such Affiliate or Related Fund that is a Bona Fide Debt Fund; and

- (ii) any Original Financier (together with its Affiliates), for so long as such Original Financier (and its Affiliates) (A) are not acting on behalf of another person (pursuant to a fronting arrangement or similar) which person is not an Affiliate of that Original Financier) and/or (B) have not entered into a sub-participation agreement or other similar arrangement with another person which person is not an Affiliate of that Original Financier), where, in each case, if such person were a Financier, that person would otherwise constitute a Loan to Own/Distressed Investor.

**"Longstop Date"** means the date falling 12 months after (but excluding) the date of the Announcement, which for the avoidance of doubt is 9 June 2024, (or such later date as may be agreed between the Company and the Mandated Lead Arrangers, each acting reasonably and in good faith).

**"Lookback Period"** has the meaning given to that term in the Conventional Facilities Agreement.

**"LTM"** has the meaning given to it in Clause 22.1 (*Financial definitions*).

**"Major Event of Default"** means any event or circumstance constituting an Event of Default that is continuing under:

- (a) Clause 24.2 (*Non-payment*) in respect of amounts of principal or interest due and owing under this Agreement or fees owing under an Arrangement Fee Letter;
- (b) Clause 24.4 (*Other obligations*) insofar as it relates to a breach of a Major Undertaking in any material respect;
- (c) Clause 24.5 (*Misrepresentation*) insofar as it relates to a breach of a Major Representation in any material respect;
- (d) Clause 24.10 (*Invalidity and Unlawfulness*) provided that, during the Certain Funds Period, for these purposes in paragraph (b) of Clause 24.10 (*Invalidity and Unlawfulness*) the words "or evidences an intention in writing to rescind or repudiate" shall be deemed deleted;
- (e) Clause 24.7 (*Insolvency*); or
- (f) Clause 24.8 (*Insolvency proceedings*) (other than paragraph 24.8(a)(v) of Clause 24.8 (*Insolvency proceedings*)) and provided that, during the Certain Funds Period, for these purposes the words "Any corporate action, legal proceedings or other formal legal procedure or formal step" in paragraph (a) of Clause 24.8 (*Insolvency proceedings*) shall be deemed replaced with the words "Any formal legal proceedings"),

in each case as it relates to:

- (i) in the case of the Neptune Acquisition, Moon Acquisition or a Certain Funds Utilisation, the Certain Funds Obligors only (and excluding: (x) any procurement obligations on the part of the Certain Funds Obligors with respect to any member of the Group, Neptune Group and/or Moon Group or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of, or matters or circumstances that

relate to, any other member of the Group, Neptune Group and/or Moon Group); and

- (ii) in the case of any an Agreed Certain Funds Utilisation (except as agreed otherwise with the relevant lenders under such Facility), the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds Obligor with respect to any other member of the Group or any entity, business, undertaking or group that is the subject of such a Agreed Certain Funds Utilisation or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of, or matters or circumstances that relate to, any other member of the Group or any entity, business, undertaking or group that is the subject of such Agreed Certain Funds Utilisation).

**"Major Representation"** means a representation or warranty under (or, in the case of the Parent, any representation or warranty (as applicable) directly corresponding to (but not to the extent more extensive than) any such representation or warranty and which is included in any Transaction Security Document to which the Parent is required to be party pursuant to Clause 4.1 (*Initial conditions precedent*)):

- (a) Clause 20.1 (*Status*);
- (b) Clause 20.2 (*Binding obligations*);
- (c) Clause 20.3 (*Non-conflict with other obligations*) (save that for these purposes paragraph (c) of Clause 20.3 (*Non-conflict with other obligations*) shall be deemed deleted);
- (d) Clause 20.4 (*Power and authority*); and
- (e) Paragraph 20.5(a) of Clause 20.5 (*Validity and admissibility in evidence*),

in each case as it relates to:

- (i) in the case of the Neptune Acquisition, Moon Acquisition or a Certain Funds Utilisation, the Certain Funds Obligors only (and excluding: (x) any procurement obligations on the part of the Certain Funds Obligors with respect to any member of the Group, Neptune Group and/or Moon Group or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of, or matters or circumstances that relate to, any other member of the Group, Neptune Group and/or Moon Group); and
- (ii) in the case of any other acquisition not prohibited by the terms of this Agreement or an Agreed Certain Funds Utilisation (except as agreed otherwise with the relevant lenders under such Facility), the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds Obligor with respect to any other member of the Group or any entity, business, undertaking or group that is the subject of such acquisition (or Agreed Certain Funds Utilisation) or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in

whole or in part) the actions of, or matters or circumstances that relate to, any other member of the Group or any entity, business, undertaking or group that is the subject of such acquisition (or Agreed Certain Funds Utilisation)).

**"Major Undertaking"** means an undertaking under (or, in the case of the Parent, any undertaking (as applicable) directly corresponding to (but not to the extent more extensive than) any such undertaking and which is included in any Transaction Security Document to which the Parent is required to be party pursuant to Clause 4.1 (*Initial conditions precedent*)):

- (a) Clause 23.11 (*Disposals*);
- (b) Clause 23.10 (*Negative pledge*);
- (c) Clause 23.15 (*Financial indebtedness*);
- (d) Clause 23.13 (*Loans, credit or guarantees*);
- (e) Clause 23.14 (*Dividends and other restricted payments*);
- (f) Clause 23.5 (*Mergers*); or
- (g) Clause 23.7 (*Acquisitions*); or
- (h) set out in paragraph (a), (b), (c) and (e) of Clause 23.22 (*Scheme or Offer undertakings*),

in each case as it relates to:

- (i) in the case of the Neptune Acquisition, Moon Acquisition or a Certain Funds Utilisation, the Certain Funds Obligor only (and excluding: (x) any procurement obligations on the part of the Certain Funds Obligor with respect to any member of the Group, Neptune Group and/or Moon Group or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of, or matters or circumstances that relate to, any other member of the Group, Neptune Group and/or Moon Group); and
- (ii) in the case of any other acquisition not prohibited by the terms of this Agreement or an Agreed Certain Funds Utilisation (except as agreed otherwise with the relevant lenders under such Facility), the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds Obligor with respect to any other member of the Group or any entity, business, undertaking or group that is the subject of such acquisition (or Agreed Certain Funds Utilisation) or any of their respective assets, liabilities or obligations; and (y) any failure to comply, breach or Default by or resulting from (in whole or in part) the actions of, or matters or circumstances that relate to, any other member of the Group or any entity, business, undertaking or group that is the subject of such acquisition (or Agreed Certain Funds Utilisation)).

**"Majority Arrangers"** means, at any time, the Mandated Lead Arrangers who (or who are an Affiliate of the Original Financiers who) together hold Commitments in respect of the Facilities in an aggregate principal amount equal to more than 66 2/3 per cent. of the aggregate principal amount of all of the commitments of the Original Financiers in respect of the Facilities at that time

(or, in respect of a particular Facility, the Mandated Lead Arrangers who (or who are an Affiliate of the Original Financiers who) together hold commitments in respect of that Facility in an aggregate principal amount equal to more than 66 2/3 per cent. of the aggregate principal amount of all of the commitments of the Original Financiers in respect of that Facility at that time), provided that, in the case of any Commitment not denominated in the Base Currency, if applicable, the Base Currency Amount of that Commitment shall be used for the purposes of such calculation.

**"Majority Incremental Facility Financiers"** means, in relation to an Incremental Facility, a Financier or Financiers whose Incremental Facility Commitments relating to that Incremental Facility are in aggregate more than 66 2/3 per cent. of the Total Incremental Facility Commitments relating to that Incremental Facility (or, if those Total Incremental Facility Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of those Total Incremental Facility Commitments immediately prior to that reduction).

**"Majority Financiers"** means a Financier or Financiers whose Commitments aggregate more than 66 2/3 per cent. of the Total Commitments (and for this purpose the amount of an Ancillary Lender's Revolving Facility Commitments shall not be reduced by the amount of its Ancillary Commitment, Fronted Ancillary Commitment or Fronting Ancillary Commitment) (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of the Total Commitments immediately prior to that reduction), provided that, in the case of any Commitment not denominated in the Base Currency, if applicable, the Base Currency Amount of that Commitment shall be used for the purposes of such calculation.

**"Majority Financier Objection"** means, in respect of a document, proposal, request or amendment in relation to this Agreement or any other Global Finance Document, that such document, proposal, request or amendment has been rejected by the Majority Financiers (or if applicable and the Company so elects, the Majority Financiers in respect of any relevant or applicable Facility(ies) or Utilisation(s)) in each case by 11.00 a.m. on the date falling 10 Business Days (or such longer period which the Company notifies to the Global Agent) after the date on which the Company (or other member of the Group) delivers the relevant document, proposal, request or amendment to the Global Agent. Unless the Company notifies the Global Agent otherwise, Clause 37.6 (*Excluded Commitments*) and/or Clause 37.7 (*Disenfranchisement of Defaulting Financiers*) shall not apply when determining the Majority Financiers for these purposes (and, for the avoidance of doubt, the Company may elect for one or more of such Clauses to apply in respect of any particular document, proposal, request or amendment from time to time).

**"Majority Islamic Participants"** has the meaning given to the term "Majority Participants" in the Murabaha Investment Agency Agreement.

**"Majority Lenders"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Management"** means any management and/or employees of any member of the Group (including the Neptune Group and/or Moon Group) (for this purpose including any person who was a member of management or an employee when acquiring an interest) and any other person directly or indirectly holding any interest pursuant to any Incentive Plan, including all Management Investors.

**"Management Investors"** means the current, former or future officers, directors, employees and other members of the management of any member of the Group or any (direct or indirect) Holding Company of the Group (excluding the Sponsor), or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their estates, heirs, executors, successors, administrators, beneficiaries and/or legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, equity interests in any member of the Group or any (direct or indirect) Holding Company of the Group (excluding the Sponsor).

**"Margin"** means:

- (a) in relation to any Facility B1 Utilisation, 2.40 per cent. per annum;
- (b) in relation to any Facility B2 Utilisation, 2.40 per cent. per annum;
- (c) in relation to any Original Revolving Facility Loan, 2.40 per cent. per annum;
- (d) in relation to any Incremental Facility Utilisation, the percentage rate per annum specified by the Parent in the relevant Incremental Facility Commitment Notice subject to any margin adjustment mechanism specified therein;
- (e) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
- (f) in relation to any other Unpaid Sum, the highest rate specified above,

provided, however, that the Margin for each Loan under Facility B, each Murabaha Contract and the Original Revolving Facility will be the percentage per annum set out below in the column for that Facility opposite the applicable range where adjusted in accordance with sub-paragraphs (i) to (ii) below:

<b>Total Net Leverage Ratio</b>	<b>Margin</b>
Greater than 4.50:1	2.40% p.a.
Less than or equal to 4.50:1 but greater than 3.50:1	2.20% p.a.
Less than or equal to 3.50:1	2.00% p.a.

provided further that:

- (i) subject to paragraph (ii) below, the relevant Total Net Leverage Ratio will be tested with reference to the Compliance Certificate that has most recently been delivered to the Global Agent pursuant to Clause 21.1 (*Information Undertakings*);
- (ii) the Company may at any time, and from time to time, voluntarily opt to evidence or confirm the applicable Margin by reference to any LTM period (and any available internal financial statements) evidencing the Total Net Leverage Ratio in respect of that LTM period by delivering a certificate to the Global Agent (together with such financial statements), whereupon the applicable Margin will be determined (and, as applicable, adjusted) accordingly in accordance with the table above;



- (iii) any increase or decrease in the Margin for a Loan shall take effect on and from the first day of the Interest Period during which the Company delivers to the Global Agent (in the case of paragraph (i) above) the relevant Compliance Certificate or (in the case of paragraph (ii) above) the relevant certificate and financial statements;
- (iv) the application of any change in the Margin to the Deferred Payment Price of a Murabaha Contract shall occur in accordance with the Murabaha Facility Agreement.

**"Market Disruption Event"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Material Adverse Effect"** means any event (which after taking into account all relevant factors or circumstances including mitigating factors and circumstances), such as, without limitation, any warranty, indemnity, insurance, government support or directive or similar) and other resources available to the Group, any right of recourse against a third party and any commitment or obligation of any other person (in each case, whether actual or contingent), including without limitation coverage by insurances, recourse under the Transaction Documents and any commitment by any person to provide any equity contribution), has a material adverse effect on:

- (a) the consolidated business, assets or financial condition of the Group such that the Group (taken as a whole) would be unable to perform its due and payable payment obligations under the Global Finance Documents; or
- (b) subject to Legal Reservations and any Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security granted or purporting to be granted pursuant to any of, the Global Finance Document or the rights or remedies of any Global Finance Party under any of the Global Finance Documents,

and, in respect of paragraph (b) above, if capable of remedy, is not remedied within 20 Business Days of the relevant Agent giving notice.

**"Material Event of Default"** means an Event of Default under any of paragraph (a) or (in so far as it relates to payments of principal) (b) of Clause 24.2 (*Non-payment*) or Clause 24.7 (*Insolvency*).

**"Material Intellectual Property"** means any Intellectual Property which is necessary for the conduct of all or a substantial part of the business of the Group from time to time.

**"Material Joint Venture Interest"** means any Permitted Joint Venture in respect of which the Company has made an election under paragraph (n) of the definition of "EBITDA" in Clause 22.1 where the amount added back to EBITDA pursuant to that election represents more than five per cent. of the Consolidated EBITDA of the Group (after such add-back) as at the date so determined and by reference to the applicable financial statements to which such election was made.

**"Material Subsidiary"** means, but only after the Neptune Completion Date, each (directly or indirectly) wholly-owned member of the Group incorporated in a jurisdiction other than an Excluded Security Jurisdiction (i) whose Unconsolidated EBITDA represents more than five per cent. of the Consolidated EBITDA of the Group or (ii) which holds any Material Intellectual

Property, provided (in each case) that no member of the Group shall constitute (or be deemed to constitute) a Material Subsidiary if it is (as determined by the Company acting reasonably and in good faith) unable or not required to become a Guarantor in accordance with the Agreed Security Principles), in each case, as at the date so determined and by reference to the applicable financial statements permitted to be used as contemplated in this Agreement (and subject always to paragraphs (c) and (d) of Clause 23.23 (*Guarantees and Security*)).

**"Methodology Supplement"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Minimum Acceptance Condition"** means, in relation to an Offer for the issued ordinary share capital of Neptune, an Acceptance Condition of not less than 90 per cent. of the issued ordinary share capital of Neptune on a fully diluted basis (assuming exercise in full of all options, warrants and other rights to require allotment or issue of any shares in Neptune, whether or not such rights are then exercisable).

**"Minimum Equity Condition"** means, as at the relevant date of calculation, one or more Equity Investments in the Company in an aggregate amount equal to not less than 50 per cent. of the aggregate amount of:

- (a) the minimum amount of Equity Investments received by the Company on or prior to the relevant date of calculation by way of the issue of shares by, or capital contributions to, the Company for the purposes of funding the Neptune Acquisition; and
- (b) the aggregate net principal amount received by the Company of all Utilisations of Facility B under the Global Finance Documents on or prior to the relevant date of calculation (but excluding any which has been or is to be repaid or prepaid and any amount drawn to fund fees, costs, taxes, expenses, flex or original issue discount (or similar)) for the purposes of funding the Neptune Acquisition on or prior to the relevant date of calculation (less the amount of cash and cash equivalent investments of the Group and the Neptune Group as at the relevant date of calculation).

**"MLI"** has the meaning given to it in Clause 14.1 (*Tax Definitions*).

**"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) 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; and
- (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.

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

**"Moody's"** means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organisation.

**"Moon"** means Magnati Sole Proprietorship LLC, a company organised under incorporated or otherwise organized under the laws of the United Arab Emirates.

**"Moon Acquisition"** means the direct or indirect acquisition by the Company or other member of the Group of 100 per cent. of the interests in Moon in accordance with the Moon Acquisition Documents.

**"Moon Acquisition Documents"** means the sale and purchase agreement to be entered into between the FAB Seller and the BCP Seller (each as defined therein) and Neptune Project Holding 1 Limited in relation to (among other things) the acquisition of the Moon Shares and/or any other document related to or referred to in a Moon Acquisition Document or entered into in connection with the Moon Acquisition and designated as a Moon Acquisition Document by the Company (including as any such document is amended, replaced, revised, restated, supplemented or modified from time to time).

**"Moon Completion Date"** means the date on which the Moon Acquisition occurs.

**"Moon Group"** means Moon Holdco and its Subsidiaries from time to time.

**"Moon Holdco"** means BCP Growth Holdings Limited.

**"Moon Shares"** means the issued (or to be issued) shares of Moon which are the subject of the Moon Acquisition.

**"Murabaha B1 Long Facility"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha B2 Long Facility"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha B1 Short Facility"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha B2 Short Facility"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Contract Period"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Facility"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Facility Agreement"** means the master Murabaha agreement dated on or about the date of this Agreement and made between the Company and the Murabaha Investment Agent.

**"Murabaha Facility B1"** has the meaning given to the term "Murabaha B1 Facility" in the Murabaha Facility Agreement.

**"Murabaha Facility B1 Commitment"** means a Murabaha B1 Long Facility Commitment and a Murabaha B1 Short Facility Commitment, each as defined in the Murabaha Facility Agreement.

**"Murabaha Facility B1 Murabaha Contract"** has the meaning given to the term "Murabaha B1 Facility Contract" in the Murabaha Facility Agreement.

**"Murabaha Facility B2"** has the meaning given to the term "Murabaha B2 Facility" in the Murabaha Facility Agreement.

**"Murabaha Facility B2 Commitment"** means a Murabaha B2 Long Facility Commitment and a Murabaha B2 Short Facility Commitment, each as defined in the Murabaha Facility Agreement.

**"Murabaha Facility B2 Murabaha Contract"** has the meaning given to the term "Murabaha B2 Facility Contract" in the Murabaha Facility Agreement.

**"Murabaha Finance Party"** has the meaning given to that term in the Murabaha Investment Agency Agreement.

**"Murabaha Investment Agency Agreement"** means the investment agency agreement dated on or about the date of this Agreement and made between, among others, the Company and the Murabaha Investment Agent.

**"Murabaha Long Facility Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Short Facility Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Murabaha Transaction Documents"** has the meaning given to the term "Murabaha Finance Documents" in the Murabaha Facility Agreement.

**"Neptune"** means Network International Holdings plc.

**"Neptune Acquisition"** means the direct or indirect acquisition by the Company of 100 per cent. of the interests in Neptune pursuant to the Neptune Acquisition Documents

**"Neptune Acquisition Documents"** means the Scheme Documents (or, in the case of a switch to an Offer, the Offer Documents and the Squeeze-Out Documents), any notices or other documents in connection with (including the implementation of) any de-listing of Neptune, any notices or other documents or agreements in connection with (including the implementation of) any re-registering of Neptune as a private limited company and/or any other document related to or referred to in the Neptune Acquisition Documents or entered into in connection with the Neptune Acquisition and designated as a Neptune Acquisition Document by the Company (including as any such document is amended, replaced, revised, restated, supplemented or modified from time to time).

**"Neptune Completion Date"** means the date on which the Neptune Acquisition is consummated in full and the Company is the legal and beneficial owner of 100 per cent. of the Neptune Shares and all consideration payable in respect thereof has been paid in full.

**"Neptune Group"** means Neptune together with each of its Subsidiaries from time to time.

**"Neptune Refinancing Debt"** means the outstanding indebtedness of the Neptune Group existing immediately prior to the Closing Date under the facilities referred to in section A (Term Debt Facilities) and section C (Revolving Facility) of Annex 7 entitled 'Financing Arrangements' of the Report, and (for the avoidance of doubt) excluding the Neptune Group's working capital overdraft facilities with Emirates NBD PJSC, Housing Bank for Trade & Finance, Arab Banking Corporation and Arab African International Bank and similar working capital or overdraft lines of the Neptune Group provided by any other lender.

**"Neptune Shares"** means the issued (or to be issued) shares of Neptune which are the subject of the Neptune Acquisition.

**"Net Proceeds"** means the cash proceeds actually received by (and for the account of) the Group from a Listing, Permitted Disposal or Relevant Debt Incurrence (as applicable) after deducting (as applicable):

- (a) in the case of a Permitted Disposal, the principal amount of any Financial Indebtedness (together with any Refinancing Amounts) that is secured by the relevant asset subject to such Permitted Disposal and required to be repaid or prepaid in connection with such Permitted Disposal;
- (b) fees, costs and expenses (including, as applicable, legal fees, accountants' fees, valuation fees, investment banking fees, notarial fees, search fees, brokerage fees and consultant fees, survey costs, registration, recording, de-registration and de-recording costs, title and other insurance premiums and any underwriting discounts) incurred by the Group (i) in connection with (as applicable) the relevant Permitted Disposal, Listing or Relevant Debt Incurrence (including in connection with any upstreaming, distribution or repatriation of proceeds, including on an intra-Group basis), (ii) any early payment required by this Agreement and/or (iii) any currency conversion or exchange of any Net Proceeds (including in connection with any upstreaming, distribution or repatriation of proceeds, including on an intra-Group basis, and/or into the relevant currency or otherwise for any early payment pursuant to this Agreement) and any applicable hedging, derivative or swap (or similar) arrangements or agreements (including any early termination or close-out amounts);
- (c) taxes (including transfer taxes, stamp taxes and any *ad valorem* taxes or similar) paid or reasonably estimated to be actually payable in connection with such Permitted Disposals, Listing or Relevant Debt Incurrence (including any taxes (including withholding taxes) arising or imposed in connection with the upstreaming, distribution or repatriation of any such Net Proceeds, including on an intra-Group basis, and/or or any early payment required by this Agreement);
- (d) in the case of any Permitted Disposals or Listing (or in connection with any upstreaming, distribution or repatriation, including on an intra-Group basis, of any Net Proceeds) by a non-wholly owned member of the Group, the pro-rata portion of the Net Proceeds thereof (calculated without regard to this paragraph (d) attributable to such minority interests;
- (e) the sum of any Net Proceeds received in connection with such Permitted Disposals or Listing that constitutes Trapped Cash (or that constitutes Trapped Cash in connection with any upstreaming, distribution or repatriation, including on an intra-Group basis, of any Net Proceeds); and/or
- (f) in the case of any Permitted Disposals, any reserve for any adjustment which the Company reasonably and in good faith expects will be required in respect of (A) the sale price of such asset or assets established in accordance with the Applicable Accounting Principles and/or (B) any liabilities (whether actual or contingent) or dispute associated with such asset(s) which are reasonably expected to be retained by the Group after the

Permitted Disposals, including pension and other post-employment benefit liabilities and any liabilities related to environmental matters or against any indemnification obligations associated with such transaction, and/or with any upstreaming, distribution or repatriation, including on an intra-Group basis, of any Net Proceeds, provided that if the Company determines in good faith that such reserve amount is no longer required for its reserved purpose, such amount shall promptly be added back to Net Proceeds.

**"Net Outstandings"** has the meaning given to that term in the Conventional Facilities Agreement.

**"New Debt Financing"** has the meaning given to that term in the Intercreditor Agreement.

**"New Financier"** has the meaning given to that term in Clause 25.2 (*Assignments and Transfers by Financiers*).

**"Non Acceptable L/C Lender"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Non-Consenting Financier"** means, in the event that any Obligor or Agent (at the request of the Company) has requested a Financier or other Mandated Lead Arranger to give a consent in relation to, or to agree to a release, waiver or amendment of, any provisions of the Global Finance Documents or other vote of the Financiers or Mandated Lead Arrangers under the terms of the Global Finance Documents, where the Majority Financiers (or the Majority Financiers under the relevant Facility, Utilisation, tranche or forming part of the relevant affected class, as the case may be) or Mandated Lead Arranger, in each case determined after the application of Clause 37.6 (*Excluded Commitments*), have consented or agreed to such request, any Financier or Mandated Lead Arranger (or any Financier who is an Affiliate of any such Mandated Lead Arranger) who has not expressly (and irrevocably and unconditionally, save for any conditions expressly permitted by the Company under the terms of the relevant request) consented or agreed to such request by the end of the period of 10 Business Days (or any other period of time notified by the Company, with the prior agreement of the relevant Agent if the period for this provision to operate is less than 10 Business Days) of a request being made.

**"Non-Cooperative Jurisdiction"** means any jurisdiction included in the "EU list of non-cooperative jurisdictions for tax purposes" maintained by the European Union, as such list may be amended from time to time.

**"Notice of Request to Purchase"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Notifiable Debt Purchase Transaction"** has the meaning given to that term in paragraph (d) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates or Investors*).

**"Obligor"** means a Borrower, the Purchaser or a Guarantor.

**"Obligors' Agent"** means the Company or such other person appointed to act on behalf of each Obligor in relation to the Global Finance Documents pursuant to Clause 2.10 (*Obligors' Agent*).

**"OFAC"** means the Office of Foreign Assets Control of the United States Department of the Treasury (or any successor thereto).

**"Offer"** means the takeover offer (as defined in section 974 of the Companies Act 2006) by the Company or an Affiliate in accordance with the Takeover Code to acquire all of the shares in Neptune that are the subject of that takeover offer (within the meaning of section 975 of the Companies Act 2006) pursuant to the Offer Documents.

**"Offer Documents"** means: (i) the Announcement; (ii) any offer documents published or provided (or to be provided) by or on behalf of the Company (or an Affiliate) to shareholders of Neptune or otherwise made available to such persons and in the manner required by Rule 24.1 of the Takeover Code; and (iii) any other documents or agreements related to the Offer or referred to in the Offer Documents or entered into in connection with the Offer and designated an Offer Document by the Company (including as any such documents are amended, replaced, revised, restated, supplemented or modified from time to time).

**"Offer Unconditional Date"** means the date the Offer has been declared, or has become, unconditional in all respects.

**"Officer"** means, with respect to any person:

- (a) the chairman of the Board of Directors, the CEO, the president, the CFO, any vice president, the treasurer, any director, managing director or the company secretary (or, in each case, any person holding a similar or equivalent role):
  - (i) of such person; and/or
  - (ii) if such person is owned or managed or represented by a single entity, of such entity; and/or
- (b) any other individual designated as an *"Officer"* or authorised signatory of such person.

**"Optional Currency"** means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).

**"Original Accounting Principles"** means the Accounting Principles under paragraph (a) of that definition, but reflecting the accounting principles and related accounting practices and financial reference periods consistent with those applied in the Base Case Model.

**"Original Financial Statements"** means the most recently available audited consolidated financial statements of Neptune prior to the date of this Agreement.

**"Original Financier"** means

- (a) the Original Lenders; and
- (b) the Original Islamic Participants.

**"Original Revolving Facility"** means the revolving credit facility made available under this Agreement as described in paragraph (b) of Clause 2.1 (*Conventional Facility*).

**"Original Revolving Facility Borrower"** means the Company or any member of the Group which accedes as an Additional Borrower under the Original Revolving Facility in accordance with Clause 27 (*Changes to the Obligors*), unless it has ceased to be an Original Revolving Facility Borrower in accordance with Clause 27 (*Changes to the Obligors*).

**"Original Revolving Facility Commitment"** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set out in Part I of Schedule 1 (*The Original Financiers*) as its Original Revolving Facility Commitment and the amount of any other Original Revolving Facility Commitment transferred to it or assumed by it under this Agreement (including in accordance with Clause 2.6 (*Increase*)); and
- (b) in relation to any other Financier, the amount in the Base Currency of any Original Revolving Facility Commitment transferred to it or assumed by it under this Agreement (including in accordance with Clause 2.6 (*Increase*)),

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

**"Original Revolving Facility Lender"** means any Conventional Lender who makes available an Original Revolving Facility Commitment or an Original Revolving Facility Loan.

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

**"Original Revolving Facility Utilisation"** means an Original Revolving Facility Loan or a Letter of Credit issued or to be issued under the Original Revolving Facility.

**"Panel"** means the UK Panel on Takeovers and Mergers.

**"Parent"** means Neptune Project Holding 2 Limited.

**"Parent Entity"** means any direct or indirect parent of the Company.

**"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.

**"Participation Amount"** means:

- (a) in relation to a Conventional Lender, the participation it has made or shall make available in a Loan;
- (b) in relation to an Islamic Participant, its Pro Rata Share (as defined in the Murabaha Investment Agency Agreement) in the Deferred Payment Price of an outstanding Murabaha Contract.

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

**"Payment Date"** means:

- (a) the last day of an Interest Period; and
- (b) a Deferred Payment Date or a Deferred Instalment Payment Date.

**"Perfection Requirements"** means the making or the procuring of any registrations, filing, endorsements, notarisation, stampings, formality requirements and/or notifications of or under the Transaction Security Documents and/or the Security created thereunder and any actions or steps necessary in any jurisdiction or under any laws or regulations in order to create or perfect any Security or the Transaction Security Documents or to achieve the relevant priority expressed therein.



**"Permitted Acquired Indebtedness"** means Acquired Indebtedness not prohibited by the terms of this Agreement.

**"Permitted Acquisition"** means:

- (a) the Neptune Acquisition and the Moon Acquisition;
- (b) 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, Permitted Reorganisation or a Permitted Transaction;
- (c) an acquisition of securities which are Cash Equivalent Investments;
- (d) an acquisition of shares or securities pursuant to a Permitted Share Issue;
- (e) the incorporation of a company with limited liability which on incorporation becomes a member of the Group;
- (f) an acquisition of (A) all or more than 50 per cent. of the voting shares or any equivalent ownership interest of any entity or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern (each, a "**Target Undertaking**"), but only if:
  - (i) subject to Clause 24.14 (*Clean-up Period*), no Event of Default is continuing or would occur as a result of the acquisition (as determined as at the Acquisition Commitment Date);
  - (ii) in respect of any acquisition which is funded through the incurrence of Financial Indebtedness (including Permitted Financial Indebtedness), on or before or promptly after the Acquisition Commitment Date, the Company delivers to the Global Agent a certificate that confirms that, after giving pro forma effect to such acquisition (taking into account, without limitation, any Equity Contributions (other than a Cure Amount) which will be provided at the time of completion of the acquisition and any cash on the balance sheet of the Target Undertaking) and any such incurrence of Financial Indebtedness, the Total Net Leverage Ratio will not exceed 5.50:1.00 (or at any time prior to the First Test Date, the maximum leverage permitted as at the First Test Date);
  - (iii) the principal business of the Target Undertaking falls within the general nature of the business of the Group or the Target Undertaking is in a line of business that is similar, complementary, compatible or related to the Group's core business or any business that is reasonably related, synergistic, incidental or ancillary thereto; and
  - (iv) the Target Undertaking is not incorporated in nor carries on a material part of its business in a Sanctioned Country;
- (g) an investment or acquisition of shares or securities pursuant to a Permitted Share Issue (other than shares in the Parent or (unless the acquiring entity is the Parent) the Company) or Permitted Joint Venture;
- (h) investments or acquisition constituting the acquisition of minority interest held in any member of the Group;

- (i) any acquisition or redemption of shares or other ownership interests held, directly or indirectly by current or former directors, officers, employees or consultants of the Parent, any other member of the Group or any Holding Company of the Parent (or indirectly by management or any trust or other person) in respect of, or in connection with, any Incentive Plan, incentive scheme or similar arrangement;
- (j) any acquisition of shares as a result of the conversion of an intra-Group loan into equity;
- (k) an acquisition with the consent of the Global Agent (acting on the instructions of the Majority Financiers); or
- (l) acquisitions in an aggregate amount which, when taken together with the outstanding amount of all other acquisitions or investments incurred in reliance on this paragraph will not exceed (over the life of the Facilities) the greater of USD 25,000,000 (or its equivalent in other currencies) and 10 per cent. of Consolidated EBITDA, provided that if an acquisition is made pursuant to this paragraph from a person that is not a member of the Group and such person subsequently becomes a member of the Group, such acquisition shall thereafter be deemed to have been made pursuant to paragraph (b) above.

**"Permitted Disposal"** means any sale, lease, licence, transfer, surrender, loan or other disposal:

- (a) by the Company of commodities pursuant to the Murabaha Contracts;
- (b) of assets, inventory, trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (c) of any asset by a member of the Group to (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor provided that if such asset was subject to Transaction Security, substantially equivalent Security must be provided over such asset by the Acquiring Company to the extent legally possible and subject to the Agreed Security Principles;
- (d) required by law or regulation or any order of any government entity made thereunder **provided that** this does not result in a Material Adverse Effect;
- (e) of assets (including loss-making businesses and non-core assets) for cash which (in the opinion of the member of the Group party thereto) are no longer required for the business or operations of the Group or is otherwise uneconomic to retain;
- (f) constituted by a licence of intellectual property rights entered into in the ordinary course of business;
- (g) of cash or Cash Equivalent Investments (including for the avoidance of doubt any Closing Overfunding for general corporate purposes or Capital Expenditure of the Group or to fund a Permitted Distribution);
- (h) of assets in exchange for other assets reasonably comparable or superior as to type, value or quality (provided that, if Transaction Security had been granted over such asset, the Company must (or must ensure that an appropriate member of the Group) gives equivalent Transaction Security over the asset received pursuant to such exchange);

- (i) of assets subject to any Finance Lease, hire purchase or similar transaction or Permitted Sale and Leaseback (provided such transaction (including any Financial Indebtedness arising thereby) is not otherwise prohibited under the Global Finance Documents);
- (j) of any asset from an Obligor to a member of the Group which is not an Obligor provided that the aggregate amount transferred (net of the value of any assets transferred from a member of the Group which is not an Obligor to an Obligor) does not exceed (at any time) an amount equal to the greater of USD 25,000,000 (or its equivalent in other currencies) and 10 per cent. of the Consolidated EBITDA provided that if a member of the Group which is not an Obligor is intended to become, and subsequently becomes, an Obligor, the aggregate amount transferred shall be ignored;
- (k) which is (or pursuant to the grant or termination of) a lease, sub lease or licence of property (or any other interests in land or real property, together with any fixtures thereon) in the ordinary course of business;
- (l) of any asset pursuant to a Permitted Distribution;
- (m) of any asset constituting a Permitted Joint Venture;
- (n) which constitutes or is part of or is made under pursuant to a Permitted Reorganisation;
- (o) of consideration pursuant to a Permitted Acquisition;
- (p) arising as a result of Permitted Security or a Permitted Transaction, including but not limited to a disposal of any receivable under a Permitted Loan in exchange for equivalent equity in the relevant member of the Group;
- (q) any disposal by any member of the Group to any entity that is not a member of the Group for the purpose of satisfying local ownership requirements under applicable local law;
- (r) with the consent of the Global Agent (acting on the instructions of the Majority Financiers);  
or
- (s) of any asset (including assets sold in a related sale) not permitted under any of the preceding paragraphs where the Net Proceeds (or, if higher, book value) in respect of all such asset or assets disposed of under this paragraph does not exceed (in aggregate in any Financial Year) the greater of USD 75,000,000 (or its equivalent in other currencies) and 25 per cent. of the Consolidated EBITDA.

**"Permitted Distribution"** means:

- (a) payment by the members of the Group to the Company for the purpose of debt service of Permitted Financial Indebtedness of the Group (including any prepayment or repayment thereof) at any time;
- (b) payment by a member of the Group (other than the Company) in favour of the holder(s) of shares or equity interests in such member of the Group pro rata according to the applicable holding of shares or equity interest in such first-mentioned members of the Group held by such holder(s) and any payment made by a member of the Group to another member of the Group;

- (c) payment by the Parent or other member of the Group:
  - (i) of professional and advisors' fees (which are not referred to in paragraphs (ii) to (v) (inclusive) below), Taxes (including those payments relating to or incurred for effecting tax efficiencies of the Group), insurance premiums, regulatory and administrative costs and audit costs and expenses of the Sponsor or of Holding Companies of the Parent in relation to the Group;
  - (ii) to the Sponsor or any Sponsor Affiliate or any advisor to them for corporate finance, investment, M&A and transaction advice (including any advice in relation to any restructuring or reorganisation of the Group) provided to the Group on bona fide arm's length commercial terms including, without limitation, fees for corporate advisory services charged by the Sponsor and/or Sponsor Affiliates on arm's length terms provided in connection with Permitted Acquisitions or Group Initiatives;
  - (iii) of management fees, fees for the provision of administrative services, administrative costs directors' fees (or directors' costs and expenses) and employees' and directors' remunerations or other payments to employees in the ordinary course of business or any payment pursuant to any Incentive Plan;
  - (iv) of monitoring or advisory fees to the Sponsor or Sponsor Affiliate;
  - (v) to any Holding Company of the Group to meet holding company mandatory substance requirements in any relevant jurisdiction; or
  - (vi) payment of upfront and ongoing structuring, transaction, arrangement, advisory, management or consulting fees, costs and expenses (which payments shall not exceed, in any Financial Year, the greater of USD 10,000,000 (or its equivalent in other currencies) and 5 per cent. of the Consolidated EBITDA, unless funded from Acceptable Funding Sources);
- (d) payments where funded from the proceeds of any Cure Amount not required to be retained or applied in prepayment of the Loans;
- (e) a payment by the Company within 12 months from the Closing Date, made in cash by the Company which is funded from or which constitutes Closing Overfunding, provided that no Material Event of Default is continuing or would result from such payment;
- (f) a payment constituting, or made pursuant to or in connection with a Permitted Transaction or contemplated in any Neptune Acquisition Document, Moon Acquisition Document or step set out or contemplated in the Tax Structure Memorandum (other than any exit steps therein);
- (g) payments in respect of any fiscal unity required in order to comply with the obligations owed to the relevant taxing or other governmental authorities by the Group (or by the relevant fiscal unity or group as a whole) or arises in connection with the ordinary course operation of such fiscal unity;
- (h) any payment funded from Acceptable Funding Sources (other than Permitted Financial Indebtedness), provided that (x) (pro forma for such payment) the Total Net Leverage

Ratio does not exceed 5.50:1.00 (or at any time prior to the First Test Date, the maximum leverage permitted as at the First Test Date), (y) no Event of Default is continuing or would result from the making of such payment;

- (i) any payment by any member of the Group to any entity that is not a member of the Group in connection with arrangements entered into with respect local ownership requirements under applicable local law or as otherwise required by law;
- (j) any payment made with the consent of the Global Agent (acting on the instructions of the Majority Financiers); or
- (k) any payment not permitted under any of the preceding paragraphs where the amount of such payment in respect of all such payments made under this paragraph does not exceed (in aggregate in any Financial Year) less than the greater of USD 10,000,000 (or its equivalent in other currencies) and 5 per cent. of the Consolidated EBITDA.

Any 'payment' permitted by this definition may be made by way of payment (in cash or in kind), dividend, distribution (including distribution of profit) or otherwise, including (without limitation) by way of dividend, repayment, issuance of equity, payment of interest or other amounts, reduction of capital, loan, fee, charge, redemption, asset distribution, repayment, prepayment, acquisition, exchange, retirement, set-off, defeasance or other discharge.

**"Permitted Factoring"** means any factoring or other arrangement for the sale or discounting of receivables (or of any contracts, guarantees or other obligations in respect of such receivables and other related assets customarily transferred in connection with such sale, factoring or discounting of receivables) (including on a non-recourse basis, where recourse is limited to customary warranties, indemnities, securities and undertakings or on a recourse basis (including by way of securitisation of receivables or similar programme)) provided such arrangements are on arm's length terms and provided further that if such arrangements are on a recourse basis then the total amount of such arrangements in aggregate must not exceed (at any time) the greater of USD 20,000,000 (or its equivalent in other currencies) and 7.5 per cent. of the Consolidated EBITDA.

**"Permitted Financial Indebtedness"** means Financial Indebtedness:

- (a) arising under or in connection with the Global Finance Documents (including any Incremental Facility) or Interim Documents;
- (b) constituting a Permitted Transaction;
- (c) constituting Acquired Indebtedness, subject to compliance with the Total Net Leverage Ratio then required as of the last day of the most recently ended Relevant Period (pro forma for such incurrence), which is in existence at the time of acquisition and not incurred or increased (otherwise than by the capitalisation of interest) in contemplation of the acquisition or which is otherwise permitted pursuant to another paragraph of this definition;
- (d) of the Neptune Group in existence at the Closing Date (or the Moon Group in existence at the Moon Completion Date) which is not required to be refinanced, repaid, prepaid, cancelled or cash collateralised under the terms of that Financial Indebtedness in connection with or as a result of the Neptune Acquisition or Moon Acquisition (or, for so

long as it not required to prepaid pursuant to this Agreement, the Neptune Refinancing Debt);

- (e) constituting Refinancing Indebtedness;
- (f) owed to a member of the Group;
- (g) constituting or, as applicable, arising under any Bank Products or Cash Management Services (including for the avoidance of doubt cash pooling arrangements between members of the Group);
- (h) in respect of the obligations of any member of the Group arising in the ordinary course of trading, to the extent covered by a Letter of Credit or other letter of credit, bond, guarantee, indemnity, documentary or like credit or any other instrument of suretyship or payment issued, undertaken;
- (i) under any Finance Lease or vendor financing of vehicles, plant, equipment or computers, real estate or other assets provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed (at any time) the greater of USD 20,000,000 (or its equivalent in other currencies) and 7.5 per cent. of the Consolidated EBITDA;
- (j) in respect of any borrowings, liabilities, loan, earn-outs or deferred consideration made available by the relevant vendor in connection with any Permitted Acquisition or purchase of other assets (provided that any such borrowings, liabilities, loan or deferred consideration shall not exceed 50 per cent. of the total cash purchase price for that Permitted Acquisition or those other assets (as applicable) of the relevant target in respect of that Permitted Acquisition);
- (k) in respect of letters of credit, bankers' acceptances, bank guarantees or similar instruments supporting trade payables, warehouse receipts, local working capital or term loan or similar facilities entered into by the Group in the ordinary course of business, provided that the aggregate amount of Financial Indebtedness incurred under this paragraph does not exceed (at any time) for the Group the greater of USD 100,000,000 (or its equivalent in other currencies) and 30 per cent. of the Consolidated EBITDA;
- (l) any Subordinated Indebtedness;
- (m) of the Group which is to be repaid on or before the Closing Date;
- (n) arising under an amount raised by the issue of redeemable shares by the Parent which are preference shares redeemable at the option of the holder provided that they are not capable of being redeemed prior to the Termination Date for Facility B or if later, the Termination Date of any Incremental Facility and do not provide for a cash yield prior to such time unless a Permitted Distribution;
- (o) of any member of the Group representing deferred compensation or other similar arrangements to directors, officers, employees, members of management and managers of any member of the Group in the ordinary course of business;

- (p) arising under, or in connection with, any fiscal unity required in order to comply with the obligations owed to the relevant taxing or other governmental authorities by the Group (or by the relevant fiscal unity or group as a whole) or arising in connection with the ordinary course of operation of such fiscal unity;
- (q) in respect of any Incentive Plan (including to finance the purchase or redemption of any equity interest of the Parent or any member of the Group or any Holding Company of the Parent to the extent constituting a Permitted Distribution or upon the exercise or settlement of stock appreciate or similar rights, stock options, restricted stock, restricted stock rights or other rights or equity incentive programs in connection with any Incentive Plan, or arising in connection with any deposit or advance of funds by a trust, fund, manager or other entity in respect of any Incentive Plan, together with any payments, awards or grants in cash, securities or otherwise, pursuant to, or the funding of, or entering into, or operation or maintenance of, any Incentive Plan (an waiver, forbearance, forgiveness or similar with respect to any of the foregoing))) provided that the aggregate amount of Financial Indebtedness incurred under this paragraph does not exceed (in any Financial Year) for the Group the greater of USD 20,000,000 (or its equivalent in other currencies) and 7.5 per cent. of the Consolidated EBITDA;
- (r) with the consent of the Global Agent (acting on the instructions of the Majority Financiers); or
- (s) not permitted by the preceding paragraphs, provided that:
  - (i) the sole purpose of the Financial Indebtedness is to fund and/or guarantee the financing of acquisitions permitted under paragraph (f) of the definition of “Permitted Acquisition”;
  - (ii) pro forma for such incurrence of such Financial Indebtedness, the Total Net Leverage Ratio then required as of the last day of the most recently ended Relevant Period (pro forma for such incurrence) which is in existence at the time of acquisition would be complied with;
  - (iii) the Financial Indebtedness is incurred when no Event of Default is continuing or would occur immediately after the incurrence of such Financial Indebtedness; and
  - (iv) in respect of which the person or persons making such Financial Indebtedness available to such member of the Group has/have no recourse whatsoever to any Obligor or Material Subsidiary, for the repayment of or payment of any sum relating to such Financial Indebtedness, other than to any Obligor or Material Subsidiary which is the owner of any shares or other equity interests of such Permitted Acquisition and then only to the extent that such Obligor or Material Subsidiary has granted security over such shares or other equity interests legally or beneficially owned by it;
- (t) not permitted by the preceding paragraphs and the aggregate outstanding principal amount of which does not exceed (at any time) for the Group the greater of USD 100,000,000 (or its equivalent in other currencies) and 30 per cent. of the Consolidated EBITDA.

**"Permitted Guarantee"** means:

- (a) any guarantee arising under any Global Finance Document;
- (b) any guarantee that is permitted as a Permitted Transaction;
- (c) the endorsement of negotiable instruments in the ordinary course of trade;
- (d) any performance, bid or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (e) guarantees and indemnities (other than any performance, bid or similar bond referred to in paragraph (d) above) given by a member of the Group in respect of the obligations of another member of the Group in circumstances where the amount guaranteed or indemnified would, if lent directly to that other member of the Group, constitute a Permitted Loan;
- (f) customary indemnities given in mandate, engagement and commitment letters and to professional advisers and consultants, provided that such indemnities are on arm's length terms and in accordance with market practice;
- (g) customary indemnities in favour of directors and officers of members of the Group in their capacity as such;
- (h) any guarantee in favour (or for the benefit) of the relevant Hedge Counterparty of obligations arising under Permitted Treasury Transactions;
- (i) any indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which indemnity is in customary form and subject to customary limitations; or
- (j) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (i) of the definition of "Permitted Security".

**"Permitted Holders"** means, collectively, the Investors, together with any other person approved by the Majority Financiers (acting reasonably).

**"Permitted Holding Company Activity"** means:

- (a) normal holding company activities (including any Tax Structure Memorandum step but not any exit step set out therein) and those referred to in the definition of "Permitted Distribution" as carried on at that level in each case incurred in the ordinary course of business as a Holding Company and not expressly prohibited by this Agreement;
- (b) having rights and liabilities under any Permitted Treasury Transactions;
- (c) any arrangement in respect of Permitted Distribution (provided that any loans made by the Parent to a member of the Group are made indirectly via the Company);
- (d) any Financial Indebtedness and/or other liabilities incurred and any loan, guarantee or payment under the Global Finance Documents;
- (e) any Permitted Security granted under the Global Finance Documents;



- (f) any Permitted Guarantee (i) of Permitted Financial Indebtedness; (ii) constituted by Permitted Financial Indebtedness; or (iii) of the liabilities of any other member of the Group incurred by that member of the Group in connection with a Permitted Acquisition;
- (g) the provision of management and administrative services, research and development, marketing, employing employees and the secondment of employees to, and guaranteeing the obligations of other members of the Group, of a type customarily provided by a holding company to its subsidiaries (provided that, in the case of guarantees, such guarantee is a Permitted Guarantee);
- (h) in connection with any employee or management incentive or participation scheme operated by any member of the Group or any Holding Company in respect of officers, managers, directors, consultants or employees of the Group;
- (i) making loans, acquiring shares or other assets and incurring liabilities in each case referred to, or in connection with, in any step set out in a Tax Structure Memorandum (but not any exit step set out therein);
- (j) any activity carried out pursuant to a Permitted Reorganisation;
- (k) activities desirable to maintain Tax status;
- (l) incurring liabilities for, or in connection with, Taxes or by operation of laws;
- (m) entering into documentation for, and the receipt of the proceeds of, any Equity Contribution and the making of a corresponding payment to the Company;
- (n) any liabilities incurred and payments made between members of the Group or pursuant to any Subordinated Indebtedness (or other documents entered into pursuant to (or assets, rights and liabilities incurred in connection with) any Equity Contribution or to facilitate the making of any such investment) in each case to the extent permitted by this Agreement and the Intercreditor Agreement;
- (o) the receipt of any Permitted Distributions made by a member of the Group and the making of any Permitted Distributions to a member of the Group or the making of a Permitted Distribution to the Sponsor or any Sponsor Affiliate (or to a member of the Group to fund such a payment);
- (p) making claims (and the receipt of any related proceeds) for rebates or indemnification with respect to Taxes and the benefit of a Permitted Distribution;
- (q) activities in connection with any litigation or court or other proceedings that are, in each case, being contested in good faith;
- (r) in the case of the Parent, ownership of shares in the Company and any liabilities incurred or payments made in respect of its share capital and professional fees, employee costs, administration costs and Taxes in each case incurred in the ordinary course of its business as a holding company and not prohibited under this Agreement;
- (s) the ownership of cash balances or Cash Equivalent Investments at any time (including arising under any cash pooling arrangement entered into with any of its Subsidiaries) and

Permitted Loans of cash made intra Group (provided that any such loans made by the Parent to a member of the Group are made indirectly via the Company);

- (t) incurring liabilities arising by operation of law;
- (u) any activity or transaction in connection with any potential Listing;
- (v) incurring any liabilities and/or obligations under, receiving any rights or benefits under and taking any action in connection with Permitted Transactions;
- (w) the entry into and performance of its obligations under any Permitted Acquisition, Permitted Disposal or Permitted Share Issue;
- (x) the establishment and existence of any fiscal unity;
- (y) general administration activities including those relating to overhead costs and paying filing fees and other ordinary course expenses (such as audit fees and Taxes), to include the fulfilment of any periodic reporting requirements and employing employees whose services are required for the operation of the Group, seconding those employees to members of the Group;
- (z) the incurrence of any other costs that relate to services provided to or duties of the Group;
- (aa) in connection with preparing for and entering into customary agreements relating to and carrying out an equity or debt issuance which is (or, upon completion thereof, will be) permitted by the Global Finance Documents or which would result in all amounts under the Global Finance Documents being repaid in full;
- (bb) entering into arrangements regarding any Minimum Equity Condition or Equity Contribution; and
- (cc) activities carried on with the consent of the Global Agent (acting on the instructions of the Majority Financiers).

**"Permitted Incremental Facility Cap"** means in respect of any Incremental Facility, an unlimited amount provided that, after giving full pro forma effect to such Incremental Facility and the use of proceeds thereof (and assuming that such Incremental Facility is drawn in full, but disregarding any increase in cash resulting from such Incremental Facility), the Total Net Leverage Ratio does not exceed 5.50:1.00, tested both at the time of establishment and first utilisation of such Incremental Facility (but for this purpose excluding any utilisations under a Revolving Facility).

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

- (a) a member of the Group is already a member of or party to the Joint Venture prior to the Closing Date provided that any further investment in such Joint Venture after the Closing Date is contractually committed by the Group as at the Closing Date and to the extent disclosed to the Mandated Lead Arrangers on or prior to the Closing Date;
- (b) such investment was made by any person which becomes a member of the Group in accordance with the terms of the Agreement after the Closing Date and any further investment is committed on or prior to the date on which such person becomes a member of the Group;

- (c) the Joint Venture's principal business falls within the general nature of the business of the Group or the acquired entity is in a line of business that is similar, complementary, compatible or related to the Group's core business or any business that is reasonably related, synergistic, incidental or ancillary thereto and, after giving pro forma effect to:
  - (i) amounts subscribed for shares in or invested in (net of all redemptions) or lent to (net of any repayment) such Joint Venture by any member of the Group;
  - (ii) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of such Joint Venture; and
  - (iii) the market value of any assets transferred by any member of the Group to such Joint Venture (not being sales or purchases for cash made between a member of the Group and any such Joint Venture in the ordinary course of trade and on arm's lengths terms),

the Total Net Leverage Ratio does not exceed 5.50:1.00 (or at any time prior to the First Test Date, the maximum leverage permitted as at the First Test Date) on a pro forma basis after giving effect to the Joint Venture investment and any debt to be incurred to finance such Joint Venture investment;

- (d) any Joint Venture required for the purpose of satisfying any local ownership requirements under applicable laws; or
- (e) any other investment in a Joint Venture to which the Global Agent (acting on the instructions of the Majority Financiers) has given its consent.

**"Permitted Loan"** means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (b) of that definition);
- (c) a loan, charge or current account allocation made by an Obligor to another Obligor or made by a member of the Group which is not an Obligor to another member of the Group;
- (d) any loan, charge or current account allocation made prior to the date of this Agreement by an Obligor to a member of the Group which is not an Obligor, provided that the principal amount of any such loan, charge or current account allocation is not increased above the principal amount outstanding as at the date of this Agreement (except to the extent permitted by other paragraphs of the definition of "Permitted Loan");
- (e) any loan, charge or current account allocation made on or after the date of this Agreement by an Obligor to a member of the Group which is not an Obligor, provided that, at any time after the end of the Closing Date, the aggregate amount of the Financial Indebtedness under any such loans does not exceed (at any time) an amount equal to the greater of USD 75,000,000 (or its equivalent in other currencies) and 25 per cent. of the Consolidated EBITDA;

- (f) any loan or credit to (i) an employee or director of any member of the Group whether pursuant to a share incentive scheme, management or employee equity participation scheme or otherwise relating to such employee's or director's participation in the business of the Group or is otherwise consistent with such member of the Group's day-to-day business; (ii) a trust or special purpose entity to fund the acquisition of shares of employees or directors who cease to be employed or appointed by any member of the Group provided that, in either case, the aggregate amount of such loans which do not exceed (at any time) the greater of USD 10,000,000 (or its equivalent in other currencies) and 5 per cent. of the Consolidated EBITDA;
- (g) a loan (using the proceeds of any Equity Contribution or any Financial Indebtedness incurred pursuant to paragraph (e) of "Permitted Financial Indebtedness") made by any member of the Group to another member of the Group in order to ensure that the relevant member of the Group can settle the purchase price for the relevant Permitted Acquisition;
- (h) any loans or credit (i) existing at the time of (but not incurred in contemplation of) the acquisition of any company acquired pursuant to a Permitted Acquisition and made by that company or its Subsidiaries provided that the amount of that loan is not increased after completion of the Permitted Acquisition except to the extent permitted by other paragraphs of the definition of "Permitted Loan", or (ii) made or granted to refinance any loan permitted by this paragraph;
- (i) any loan made or credit extended by any member of the Group to its customers, to franchisees and/or partners or, in relation to Capital Expenditure, under Finance Leases, advance payment (or other forms of financing), in each case, on standard commercial terms and in the ordinary course of its business;
- (j) any loan made to an Obligor for the purposes of enabling that Obligor to meet its payment obligations under the Global Finance Documents, (to the extent not prohibited under the Intercreditor Agreement), to facilitate a Permitted Distribution or facilitating compliance with applicable law;
- (k) any deferred consideration on Permitted Disposals;
- (l) any loans described in the Tax Structure Memorandum (other than any exit steps);
- (m) any loans incurred or made (as the case may be) for the purposes of repaying any Permitted Financial Indebtedness, to the extent such payment is not prohibited under this Agreement or the Intercreditor Agreement;
- (n) deposits of cash or Cash Equivalent Investments with financial institutions for cash management purposes or in the ordinary course of business;
- (o) any loan which constitutes a Permitted Transaction or is made to or in connection with a Permitted Joint Venture or any Permitted Security;
- (p) any loan lent by an Obligor to any member of the Group that is not an Obligor during the Clean Up Period in respect of a Permitted Acquisition, which is one of the target companies of such Permitted Acquisition (or made or granted to refinance any other loan permitted by this paragraph (p)) provided that, in each case, such non-Obligor accedes

as a Guarantor at the end of the relevant Clean-Up Period or the loan would otherwise be permitted under this Agreement;

- (q) any debt obligation which arises as the result of any person declaring any dividend or other distribution which is not prohibited under this Agreement;
- (r) loans between any members of the Group in connection with any Cash Management Services (including in respect of any Bank Products) provided that, if any such loans made by an Obligor to a non-Obligor, such loans would be permitted under paragraph (e) above;
- (s) loans required to be made by mandatory provisions of law;
- (t) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under applicable law;
- (u) a loan made by a member of the Group in order to fund a payment to be made under the Global Finance Documents;
- (v) (without double-counting any permission available pursuant to paragraph (f)(ii) above) loan, advance or, as applicable, other extension of credit grant by the Parent or any member of the Group in connection with any incentive plan, the outstanding principal amount under which, when taken together with (i) the outstanding principal amount under all other loans, advances or, as applicable, other extension of credit incurred in reliance on this paragraph (v) in that Financial Year and (ii) the aggregate amount of loans advanced under paragraph (i) above, will not exceed (in any Financial Year) the greater of USD 20,000,000 (or its equivalent in other currencies) and 7.5 per cent. of Consolidated EBITDA;
- (w) any loan with the consent of the Global Agent (acting on the instructions of the Majority Financiers); or
- (x) any loan or credit not permitted pursuant to the preceding paragraphs so long as the aggregate amount of the Financial Indebtedness or loan does not exceed (in any Financial Year) the greater of USD 10,000,000 (or its equivalent in other currencies) and 5 per cent. of the Consolidated EBITDA.

**"Permitted Matter"** means (i) the establishment, incurrence, refinancing, repayment, prepayment, defeasance or purchase of any Permitted Financial Indebtedness, the release of any guarantee and/or Transaction Security in connection with any transaction permitted by the Global Finance Documents, the resignation of any Obligor, in each case in accordance with the terms of the Global Finance Documents, and/or (ii) any Permitted Transaction.

**"Permitted Reorganisation"** means any amalgamation, demerger, merger, voluntary liquidation, consolidation, reorganisation, winding up or corporate reconstruction of any member of the Group (or involving the business or assets of, or shares of (or other interests in), any member of the Group):

- (a)
  - (i) contemplated in the Tax Structure Memorandum (other than the exit steps described therein); and/or

- (ii) any related to tax planning and/or any tax reorganisation, provided it is not materially prejudicial to the interests of the Financiers taken as a whole under the Global Finance Documents (as determined by the Company in good faith).
- (b) that is made or undertaken (or similar) on a solvent basis (excluding, for this purpose (and with the word "solvent" construed accordingly) any balance sheet insolvency or any other technical insolvency (or similar) or any other event or circumstance that itself would not constitute an Event of Default) or as required or desirable to effect a Listing, provided that:
  - (i) all of the business, assets and shares of (or other interests in) the relevant members of the Group continue to be owned directly or indirectly by the Company in the same or a greater percentage as prior to such re-organisation, other than (A) as a result of a cessation of business or solvent winding-up of a member of the Group in conjunction with a distribution of all or substantially all of its assets remaining after settlement of its liabilities to its immediate shareholders or other persons directly holding partnership or other ownership interests in it or other member of the Group, (B) any ceasing to exist in connection with the relevant re-organisation or (C) as a result of a disposal or other transaction permitted under the this Agreement;
  - (ii) subject to the Agreed Security Principles, the Financiers (or the Security Agent on their behalf) will continue to have the same or substantially equivalent (ignoring for the purposes of assessing such equivalency any limitations required in accordance with the Agreed Security Principles or hardening periods or any Legal Reservations or Perfection Requirements and (for the avoidance of any doubt) other than from (or in respect of) any entity which has ceased to exist in connection therewith) guarantees (where applicable) and/or security (including, as applicable, on a 'third-party' basis) over the same or substantially equivalent (or corresponding) assets from or in the transferee or the entity surviving as a result of such reorganisation, save to the extent such assets or shares (or other equivalent interests) cease to exist or to be owned by members of the Group as contemplated in paragraph (i) above;
  - (iii) to the extent applicable:
    - (A) (in the case of the Company), the Company is the surviving entity;
    - (B) (in the case of any Borrower or the Purchaser (other than the Company), including in its capacity as a Guarantor), that Borrower or the Purchaser (as applicable) is the surviving entity or (if it is not) the relevant surviving entity (x) is incorporated in the same jurisdiction as that Borrower or the Purchaser (or any other jurisdiction that is a permitted borrowing jurisdiction in respect of the relevant Facility) (y) is or becomes party to the Global Finance Documents as a Borrower or the Purchaser (as applicable) and (z) assumes the obligations of that Borrower or the Purchaser (as applicable) under the Global Finance Documents; and

- (C) (in the case of a Guarantor (other than the Company or a member of the Group that is also a Borrower or the Purchaser)), that Guarantor is the surviving entity or (if it is not) the relevant surviving entity (A) is or becomes party to this Agreement as a Guarantor and (B) assumes the obligations of that Guarantor under the Global Finance Documents,

and, for the avoidance of any doubt, this paragraph (iii) will not apply to (nor be construed as restricting or otherwise limiting) any re-organisation of a member of the Group who is neither a Borrower, the Purchaser nor a Guarantor,

provided that, in each case, no Event of Default is continuing at the commencement of, or would otherwise occur as a result of, that amalgamation, demerger, merger, voluntary liquidation, consolidation, reorganisation, winding up or corporate reconstruction.

**"Permitted Sale and Leaseback"** means the disposal of assets by a member of the Group (on arm's length terms) on terms whereby such asset may be leased back to or re-acquired by a member of the Group.

**"Permitted Security"** means:

- (a) any Transaction Security or Security and Quasi Security arising under the Global Finance Documents and/or Interim Documents;
- (b) any Security created or evidenced under or in connection with the ordinary banking arrangements of the Group as a result of the applicable general terms and conditions of the relevant account bank with which a member of the Group maintains an account;
- (c) any netting, charging, cash pooling 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 or cash pooling of members of the Group (including a Multi account Overdraft) provided that the security is limited to the account balances with the relevant bank which are the subject of such arrangements;
- (d) any lien arising by operation of law and in the ordinary course of business and not as a result of any default or omission by any member of the Group or any encumbrance arising pursuant to court proceedings and assessments by authorities being contested in good faith;
- (e) any Security or Quasi Security pursuant to any legal proceedings (including any court order, injunction and/or security for costs) or assessments by authorities being contested by any member of the Group in good faith which does not give rise to or constitute an Event of Default;
- (f) any Security or Quasi Security over or affecting any asset (x) acquired by a member of the Group after the Closing Date or (y) of any person which becomes a member of the Group after the Closing Date where the Security or Quasi Security is created prior to the date on which that person becomes a member of the Group, in each case if:
  - (i) the Security or Quasi Security was not created in contemplation of the acquisition of that asset by a member of the Group;

- (ii) the principal amount secured (otherwise than by a capitalisation of interest) has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iii) unless permitted under another paragraph of this definition, the Security or Quasi Security is removed or discharged within nine months of the date of acquisition of such asset (unless otherwise permitted to remain outstanding pursuant to any other paragraph of this definition (without double counting));
- (g) any Security or Quasi Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading;
- (h) any Security or Quasi Security arising as a result of a disposal which is a Permitted Disposal;
- (i) any Security or Quasi Security to secure, or under netting, set off or margin arrangements under, Permitted Treasury Transactions;
- (j) any Security or Quasi-Security arising as a consequence of set-off or liens or similar contained in the standard terms and conditions applicable to any banking arrangements entered into by a member of the Group in the ordinary course of its banking arrangements that are permitted to be entered into by the terms of the Global Finance Documents;
- (k) any Security or Quasi Security arising in respect of Taxes being contested in good faith;
- (l) any Security or Quasi Security arising automatically by operation of law in favour of any Tax or other governmental authority or organisation in respect of Tax, assessments or governmental charges which are being contested by a member of the Group in good faith and in accordance with the relevant procedures and with appropriate means and withdrawn or discharged within 90 days;
- (m) any Security or Quasi Security which does not secure any outstanding actual or contingent obligation or liability;
- (n) any Security which constitutes, or arises pursuant to or in connection with, a Permitted Transaction (other than paragraph (a) of the definition of "Permitted Transaction");
- (o) any Security or Quasi Security over documents of title and goods and rights relating to those goods as part of a documentary credit transaction;
- (p) any Security or Quasi Security to secure obligations in respect of bank guarantees issued on behalf of any member of the Group in respect of rental (or similar) obligations or constituting cash collateral provided in respect of letters of credit or bank guarantees to the extent not prohibited under this Agreement;
- (q) any Security or Quasi Security over cash paid into an escrow or similar account pursuant to any customary deposit or retention of purchase price arrangements entered into in connection with a Permitted Disposal or Permitted Acquisition;



- (r) any Security or Quasi Security arising under or in connection with any Permitted Financial Indebtedness under paragraphs (c) (limited to existing security in respect of such Financial Indebtedness only), (d), (g) or (t) or that definition;
- (s) customary Security in respect of securitisation programmes which constitute "Permitted Factoring";
- (t) any Security or Quasi Security over shares in Permitted Joint Ventures to secure obligations to the other Joint Venture partner(s);
- (u) any Security or Quasi Security over assets subject to any Finance Lease, hire purchase or similar transaction (provided such transaction (including any Financial Indebtedness arising thereby) is not otherwise prohibited under the Global Finance Documents) or Permitted Sale and Leaseback;
- (v) any Security or Quasi Security granted or arising in connection with any Incentive Plan;
- (w) any Security or Quasi Security with the consent of the Global Agent (acting on the instructions of the Majority Financiers); or
- (x) any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under the preceding paragraphs), does not exceed (at any time) the greater of USD 50,000,000 (or its equivalent in other currencies) and 15 per cent. of the Consolidated EBITDA (provided that the value of the collateral assets under such Security does not exceed the greater of USD 100,000,000 (or its equivalent in other currencies) and 30 per cent. of the Consolidated EBITDA).

**"Permitted Share Issue"** means an issue of:

- (a) shares by the Company to the Parent, provided that such issue does not lead to a Change of Control;
- (b) equity by the Company to the Parent as part of an Equity Contribution, provided that such newly issued shares are subject to Transaction Security;
- (c) shares by a member of the Group to its immediate Holding Company or to another member of the Group (other than the Parent) or to a minority shareholder proportionate to its existing holding where (if the existing shares of the Subsidiary are the subject of Transaction Security) the newly issued shares (to the extent held by a member of the Group) also become subject to Transaction Security on the same terms;
- (d) shares where the issue is described in the Tax Structure Memorandum (other than any "exit step" described therein) or which constitutes, or is made pursuant to or in connection with, a Permitted Transaction;
- (e) shares (other than shares in the Company) where the issuance is part of an investment in a Permitted Joint Venture;
- (f) shares to a member of the Group pursuant to a Permitted Reorganisation, Permitted Joint Venture or a Permitted Acquisition;

- (g) shares in connection with a Listing;
- (h) shares to directors and other officers who are required to have a minimum shareholding under applicable law or regulation, to the extent they do not at the time of issue have such a shareholding;
- (i) shares by a member of the Group or any Parent Entity under any Incentive Plan in the ordinary course of business, or in connection with arrangements entered into with respect local ownership requirements under applicable local law, in each case provided that such issue does not lead to a Change of Control; and
- (j) any shares with the consent of the Global Agent (acting on the instructions of the Majority Financiers).

**"Permitted Structural Adjustment"** means a Structural Adjustment as permitted by this Agreement.

**"Permitted Transaction"** means:

- (a) any step, circumstance, event, transaction or arrangement to, pursuant to or (as applicable) constituting a Permitted Reorganisation, Permitted Acquisition, Permitted Disposal, Permitted Distribution, Permitted Financial Indebtedness, Permitted Guarantee, Permitted Share Issue, Permitted Security, Permitted Joint Venture, Permitted Sale and Leaseback, Permitted Treasury Transaction or Permitted Factoring;
- (b) payment of any amount payable under, any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Global Finance Documents and/or any loan, acquisition, guarantee, investment, transfer of assets or capital contribution provided that such transaction is funded from sources constituting Acceptable Funding Sources;
- (c) in connection with the establishment, maintenance and/or operation of any (i) Incentive Plan (ii) fiscal unity, tax consolidation and/or any profit and/or loss sharing or domination (or similar) agreement, between members of the Group and, as applicable, any Holding Companies of the Group (excluding the Sponsor);
- (d) the opening, maintenance and closure of bank accounts;
- (e) transactions (other than (x) any sale, lease, license, transfer or other disposal and (y) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on an arm's length basis;
- (f) the Offer, the Scheme, the Neptune Acquisition, the Moon Acquisition, the Squeeze-Out and/or the Transaction and/or the entry into, and performance of, and any step, circumstance, event, payment, action, reorganisation, transaction, activity or arrangement in or contemplated by or relating to, the Transaction Documents or any other document or arrangement entered into in connection with the Transaction (including any market purchases of any shares or other securities in or of Neptune, entry into any irrevocable undertaking(s) or commitment(s) in connection with any Scheme or Offer and/or any transaction, activity, arrangement, action, event or other matter contemplated in or by Rule

15 of the Takeover Code), the Tax Structure Memorandum (other than any exit steps described therein), the Reports, the Base Case Model, the Funds Flow Statement or otherwise disclosed to the Mandated Lead Arrangers prior to the date of this Agreement, in each case, together with any intermediate, consequential, ancillary or necessary step, event, action, transaction, activity or arrangement relating thereto or necessary to implement any of the foregoing;

- (g) any conversion of a loan, credit or any other indebtedness outstanding into distributable reserves, share capital, share premium or other equity interests of any member of the Group or any other capitalisation, forgiveness, waiver, release or other discharge of any loan, credit or other indebtedness of any member of the Group, in each case on a cashless basis;
- (h) actions to comply with any rule, law, regulation, directive, order or guidance by any applicable court, tax, governmental, regulatory, legislative, licencing, competition anti-trust or supervisory authority (or similar body) (including arising under an order of attachment or injunction or similar legal process) or the requirements of any Transaction Document;
- (i) any transaction, activity or arrangement as between members of the Group, including the Neptune Group or Moon Group and/or any management, employee, vendor or investor roll-over, roll-up or investment provided that (in such case), after completion of such steps, no Change of Control shall have occurred;
- (j) of any member of the Neptune Group and/or Moon Group that is a 'regulated entity' in connection with any of its (or the maintenance of its) regulated activities and/or status; or
- (k) any transaction, activity or arrangement required pursuant to the terms of the Global Finance Documents or required by the Neptune Group, the Neptune board, the Moon Group, the Moon board, the Panel, the Court, any insurer, regulator, governmental institution, local authority, stock exchange or clearing system, any competition, anti-trust, listing, legal or regulatory authority, any pensions trustee or employee or works council (or similar) or any regulator or arising by operation of law or regulation.

**"Permitted Treasury Transaction"** means a Treasury Transaction which:

- (a) comprises interest or base rate or similar hedging (of whatsoever nature or type) in respect of any Permitted Financial Indebtedness, including any under any Finance Document (including any Facility and any facility established pursuant to any Structural Adjustment or amendment/waiver or similar);
- (b) is non-speculative (as determined by the Company) foreign exchange or other currency-related or similar hedging (of whatsoever nature or type and in relation to any matter whatsoever (for the avoidance of any doubt, with no requirement that any such hedging relates to any Financial Indebtedness)); or
- (c) is any other non-speculative (as determined by the Company) hedging (of whatsoever nature or type and in relation to any matter whatsoever (for the avoidance of any doubt, no requirement that any such hedging relates to any Financial Indebtedness)) not set out above,

which, for the avoidance of doubt and in each case, may rank *pari passu* with Facility B with respect to the application of proceeds from enforcement of the Transaction Security, provided that any such hedging in respect of interest or profit rates applicable to the Facility B will be entered into with a Financier, subject to that Financier having provided a market competitive quote for that hedging.

**"Potential Material Event of Default"** means an event or circumstance which would (with the expiry of a grace period, the making of a determination, or the giving of notice provided for, as applicable, in Clause 24 (*Events of Default*) or any combination of the foregoing) be a Material Event of Default, **provided that**, as applicable, any such event or circumstance which requires the satisfaction of a condition or determination (including as to materiality) before it becomes a Material Event of Default shall not be a Potential Material Event of Default unless that condition or that determination is satisfied.

**"Profit Amount"** has the meaning given to that term in the Murabaha Facility Agreement.

**"PTE"** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**"Published Rate Replacement Event"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Purchaser"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Purchase Price"** has the meaning given to that term in the Murabaha Facility Agreement.

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

**"Quotation Day"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Ratio-Based Applicable Metric"** means any Applicable Metric calculated, determined or otherwise expressed by reference to a ratio (including any determined on a "no worse than" or "no deterioration" (or equivalent) basis)).

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

**"Reconciliation Statement"** has the meaning given to such term in paragraph (a)(ii) of Clause 21.3 (*Agreed Accounting Principles*).

**"Reference Bank Quotation"** means any quotation supplied to the relevant Agent by a Reference Bank.

**"Reference Banks"** means up to three Financiers as may be appointed by the relevant Agent in consultation with the Company (**provided that** no Global Finance Party shall be appointed as a Reference Bank without its consent).

**"Reference Rate Terms"** has the meaning given to that term in the Conventional Facilities Agreement

**"Refinanced Indebtedness"** means any refinancing of all or any part of the Facilities (and of any refinancing or replacement financing thereof from time to time) and all fees, costs, expenses, prepayment premium and similar incurred in connection with such refinancing.

**"Refinancing Amounts"** means breakage costs, prepayment fees, redemption premium, make-whole costs and other fees, costs and expenses payable in connection with any repayment, prepayment, refinancing, repurchase, defeasance or other discharge of any indebtedness.

**"Refinancing Indebtedness"** means one or more secured or unsecured bonds, notes, loans or other debt instruments incurred to give effect to Refinanced Indebtedness, provided that the principal amount of such Refinancing Indebtedness shall not exceed an amount which is equal to the amount of the Refinanced Indebtedness and in the event that any Facility is being replaced or refinanced in part only:

- (a) in respect of a Refinancing Indebtedness which is a term facility with amortising repayment, (x) no amortisations shall fall due prior to the Termination Date in respect of Facility B or (y) the Financiers of Facility B are offered the same amortisation percentage per annum as the proposed amortising Refinancing Indebtedness (if shorter than the amortisation percentage per annum of Facility B);
- (b) the final maturity date of any such Refinancing Indebtedness shall be no earlier than the Termination Date in respect of Facility B or (if the final maturity date of the Refinancing Indebtedness is shorter than the maturity date of Facility B) the Termination Date of Facility B is amended to be the same as or earlier than that of such Refinancing Indebtedness;
- (c) the provider(s) of such Refinancing Indebtedness (or, where customary for financing of the relevant type, the agent or trustee in respect of such Refinancing Indebtedness) shall become party to the Intercreditor Agreement on a *pari passu* or subordinated basis (in each case with respect to the application of the proceeds of enforcement of the Transaction Security);
- (d) any proceeds from such Refinancing Indebtedness shall be applied towards the purported refinancing only (dollar for dollar) and any associated costs and expenses and shall be so applied within 20 Business Days of its incurrence;
- (e) any Refinancing Indebtedness may only receive any mandatory prepayments pro rata with or after (and not in priority to) any Facility;
- (f) the Refinancing Indebtedness shall only be secured by the same (or less) security that also secure the Facilities;
- (g) any Refinancing Indebtedness must rank *pari passu* with or be subordinated to Facility B with respect to the application of the proceeds of enforcement of the Transaction Security;
- (h) the borrower of such Refinancing Indebtedness must be a Borrower or the Purchaser under Facility B; and
- (i) no Event of Default is continuing or would result from the incurrence of such Refinancing Indebtedness.

**"Register"** has the meaning given to that term in Clause 25.10 (*The Register*).

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

different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

**"Relevant Debt Incurrence"** means (i) in the case of Facility B, any Financial Indebtedness incurred under a listed public debt capital markets issuance or a term loan facility raised as Refinancing Indebtedness in respect of Facility B and/or (ii) in the case of a Revolving Facility, any Financial Indebtedness incurred under a revolving facility loan raised as Refinancing Indebtedness in respect of the Revolving Facility.

**"Relevant Debt Incurrence Proceeds"** means the Net Proceeds received by members of the Group from a Relevant Debt Incurrence.

**"Relevant Market"** has the meaning given to that term Murabaha Facility Agreement and the meaning given to the term "Relevant Market" in the Conventional Facilities Agreement.

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

- (a) its jurisdiction of incorporation; and
- (b) the jurisdiction whose laws govern any of the Transaction Security Documents entered into by it.

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

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

**"Renewal Request"** has the meaning given to that term in the Conventional Facilities Agreement.

**"Repeating Representations"** has the meaning given to it in paragraph (b) of Clause 20.20 (*Repetition*).

**"Replacement Notice"** has the meaning given to that term in paragraph (a) of Clause 37.5 (*Replacement of Financier*).

**"Reporting Entity"** means the entity in respect of which financial reporting is provided under the terms of this Agreement, as elected at the sole discretion of the Company (provided that it is contemplated by the terms of this Agreement, including, without limitation a Parent Entity).

**"Reports"** means each of the following reports:

- (a) the final 'Project Neptune' legal due diligence report by Linklaters LLP dated 26 May 2023; and
- (b) the final 'Project Neptune FDD' financial due diligence report by KPMG dated 16 June 2023,

as such reports may be updated, amended and/or supplemented in accordance with paragraph 4 of Part I of Schedule 2 (*Conditions Precedent*).

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

**"Request"** means:

- (a) a Utilisation Request; or

(b) a Notice of Request to Purchase.

**"Resignation Letter"** means a document substantially in the form set out in Schedule 6 (*Form of Resignation Letter*) or any other form agreed between the Global Agent and the Company (each acting reasonably).

**"Restructuring Costs"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Revolving Facility"** means the Original Revolving Facility or an Incremental Revolving Facility.

**"Revolving Facility Borrower"** means, in respect of the Original Revolving Facility, the Original Revolving Facility Borrowers or, in respect of an Incremental Revolving Facility, the relevant Borrower under that Incremental Revolving Facility.

**"Revolving Facility Commitment"** means the Original Revolving Facility Commitment or an Incremental Revolving Facility Commitment.

**"Revolving Facility Lender"** means a Conventional Lender under a Revolving Facility.

**"Revolving Facility Loan"** means an Original Revolving Facility Loan or an Incremental Revolving Facility Loan.

**"Revolving Facility Utilisation"** means a Revolving Facility Loan or Letter of Credit issued or to be issued under a Revolving Facility.

**"Rollover Loan"** has the meaning given to that term in the Conventional Facilities Agreement.

**"S&P"** means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organisation.

**"Sanctioned Country"** means, at any time, a country or territory which is itself, or whose government is, the target of country or territory-wide Sanctions Laws, which, as at the date of this Agreement, includes Cuba, Iran, North Korea, Syria and the Crimea, Luhansk and Donetsk regions of Ukraine (as defined and construed in the applicable Sanctions Laws).

**"Sanctioned Entity"** means:

- (a) a person or entity which is, or which is owned, controlled, managed or advised by (whether directly or indirectly in whole or in part) any person or group of persons which is, identified on any Sanctions Laws-related list or organised or resident in any Sanctioned Country or the subject of or designated target of Sanctions Laws;
- (b) an Affiliate or Related Fund of any person or entity falling under paragraph (a) above and any trust, partnership or similar arrangement of which any person or entity falling under paragraph (a) above is a trustee, partner or beneficiary; and
- (c) any person or entity situated or incorporated in, or which is a branch or affiliated entity of a person or institution situated or incorporated in, or which is acting through a Facility Office or using a bank account situated or located in, a Sanctioned Country,

provided that no Original Financier (nor any Affiliate of an Original Financier) shall be a Sanctioned Entity.

**"Sanctioned Person"** means, at any time: (a) any person listed in any Sanctions Laws-related list of designated persons maintained by the OFAC, or by the United Nations Security Council, the European Union (including its member states) or His Majesty's Treasury of the United Kingdom; (b) any person organised or resident in a Sanctioned Country; and (c) any person owned or controlled by any person or persons falling within paragraph (a) above.

**"Sanctions Laws"** means any economic, financial and trade sanctions, laws, regulations or restrictive measures (including, for the avoidance of doubt, any sanctions or measures relating to any particular embargo or asset freezing) enacted, administered, imposed or enforced by the United States of America (including the US State Department, the US Department of Commerce, the US Department of the Treasury (including the OFAC and the OFAC Regulations)), the United Nations Security Council, the European Union (including its member states), the United Arab Emirates and/or His Majesty's Treasury of the United Kingdom.

**"Scheme"** means the scheme of arrangement effected pursuant to part 26 of the Companies Act 2006 proposed by Neptune to its shareholders to implement the Neptune Acquisition.

**"Scheme Circular"** means the circular (including any supplemental circular) issued or dispatched (or to be issued or dispatched) by Neptune to shareholders of Neptune setting out the resolutions and proposals for and the terms and conditions of the Scheme.

**"Scheme Documents"** means: (i) the Announcement; (ii) any Scheme Circular; (iii) the Court Order; and (iv) any other documents or agreements related to the Scheme or referred to in the Scheme Documents or entered into or published in connection with the Scheme and designated a Scheme Document by the Company (including as any such documents are amended, replaced, revised, restated, supplemented or modified from time to time).

**"Scheme Effective Date"** means the date on which the Court Order is delivered to Companies House in accordance with section 899 of the Companies Act.

**"Secured Parties"** means each Global Finance Party from time to time party to this Agreement and any Receiver or Delegate.

**"Security"** means a mortgage, charge, pledge, lien, security assignment, security transfer of title or other security interest having a similar effect.

**"Semi-Annual Compliance Certificate"** means a Compliance Certificate substantially in the agreed form set out in Part I (*Form of Semi-Annual Compliance Certificate*) of Schedule 7 and delivered by the Company to the Global Agent under paragraph (a) of Clause 21.2 (*Provision and contents of Compliance Certificates*).

**"Semi-Annual Financial Statements"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Semi-Annual Financial Statements (Company)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Semi-Annual Financial Statements (Moon)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).



**"Semi-Annual Financial Statements (Neptune)"** has the meaning given to that term in Clause 21.1 (*Information Undertakings*).

**"Specified Time"** has the meaning given to that term in each of the Conventional Facilities Agreement and the Murabaha Facility Agreement.

**"Specified Transaction"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Sponsor"** means each of Brookfield Capital Partners VI L.P. and BCP Growth Aggregator LP.

**"Sponsor Affiliate"** means any person who or which, directly or indirectly, controls, or is controlled by, or is under common control with, a Sponsor, and shall include any of its Holding Companies or Subsidiaries or any other Subsidiary of any of its Holding Companies and any trust, fund, company, limited partnership, partnership, co-investment vehicle and/or other entity, vehicle, account owned or person owned, managed, sponsored, advised, represented or controlled directly or indirectly by the Sponsor or any of its Sponsor Affiliates and any Sponsor Affiliate of any such trust, fund, company, limited partnership, partnership, co-investment vehicle and/or other entity, vehicle, account owned or person owned but does not include any portfolio company of the Sponsor or of any Affiliate of the Sponsor and, in the context of a Person or Persons achieving or having control over another Person.

**"Squeeze-Out"** means the squeeze-out procedures set out in Chapter 3 of Part 28 of the Companies Act pursuant to which the Company may acquire any remaining Neptune Shares the subject of the Offer.

**"Squeeze-Out Documents"** means any documents, agreements or notices issued or entered into or to be issued or entered into in connection with any Squeeze-Out (including as any such document may be amended, replaced, revised, restated, supplemented or modified from time to time).

**"Structural Adjustment"** means (in each case other than in respect of an Incremental Facility, which shall not require any Financier consent):

- (a) any increase in a Financier's Commitment or participation in a Utilisation;
- (b) any extension to any Availability Period in respect of any Commitment or to any date of payment of principal, interest, fees, commissions or other amounts to a Financier (in its capacity as such);
- (c) any reduction in the Margin otherwise applicable to a Facility (other than any expressly contemplated in accordance with the terms of the Global Finance Documents) or a reduction in the amount of any payment of principal, interest, fees, commissions or other amounts to a Financier (in its capacity as such) (other than any expressly contemplated in accordance with the terms of the Global Finance Documents, including any amendment or waiver to any base rate));
- (d) any redenomination of a Financier's Commitment or participation in a Utilisation into another currency or any change in the currency of any payment of principal, interest, fees or other amounts otherwise payable to a Financier (in its capacity as such) under the

Global Finance Documents (other than expressly contemplated under the terms of the the Global Finance Documents);

- (e) the introduction of an additional loan, commitment, tranche or facility into the Global Finance Documents ranking *pari passu* with or junior to any of the then existing Facilities, provided that no Financier consent is required for the creation of any 'hollow' tranche or facility (being a tranche or facility under which there are no Commitments immediately upon its establishment);
- (f) a re-tranching of any or all of the then existing Facilities and/or any re-designation or transfer of all or part of any Financier's Commitment and/or participation in any Utilisation to any other new tranche or facility established (including any undertaken on a cashless basis);
- (g) any amendment or waiver referred to in Clause 37.2 (*All Financier Matters*) or which would otherwise require the consent of the Majority Financiers (or equivalent under a particular Facility), provided that the relevant amendment or waiver is being made only in respect of a Financier that has consented to that amendment or waiver and a result of which that Financier will be in a position or will be treated in a manner which is less advantageous to it (or, as applicable, to it with respect to the Commitments and/or participation in Utilisations in respect of which it has given its consent) than its treatment immediately prior to that amendment or waiver and such amendment or waiver is not materially adverse to the interests of the other Financiers (taken as a whole) under the Global Finance Documents; and/or
- (h) any amendment or waiver of a term of a Global Finance Document and any change (including changes to, the taking of or release coupled with the retaking of Security and/or guarantees and changes to and/or additional intercreditor arrangements) that is consequential on, incidental to, or required to implement or effect or reflect any of the amendments or waivers listed in the paragraphs (a) to (g) above.

**"Subordinated Indebtedness"** means, with respect to any person, any Financial Indebtedness (whether outstanding on the Closing Date or thereafter incurred) which either (a) is expressly subordinated in right of payment to the Facilities pursuant to a written agreement or (b) constitutes Senior Unsecured Liabilities (as defined in the Intercreditor Agreement) which are borrowed or issued by a member of the Group or which are guaranteed by one or more members of the Group.

**"Subsequent Murabaha B1 Short Facility Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Subsequent Murabaha B2 Short Facility Contract"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Subsidiary"** means, in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and control for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to direct management to comply with the type of material restrictions and obligations contemplated in this Agreement or to determine the composition of a majority of the Board of Directors (or like

board) of such entity, in each case, whether by virtue of ownership of share capital, contract or otherwise.

**"Super Majority Financiers"** means, at any time a Financier or Financiers whose Commitments aggregate 75 per cent. or more of the Total Commitments (and for this purpose the amount of an Ancillary Lender's Revolving Facility Commitments, a Fronted Ancillary Lender's Revolving Facility Commitments and a Fronting Ancillary Lender's Revolving Facility Commitments shall not be reduced by the amount of its Ancillary Commitment, Fronted Ancillary Commitment or Fronting Ancillary Commitment), and if the Total Commitments have been reduced to zero, a Financier or Financiers whose Commitments aggregated 75 per cent. or more of the Total Commitments immediately prior to that reduction, provided that, in the case of any Commitment not denominated in the Base Currency, if applicable, the Base Currency Amount of that Commitment shall be used for the purposes of calculating the relevant threshold.

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

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

**"Tax Structure Memorandum"** means the tax structure memorandum in connection with, among other things, the Neptune Acquisition and the Moon Acquisition and the Facilities prepared by PricewaterhouseCoopers LLP.

**"Term Facility"** means Facility B1, Facility B2 or an Incremental Facility B, as the context requires.

**"Term Loan"** means a Conventional Facility B Loan or an Incremental Facility B Loan.

**"Termination Date"** means:

- (a) in respect of Facility B1, the date falling five years after the date of this Agreement;
- (b) in respect of Facility B2, the date falling five years after the date of this Agreement;
- (c) in respect of the Original Revolving Facility, the date falling five years after the date of this Agreement; and
- (d) in relation to any Incremental Facility, the date specified as the final repayment date in the Incremental Facility Commitment Notice relating to such Incremental Facility delivered by the Company in accordance with Clause 2.7 (*Incremental Facility*).

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

**"Third Parties Act"** has the meaning given to that term in Clause 1.6 (*Third Party Rights*).

**"Third Party Security Provider"** means:

- (a) the Parent; and
- (b) any other Person designated as such by the Company and which Person is or becomes Party to the Intercreditor Agreement as a Third Party Security Provider (as that term is defined therein) (and, unless specified to the contrary by the Company in any such designation, any such Person shall replace, for all purposes under this Agreement, any

other security provider and this Agreement shall be construed and interpreted *mutatis mutandis* accordingly).

**"Total Commitments"** means the aggregate of the Total Facility B Commitments, the Total Revolving Facility Commitments and any Total Incremental Facility Commitments.

**"Total Conventional Facility B Commitments"** has the meaning given to the term "Total Facility B Commitments" in the Conventional Facilities Agreement.

**"Total Facility B Commitments"** means the aggregate of the Total Facility B1 Commitments and the Total Facility B2 Commitments.

**"Total Facility B1 Commitments"** means the aggregate of the Facility B1 Commitments, being USD1,135,000,000 at the date of this Agreement.

**"Total Facility B2 Commitments"** means the aggregate of the Facility B2 Commitments, being USD300,000,000 at the date of this Agreement.

**"Total Incremental Facility Commitments"** means the aggregate of the Total Incremental Facility B Commitments and the Total Incremental Revolving Facility Commitments.

**"Total Incremental Facility B Commitments"** means the aggregate of the Incremental Facility B Commitments.

**"Total Incremental Revolving Facility Commitments"** means the aggregate of the Incremental Revolving Facility Commitments.

**"Total Murabaha Commitments"** has the meaning given to that term in the Murabaha Facility Agreement.

**"Total Net Debt"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Total Net Leverage Ratio"** has the meaning given to that term in Clause 22.1 (*Financial definitions*).

**"Total Original Revolving Facility Commitments"** means the aggregate of the Original Revolving Facility Commitments, being USD 50,000,000 at the date of this Agreement.

**"Total Revolving Facility Commitments"** means the Incremental Revolving Facility Commitments or, as applicable, the Total Original Revolving Facility Commitments.

**"Trade Instruments"** means any performance bonds, advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

**"Transaction"** means the Neptune Acquisition, the Moon Acquisition, refinancing or otherwise discharging of certain Existing Target Debt (including the utilisation of the Facilities) and the other transactions contemplated by the Transaction Documents and all transactions relating thereto.

**"Transaction Documents"** means the Neptune Acquisition Documents, Moon Acquisition Documents, Equity Documents (provided that this will not be construed as permitting any Permitted Distribution that would not otherwise be permitted), the Global Finance Documents, the Tax Structure Memorandum (but excluding the exit steps described therein), the Base Case Model, any presentation or materials provided to any rating agencies in connection with Facility B,

the Reports and/or any quality of earnings analysis or other reports delivered to the Mandated Lead Arrangers prior to the date of this Agreement (in each case, as amended, varied, supplemented and/or updated on or prior to the Closing Date, to the extent such amendment, variation, supplement and/or update is not materially prejudicial to the Financiers) and/or any other reports or quality of earnings analysis or base case model delivered to the Global Agent in connection with any other Permitted Acquisition, any document providing for any Equity Contribution (provided that this will not be construed as permitting any Permitted Distribution that would not otherwise be permitted), any Senior Unsecured Proceeds Loan Agreement (as defined in the Intercreditor Agreement) (provided that this will not be construed as permitting any Financial Indebtedness that would not otherwise be permitted) and any document incidental or ancillary to (or necessary to enable) any of the foregoing or designated as a 'Transaction Document' by the Company prior to the date of this Agreement.

**"Transaction Expenses"** means any fees, costs, expenses and/or Taxes incurred or paid by the Company in connection with the Transactions (and related steps and transactions, including the financing thereof), including any fees, costs, expenses and/or Taxes associated with settling any claims or action arising from a dissenting stockholder exercising its appraisal rights.

**"Transaction Security"** means the Security created or expressed to be created in favour of the Security Agent and/or the Secured Parties (represented by the Security Agent, as the case may be) pursuant to the Transaction Security Documents.

**"Transaction Security Documents"** means:

- (a) the security document listed as being a Transaction Security Document in Schedule 2 (*Conditions Precedent*);
- (b) any document entered into by the Company and/or any member of the Group (including any member of the Neptune Group and/or Moon Group) creating or expressed to create any Security over all or any part of its assets in respect of the obligations of the Company and/or any member of the Group under any of the Global Finance Documents; and
- (c) any other document designated a Transaction Security Document by the Company and the Global Agent (or the Security Agent) in writing.

**"Transfer Arrangement"** means a transfer, assignment, sub-participation or sub-contract (whether voting or non-voting or funded or risk participation) or any similar or analogous arrangement (including any having a similar commercial effect and/or any agreement with respect to any of the foregoing) of or in connection with any Facility.

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Global Agent and the Company.

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

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

**"Trapped Cash"** means any cash, Cash Equivalent Investments or any other amounts that are (or would, if they constituted an applicable mandatory early payment, be) exempt from being required to be applied in a mandatory early payment of the Facilities as a result of any restriction set out in Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*).

**"Treasury Transaction"** means any derivative transaction (and any extensions or replacements thereof) entered into in connection with protection against or benefit from fluctuation in any rate or price.

**"UAE"** means United Arab Emirates.

**"UAE Civil Code"** means UAE Federal Law No. (5) of 1985 regarding the law of civil transactions.

**"UAE Guarantor"** means a Guarantor incorporated in the UAE (including a free zone within the UAE).

**"Unconsolidated EBITDA"** has the meaning given to it in the definition of "Guarantor Coverage Test".

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

**"US"** means the United States of America.

**"US Government Securities Business Day"** means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**"Utilisation"** means a Loan, a Murabaha Contract or a Letter of Credit.

**"Utilisation Date"**:

- (a) in relation to the Conventional Facility, has the meaning given to that term in the Conventional Facilities Agreement; or
- (b) in relation to the Murabaha Facility, has the meaning given to the term "Value Date" in the Murabaha Facility Agreement.

**"Utilisation Request"** has the meaning given to that term in the Conventional Facilities Agreement.

**"VAT"** means:

- (a) value added tax imposed pursuant to the VATA 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax as amended (EC Directive 2006/112);
- (c) any tax imposed in compliance with the Federal Decree Law No. (8) of 2017 on Value Added Tax (and related regulations) as applicable in the UAE; and

- (d) 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), (b) or (c) above, or imposed elsewhere.

**"VATA 1994"** means the Value Added Tax Act 1994 of the United Kingdom.

**"Vendor"** means any holder of Neptune Shares prior to the Completion Date

**"Waived Amount"** has the meaning given to that term in paragraph (b) of Clause 9.4 (*Right to Refuse Early Payment*).

**"Withdrawal Event"** means:

- (a) any withdrawal of (or any vote or referendum electing to withdraw) any participating member state from the EU or from the single currency of the participating member states of the EU (or the expiry of any transition period related thereto) and/or the redenomination of the euro into any other currency by the government of any current or former participating member state of the EU; and/or
- (b) any independence of (or any vote or referendum in respect of the independence of) any country forming part of, and from, the United Kingdom or from the British sterling pound (or the expiry of any transition period related thereto) and/or the redenomination of the British sterling pound into any other currency by any government of any country formerly forming part of the United Kingdom.

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the "Agent", any "Global Finance Party", any "Issuing Bank", any "Financier", any "Mandated Lead Arranger", the "Company", any "Obligor", the "Obligors' Agent", the "Parent", any "Party", any "Secured Party", the "Security Agent" or any other person shall be construed so as to include its successors in title (including the surviving entity of any merger involving that person), permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Global Finance Documents;
- (ii) an **"agency"** of a state includes any local or other authority, self regulating or other recognised body or agency, central or federal bank, department, government, legislature, minister, ministry, self regulating organisation, official or public or statutory person (whether autonomous or not) of, or of the government of, that state or any political subdivision in or of that state; agreed and/or approved by the Obligors' Agent and an Agent or, if not so agreed or approved, as approved or agreed by an Agent (acting reasonably)
- (iii) a document in **"agreed form"** is a document (A) which is previously agreed and/or approved by or on behalf of the relevant Agent and the Company; or (B) if not so agreed or approved, as approved or agreed by the relevant Agent (acting reasonably) or, as applicable, if such document is to be delivered pursuant to Clause 4.1 (*Initial conditions*)

*precedent*) or specified in Schedule 2 (*Conditions Precedent*) in the form required or contemplated by those provisions;

- (iv) an "**agreement**" includes any legally binding agreement, arrangement, concession, contract, deed or franchise (in each case whether oral or written);
- (v) an "**amendment**" includes any amendment, supplement, variation, novation, modification, replacement or restatement (however fundamental), and **amend** and **amended** shall be construed accordingly;
- (vi) (x) "**assets**" includes properties, assets, businesses, undertakings, revenues and rights of every kind (including uncalled share capital), present and future, actual or contingent and any interest in any of the foregoing and (y) "**assets**" which are only subject to a floating charge (or similar all (or substantially all) security interest) under any Transaction Security shall not be considered not to be part of (and security over them not sharing in) the Transaction Security and any relevant provision (including any restriction, permission or condition (or similar)) shall be construed and interpreted accordingly;
- (vii) "**available for utilisation**" in respect of any indebtedness means that indebtedness being committed pursuant to the terms of an executed commitment letter, credit agreement, indenture, notes or other documentation notwithstanding that any documentary, drawdown or other substantive event including the execution of a long form credit agreement, the completion of an acquisition (or other transaction) or condition to utilisation or issue thereof has not been satisfied including (if any of the proceeds are to be applied in connection with an acquisition or other transaction) the date on which the applicable acquisition agreement is signed or such other date on which the Group makes an announcement, offer or enters into a legally binding commitment for the relevant acquisition or such other transaction which will be funded by the proceeds of such proceeds;
- (viii) a "**consent**" includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
- (ix) a "**disposal**" includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;
- (x) "**fair market value**" may be conclusively established by means of an officer's certificate or a resolution of the Board of Directors of the Company setting out such fair market value as determined by such Officer or such Board of Directors in good faith;
- (xi) a "**filing**" includes any relevant filing, registration, recording or notice (and references to making or renewing filings shall be construed accordingly) required by law or regulation;
- (xii) a "**Global Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is (unless expressed to be a reference to such document, agreement or instrument in its original form or form as at a particular date) a reference to that Global Finance Document or Transaction Document or other agreement or instrument as amended and includes any increase in, addition to or extension of or other change to any



facility under such agreement or instrument, in each case to the extent not prohibited by the terms of this Agreement;

(xiii) a "**guarantee**" includes (other than, for the avoidance of doubt, where such term is used in Clause 19 (*Guarantees and Indemnity*)):

(A) an indemnity, counter-indemnity, guarantee or similar assurance against loss in respect of any indebtedness of any other person; and

(B) any other obligation of any other person, whether actual or contingent, to pay, purchase, provide funds (whether by the advance of money to, the purchase of or subscription for shares, partnership interests or other investments in, any other person, the purchase of assets or services, the making of payments under an agreement or otherwise) for the payment of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person,

and "**guaranteed**" and "**guarantor**" shall be construed accordingly;

(xiv) "**including**" means including without limitation, and "**includes**" and "**included**" shall be construed accordingly;

(xv) "**indebtedness**" includes any obligation (whether incurred as principal, guarantor or surety and whether present or future, actual or contingent) for the payment or repayment of money;

(xvi) "**losses**" includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including legal and other fees) and liabilities of any kind, and loss shall be construed accordingly;

(xvii) an obligation of an Obligor or an Islamic Participant to make a payment on account of any "**cost**", "**loss**" or "**liability**" incurred by an Agent or an Islamic Participant in relation to the Murabaha Facility shall only be an obligation to make a payment on account of any cost, loss or liability actually incurred (or determined to actually be incurred) (but excluding, in any event, any interest, opportunity loss or costs of funds) by such Agent or Islamic Participant;

(xviii)

(A) Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived and a Declared Default or Declared Default is "**continuing**" unless the underlying Default or Event of Default has ceased to be continuing or the relevant demand or notice has been revoked, rescinded, withdrawn or otherwise rendered ineffective by the Global Agent (acting on the instructions of the Majority Financiers) or otherwise ceased to have effect. In addition and for the avoidance of doubt, (A) if a Default (including an Event of Default) has occurred but is no longer continuing (a "**Cured Default**"), any other Default or Event of Default which would not have arisen but for the Cured Default having occurred shall be deemed not to be continuing automatically upon, and simultaneous with the remedy, cure or waiver of the Cured Default, (B) if a Default (including an Event of Default)

occurs for a failure to report or failure to deliver a required certificate, notice or other document in connection with another default (an "**Initial Default**") then at the time such Initial Default is remedied or waived, such Default (including an Event of Default) for a failure to report or deliver a required certificate, notice or other document or information in connection with the Initial Default will also be cured without any further action and (C) any Default (including an Event of Default) for the failure to comply with the time periods prescribed in Clause 21 (*Information and Accounting Undertakings*), or otherwise to deliver any notice, certificate or other document, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Global Finance Document shall be deemed to be cured and remedied upon the delivery of any such report or statements or information required by such covenant or notice, certificate or other document or performance of such obligation, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Global Finance Document; and

- (B) Majority Financier Objection is "**continuing**" for so long as the Majority Financiers (or if applicable the Majority Financiers in respect of any relevant or applicable Facility(ies)) assert and continue to assert their objection in respect of the relevant document, proposal, request or amendment to which the Majority Financier Objection relates (provided that, such Majority Financier Objection shall cease to be "**continuing**" on the first date on which any such objection is supported by less than the Majority Financiers (or if applicable the Majority Financiers in respect of any relevant or applicable Facility(ies)) in each case, as confirmed in writing by the Global Agent to the Company;
- (xix) references to any matter being "**permitted**" (or any similar term) by or under this Agreement or any other Global Finance Document or other agreement shall include references to such matters not being prohibited by or under or otherwise restricted by this Agreement or such Global Finance Document or other agreement and shall include, without limitation, any such permission as a result of any approval, consent, amendment or waiver subject to, as applicable, the fulfilment of any conditions or other tests (or similar) (without prejudice to the application of such conditions or tests (or similar));
- (xx) a "**person**" or "**Person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, fund, joint venture, consortium, partnership or undertaking (whether or not having separate legal personality) or any two or more of the foregoing;
- (xxi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having force of law which are binding or customarily complied with by those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
- (xxii) a "**sub-participation**" means any sub-participation or sub-contract (whether written or oral) or any other agreement or arrangement having an economically substantially similar

effect, including any credit default or total return swap or derivative (whether disclosed, undisclosed, risk or funded) by a Financier of or in relation to any of its rights or obligations under, or its legal, beneficial or economic interest in relation to, the Facilities and/or Global Finance Documents to a counterparty and "sub-participate" and "sub-participant" shall be construed accordingly;

- (xxiii) "**sufficient available information**" means financial information selected and determined by the Company in good faith in order to test the applicable condition or ratio, including, but not limited to, information required to be delivered to the Agents under this Agreement as well as other information including monthly management accounts and other internal accounts and financial information;
- (xxiv) a provision of law (or a statute or statutory instrument or any provision thereof) is a reference to that provision (or that statute or statutory instrument or such provision thereof) as amended or re-enacted from time to time;
- (xxv) a time of day is a reference to London time;
- (xxvi) the singular includes the plural (and vice versa);
- (xxvii) unless expressly stated to the contrary, a reference in any Global Finance Document to an Agent or the Security Agent (an "**Applicable Agent**") being "**authorised**", "**instructed**" and/or "**directed**" (or similar term) to take any action by a Global Finance Party by the terms of such Global Finance Document shall mean irrevocably and unconditionally authorised, instructed or directed (or similar) (as applicable) to take such action without any further consent, authorisation, instruction or direction from any Global Finance Party or any of their Affiliates and shall require the Applicable Agent to take (and the Applicable Agent shall take) such action within the timeframes specified in the applicable Global Finance Document and, if none is specified, promptly and without requesting any further consent, authorisation, instruction or direction from any Global Finance Party or any of their Affiliates; and
- (xxviii) unless expressly stated to the contrary, where an Applicable Agent is required to act "**reasonably**", or in a "**reasonable**" manner, or as coming to an opinion or determination that is "**reasonable**" (or any similar or analogous wording is used) under the terms of any Global Finance Document and the Applicable Agent has not been authorised, instructed or directed by a Global Finance Party by the terms of such Global Finance Document to take such action:
  - (A) if the Applicable Agent determines that any instruction is or may be required by any Global Finance Party or any group of Global Finance Parties, it shall notify the Company as soon as reasonably practicable after making such determination;
  - (B) to the extent reasonably practicable, the Applicable Agent shall first (prior to seeking, or notifying any Global Finance Party that it intends to seek, such instruction) consult with the Company in order to determine (1) whether any instruction from the requisite Global Finance Parties is required under the terms of the applicable Global Finance Document and (2) the period of time in which such instructions may be sought;

- (C) if the Applicable Agent determines (in good faith and in accordance with the terms of the Global Finance Documents and, to the extent applicable, after consulting under paragraph (B) above) that it is required to seek instructions from the requisite Global Finance Parties in accordance with the terms of the applicable Global Finance Document (acting reasonably), it shall notify the Company and the Global Finance Parties from whom it is seeking such instruction of the requested instructions and the period of time within which such instructions must be provided (taking into account any such consultation with the Obligors' Agent); and
  - (D) if the Applicable Agent complies with this paragraph (xxviii), it shall (1) be deemed to have been acting on the instructions of the requisite Global Finance Parties, (2) be under no obligation to determine the reasonableness of any instructions from any Global Finance Party or whether in giving such instructions the relevant Global Finance Party is acting in a reasonable manner and (3) not be responsible for any liability arising to any person from such instructions or any delay or failure in the giving of such instructions; and
- (xxix) any corporation into which an Agent or Security Agent may be merged or converted, or any corporation with which an Agent or Security Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which an Agent or Security Agent shall be a party, or any corporation, including affiliated corporations, to which an Agent or Security Agent shall sell or otherwise transfer:
- (A) all or substantially all of its assets; or
  - (B) all or substantially all of its corporate trust business,
- shall, on the date when the merger, conversion, consolidation or transfer becomes effective and to the extent permitted by any applicable laws become the successor Agent or Security Agent under this Agreement without the execution or filing of any paper or any further act on the part of the parties to this Agreement, unless otherwise required by the Company, and after the said effective date all references in this Agreement to an Agent or Security Agent shall be deemed to be references to such successor corporation. Written notice of any such merger, conversion, consolidation or transfer shall immediately be given to the Company and the Financiers by an Agent or Security Agent.
- (b) The determination of the extent to which a rate is **"for a period equal in length"** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
  - (c) Section, Clause and Schedule headings are for ease of reference only.
  - (d) Unless a contrary indication appears, a term used in any other Global Finance Document or in any notice given under or in connection with any Global Finance Document has the same meaning in that Global Finance Document or notice as in this Agreement.
  - (e) Notwithstanding anything to the contrary in any Global Finance Document, nothing in the Global Finance Documents shall prohibit a non-cash contribution of any asset (including any participation, claim, commitment, rights, benefits and/or obligations in respect of indebtedness borrowed or

issued by any member of the Group from time to time) by a person that is not a member of the Group to the Company (and subsequently to any other member(s) of the Group) **provided that** to the extent such transaction results in any Financial Indebtedness being outstanding from the Company to any of its direct or indirect shareholders (acting in their capacity as such) and such Financial Indebtedness would be required to be subordinated as "*Investor Liabilities*" under the Intercreditor Agreement in accordance with the terms thereof, such Financial Indebtedness is subordinated as "*Investor Liabilities*" pursuant to the Intercreditor Agreement or otherwise in a manner satisfactory to the Global Agent acting reasonably.

- (f) For the avoidance of doubt, if any receivable (or any part thereof) has been sold or discounted on a basis which it means it would be treated as off balance sheet or derecognised under the Applicable Accounting Principles, that receivable shall be considered to have been sold or discounted on a non-recourse basis.
- (g) Notwithstanding anything to the contrary in any Global Finance Document, nothing in the Global Finance Documents shall prohibit any step, action or matter arising in connection with any actual, proposed or future payment of Tax (including as a consequence of any 'group contributions', the surrender of tax relief or similar or equivalent arrangements).
- (h) Subject to Clause 1.4 (*Exchange rate fluctuations*), unless a contrary indication appears, references to the equivalent of an amount specified in a particular currency (the specified currency amount) shall be construed as a reference to the amount of any other relevant currency which can be purchased with the specified currency amount to the relevant Agent's Spot Rate of Exchange on the date on which the calculation falls to be made for spot delivery, as determined by the relevant Agent.
- (i) Subject to Clause 1.4 (*Exchange rate fluctuations*), unless a contrary indication appears, a reference to a basket amount, threshold or limit expressed in a particular currency includes the equivalent of such amount, threshold or limit in other currencies.
- (j) For the purposes of the "permitted" definitions in Clause 1.1 (*Definitions*): (i) until the date by which such entities are required to accede as Guarantors pursuant to Clause 23.23 (*Guarantees and Security*), such Material Subsidiaries under paragraph (b) of Clause 23.23 (*Guarantees and Security*) shall be deemed to be Obligor **provided that** no Material Subsidiary which will not accede to this Agreement as a Guarantor as a result of the Agreed Security Principles shall be deemed to be an Obligor and (ii) from the date of completion of a Permitted Acquisition until 60 Business Days after completion of such acquisition, the members of the Group which the Company has confirmed will accede as a Guarantor within 60 Business Days of completion of such Permitted Acquisition, shall be deemed to be an Obligor until the earlier of:
  - (i) the date it becomes an Obligor;
  - (ii) the date the Company confirms that, due to the Agreed Security Principles, such member of the Group cannot become an Obligor; and
  - (iii) the date falling 60 Business Days after completion of the relevant Permitted Acquisition.

- (k) The knowledge of awareness or belief of any member of the Group shall be limited to the actual knowledge, awareness or belief of the Board of Directors (or equivalent body) of such member of the Group at the relevant time.
- (l) Where any member of the Group (the "**procuring person**") is required under this Agreement or any other Global Finance Document to ensure or procure certain acts, events or circumstances in relation to any other person (the "**other person**") and the other person is not a wholly owned Subsidiary of the procuring person, or is otherwise limited or restricted by applicable law or regulation or any shareholders' agreement, the procuring person shall only be obliged to use its reasonable efforts, subject to all limitations and restrictions on the influence it may exercise as a shareholder over the other person, including pursuant to any agreement with the other shareholders or pursuant to any applicable law or regulation which requires the consent of the other shareholders or other person, and its obligation to ensure or procure shall not be construed as a guarantee for or assurance of such acts, events or circumstances, and shall be construed as only being an obligation on the procuring person to procure the other person to the extent that it is not illegal for the procuring person or the other person to do so or doing so would constitute a breach of applicable law or regulation.
- (m) The obligations of the Obligors and any member of the Group (including any procurement obligation), including but not limited to, the making of any payment, any representation or warranty, general undertaking, any information undertaking or Financial Covenant under or pursuant to the Global Finance Documents (other than in relation to the utilisation of the Facilities pursuant to Clause 2 (*The Facilities*) to Clause 6 (*Optional Currencies*), any representation or warranty, general undertaking or event of default referred to in the definitions of Major Event of Default, Major Representation or Major Undertaking (as applicable), Clause 8.1 (*Illegality*), Clause 9.1 (*Exit*) and Clause 12 (*Interest Periods and Murabaha Contract Periods*)), shall not become effective or take effect until and from the date of the first Utilisation in accordance with the terms of this Agreement. This paragraph (m) shall not apply to any term or obligation arising under Clause 13.1 (*No deal, no fees*), Clause 16.2 (*Other indemnities*), Clause 16.3 (*Indemnity to the Global Agent*) and Clause 18.1 (*Transaction expenses*).
- (n) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include (subject to the Company's prior written consent, acting reasonably) any other page or service displaying that rate specified by the relevant Agent to the Company.
- (o) The amount of any non-cash items for the purposes of any test or permission under the Global Finance Documents shall be the fair market value as determined by the Company acting in good faith.
- (p) Any reference to any Global Finance Party "**acting reasonably**" and/or acting "**in good faith**" shall include, as the context requires, not unreasonably withholding, conditioning or delaying

consent (and shall include, in the case of "**acting reasonably**", that Global Finance Party acting in good faith).

- (q) Any reference to any matter or action or other step (or similar) being "**required by**" the Takeover Code, the Panel, the Court or any other applicable law, regulation or regulatory body (or any similar or equivalent reference) shall include any matter or action or other step (or similar) that the Company (acting reasonably and in good faith) determines to be necessary or desirable to comply with the relevant requirement.
- (r) Subject (as applicable) to the proviso in paragraph (a)(ii) of Clause 23.22 (*Scheme or Offer undertakings*), for the avoidance of doubt, it is acknowledged and agreed that any change in the structure or form of the Neptune Acquisition, (without prejudice to the length of the Certain Funds Period) any change in the timing of the Neptune Acquisition (including any reduction or extension to the actual or anticipated Scheme Effective Date, Offer period, closing date or completion date (howsoever described) of the Neptune Acquisition (including by reason of any adjournment of any meeting or court hearing)) and any increase, decrease or any other adjustment to or change in the purchase price (or other consideration) or in the nature or manner in which any purchase consideration (or other consideration) is paid or to be paid (or, as applicable, other undertaken or to be undertaken) shall be permitted and shall not (in any such case) be regarded as being a change, amendment or other modification or otherwise materially adverse to the interests of the Original Financiers (or to any other Global Finance Party), provided that the foregoing will not permit any change in the purchase consideration such that a material part of that purchase consideration is in the form of debt (or debt-like instrument(s)) issued by a member of the Group or non-cash consideration issued by the Company (but without prejudice to any customary intermediary roll-up (or related steps) of any such non-cash consideration).
- (s) For the avoidance of any doubt, it is acknowledged and agreed that a switch or other change from a Scheme to an Offer (provided that, in the case of any switch or other change from a Scheme to an Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition) or from an Offer to a Scheme shall be permitted and shall not (in any such case) be regarded as being a change, amendment or other modification or otherwise materially adverse to the interests of the Original Financiers (or to any other Global Finance Party).
- (t) A reference to the "United Arab Emirates" refers to all onshore and offshore jurisdictions therein, provided that, where used in Clause 27 (*Changes to the Obligors*), "United Arab Emirates" shall only refer to the United Arab Emirates, Dubai International Financial Centre or (as applicable) the Abu Dhabi Global Market.
- (u) For the purposes of the definitions of "Affiliate", "EBITDA" and "Sponsor Affiliate" and Clause 9.1 (*Exit*), "**control**" with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

### 1.3 **Currency Symbols and Definitions**

- (a) "**US\$**", "**USD**" and "**US Dollars**" mean the lawful currency for the time being of the United States of America.

- (b) "AED" and "Emirati Dirham" mean the lawful currency for the time being of the United Arab Emirates.

#### 1.4 Exchange rate fluctuations

- (a) Subject to paragraph (c) below, when applying any monetary limits, thresholds and other exceptions to the representations and warranties, undertakings and Events of Default under the Global Finance Documents, the equivalent of an amount in a currency other than the Base Currency to such shall be calculated, at the option of the Company, in a manner consistent with paragraph (e) of Clause 22.4 (*Calculations*).
- (b) No misrepresentation, breach, Default or Event of Default will arise merely as a result of a subsequent change in the currency-equivalent amount of the relevant transaction, action, payment, step, matter, item or amount (or similar), including, for the avoidance of any doubt, any Financial Indebtedness, due to a fluctuation in any conversion or exchange rate and any such transaction, action, payment, step, matter, item or amount (or similar) may be refinanced, replaced or extended notwithstanding any such change or fluctuation (and the Group may use, at the time of (and for the purposes of) that refinancing, replacement or extension, the relevant conversion or exchange rate that was originally used when the permissibility of the relevant original transaction, action, payment, step, matter, item or amount (or similar) being so refinanced, replaced or extended was tested, calculated or determined).
- (c) The Company may, from time to time by notice to the Global Agent, redenominate any Applicable Metric denominated in a particular currency into USD by reference to any rate (or combination or rates) referred to in paragraph (e) of Clause 22.4 (*Calculations*) and, on and from the date of such notice, such Applicable Metric shall for all purposes be construed as being denominated in such currency specified by the Company in the amount determined by the Company in accordance with this paragraph (c).

#### 1.5 Baskets and Basket Testing

- (a) In respect of any transaction, action, payment, step, matter, item or amount (or similar), including, for the avoidance of any doubt, any Financial Indebtedness, incurred (whether in whole or in part) in reliance on any grower element of a Fixed Applicable Metric (including by reference to a percentage of Consolidated EBITDA) or on any Ratio-Based Applicable Metric (including any on a "no worse than" or "no deterioration" basis), no misrepresentation, breach or Default or Event of Default shall occur in the event that such Fixed Applicable Metric (including Consolidated EBITDA) or such Ratio-Based Applicable Metric subsequently deteriorates and there shall be no requirement to re-calculate any such Fixed Applicable Metric (including Consolidated EBITDA) or such Ratio-Based Applicable Metric at any time (and, for the avoidance of any doubt, any such transaction, action, payment, step, matter, item or amount (or similar) may be refinanced, replaced or extended notwithstanding any such deterioration, provided that (in the case of Financial Indebtedness) the principal amount of the Financial Indebtedness being refinanced or replaced is not increased (other than any increase equal to any applicable Refinancing Amount, contemplated under paragraph (b) of Clause 1.4 (*Exchange rate fluctuations*) or which is otherwise permitted under the terms of this Agreement).
- (b) In the event that any transaction, action, step, payment, matter, item or amount (or similar) (or any portion thereof) meets the criteria of more than one basket, ratio, type, permission and/or



exception in a Global Finance Document, the Company (or, as applicable, relevant member of the Group) may, in its sole discretion, at any time and from time to time split, divide, classify and/or re-classify any transaction, action, step, payment, matter, item or amount (or similar) (or any portion thereof) from, to or between one or more of any basket, ratio, type, permission and/or exception and (without prejudice to the ability to split any transaction, action, step, matter, item or amount between different baskets, ratios, permissions and exceptions so as to be permitted in part by one such basket, ratio, permission or exception and in part by another) any such transaction, action, step, payment, matter, item or amount (or similar) (or portion thereof) will only be required to be included (and will not be prohibited if so included) in one basket, ratio, type, permission or exception, provided that Financial Indebtedness outstanding under Facility B solely in reliance on paragraph (a) of the definition of "Permitted Financial Indebtedness" may not be reclassified.

- (c) If all or any part of any transaction, action, payment, step, matter, item or amount (or similar) that is permitted in reliance on a Fixed Applicable Metric would, at any later time, be permitted in reliance on any Ratio-Based Applicable Metric, then (unless the Company otherwise elects) that transaction, action, payment, step, matter, item or amount (or similar) (or the relevant portion thereof) shall automatically be re-classified to that Ratio-Based Applicable Metric, provided that Financial Indebtedness outstanding under Facility B solely in reliance on paragraph (a) of the definition of "Permitted Financial Indebtedness" will not be so reclassified.
- (d) In relation to any Permitted Acquisition or other investment permitted by this Agreement (other than the Neptune Acquisition or the Moon Acquisition) which would result in a cumulative increase to Consolidated EBITDA of the Group (as confirmed by the Company by reference to the Applicable Measurement Period after giving pro forma effect to the acquisition and any adjustments permitted by this Agreement) (each a "**Qualifying Transaction**"), from the completion of that Qualifying Transaction until the date on which the Semi-Annual Financial Statements for the first Half Year Date falling immediately after completion of that Qualifying Transaction are delivered to the Global Agent, the Consolidated EBITDA of the Group for the purposes of all baskets, fixed amounts, thresholds or other Applicable Metrics in this Agreement which include a calculation by reference to Consolidated EBITDA shall be increased on a pro forma basis for that Qualifying Transaction for the purposes of calculating the adjustments to the relevant baskets with effect from the date of completion of that Qualifying Transaction. Without prejudice to paragraph (a) above, if the value of any of the baskets, fixed amounts, thresholds or Applicable Metrics is subsequently decreased upon the delivery of the Semi-Annual Financial Statements in respect of the Financial Half Year immediately following completion of that Qualifying Transaction, any item undertaken or incurred in good faith prior to any decrease shall be grandfathered and shall continue to be permitted notwithstanding the subsequent reduction in the relevant baskets, fixed amounts or thresholds.
- (e) For any Fixed Applicable Metric set by reference to a specified period of time (including any Financial Year, fiscal year, calendar year, Relevant Period or other fixed or similar annual period) (each a "**Specified Period**"):
  - (i) at the option of the Company, the maximum amount so permitted under such Fixed Applicable Metric during such Specified Period may be increased by:

- (A) an amount equal to 100 per cent. of the difference (if positive) between the permitted amount in the immediately preceding Specified Period and the amount thereof actually used or applied by the Group during such preceding Specified Period (the "**Carry Forward Amount**"); and/or
  - (B) an amount equal to 100 per cent. of the permitted amount in the immediately following Specified Period and the permitted amount in such immediately following Specified Period shall be reduced by such corresponding amount (the "**Carry Back Amount**"); and
- (ii) to the extent that the maximum amount so permitted under such Fixed Applicable Metric during such Specified Period is increased in accordance with paragraph (i) above, any usage of such basket during such Specified Period shall be deemed to be applied in the following order:
  - (A) firstly against the Carry Forward Amount;
  - (B) secondly against the maximum amount so permitted during such Specified Period prior to any increase in accordance with paragraph (i) above; and
  - (C) thirdly against the Carry Back Amount.
- (f) To the extent that any Financial Indebtedness, Security, distribution, payment or investment or other transaction satisfies the applicable ratio or other condition or Applicable Metric (on a pro forma basis) on the Relevant Transaction Test Date or the other terms of this Agreement), for the avoidance of doubt, such ratio, condition or Applicable Metric is (and shall be) deemed to have been satisfied, including on the date of the relevant transaction or on any other date of determination under the Global Finance Documents and irrespective of any facts or circumstances (including financial condition) on any such date or thereafter and shall not be retested after that date unless otherwise elected by the Company and the Company may elect, in its sole discretion, to recalculate any applicable ratio or other condition or Applicable Metric (on a pro forma basis) on any other Relevant Transaction Test Date or the other terms of this Agreement), in which case, such date of redetermination shall thereafter be deemed to be that date for purposes of such applicable ratio or other condition or Applicable Metric.
- (g) Notwithstanding anything to the contrary in any Global Finance Document:
  - (i) in the event that any person ceases to be a non-Obligor or a Joint Venture, any amounts which would prior to such cessation have fallen within (and consequently reduced the amount available to the Group under) any basket set out in this Agreement as a result of such person being a non-Obligor (if any) or a Joint Venture shall be ignored for the purpose of calculating the amount available under the relevant basket; and
  - (ii) when establishing whether any action, transaction and/or incurrence of a liability (in each case including any replacement, renewal or extension thereof) is, was and/or remains permitted under the terms of the Global Finance Documents, the Group shall be entitled to rely on the fact that such action, transaction and/or incurrence was permitted at the time that action, transaction or liability was originally taken, committed to or incurred (as the case may be).

- (h) For the avoidance of any doubt, there shall be no requirement under the terms of this Agreement to notify or provide any certifications or confirmations (or similar) to any Global Finance Party in connection with any incurrence-based transaction, action, payment, step, matter, item or amount (or similar).

#### 1.6 **Third Party Rights**

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, provided that no consent of any such third party shall be required for any amendment to or waiver of or consent under (or any similar or equivalent transaction) this Agreement.

#### 1.7 **Intercreditor Agreement**

This Agreement is subject to, and has the benefit of, the Intercreditor Agreement. In the event of any inconsistency between this Agreement and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

#### 1.8 **No Investor Recourse**

No Global Finance Party will have any recourse to any Investor (or to any partner, director, officer, employee, secondee or any other representative of any Investor) under or in connection with any Global Finance Document (including in connection with any information or documentation provided or any representation, certification or statement (including any statement of intention) made, in each case, whether given in writing or given orally), and, to the fullest extent allowed under law, no such person shall have any liability whatsoever in connection therewith.

#### 1.9 **Personal Liability**

Except to the extent of fraud, gross negligence or wilful default, to the fullest extent allowed under law, no partner, director, officer, employee, secondee or any other representative of the Parent or any member of the Group or any other natural person shall be personally liable under or in connection with any Global Finance Document (including in connection with any information or documentation provided or any representation, certification or statement (including any statement of intention) made, in each case, whether given in writing or given orally) and each of the foregoing may rely on this Clause 1.9 subject to Clause 1.6 (*Third Party Rights*) and the provisions of the Third Parties Act.

#### 1.10 **Cashless Roll**

Notwithstanding anything to the contrary contained in this Agreement or in any other Global Finance Document, to the extent that any Financier extends the maturity date of, or replaces, renews or refinances, any of its then existing participations in any Utilisation or Ancillary Outstandings with Refinancing Indebtedness or loans incurred under a new credit facility or otherwise, in each case, that are effected by means of a "*cashless roll*", such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or in any other Global Finance Document that such payment be made in a given currency, in "*immediately available funds*", in "*cash*" or any other similar requirement.

#### 1.11 **Murabaha Finance Parties**

No provision of this Agreement (or any amendment to this Agreement) shall under any circumstances oblige any Murabaha Finance Party to:

- (i) receive, claim or demand the payment of any interest or any other amounts which are prohibited under *Shari'a* principles (as determined by the Internal Sharia Supervisory Committee of the Murabaha Investment Agent in accordance with AAOIFI Sharia Standards); or
- (ii) undertake or perform any activity or participate in or benefit from any right which is prohibited under *Shari'a* principles (as determined by the Internal Sharia Supervisory Committee of the Murabaha Investment Agent in accordance with AAOIFI Sharia Standards).

## 2. THE FACILITIES

### 2.1 Conventional Facility

Subject to the terms and conditions of the Conventional Finance Documents:

- (a) the relevant Conventional Lenders make available to the relevant Borrowers, the relevant Conventional Facility B; and
- (b) the Original Revolving Facility Lenders make available to the Original Revolving Facility Borrowers a multicurrency revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Original Revolving Facility Commitments.

### 2.2 Murabaha Facility

Subject to the terms and conditions of the Murabaha Transaction Documents the Islamic Participants make available to the Purchaser, the Murabaha Facility.

### 2.3 Matched Funding

Notwithstanding any provision in any Global Finance Document, no Financier will be required to make available any amount under the Facilities unless:

- (a) the Utilisation Date under the Conventional Facility B1, the Murabaha B1 Long Facility and the Murabaha B1 Short Facility (but only in relation to an Initial Murabaha B1 Short Facility Contract (as defined in the Murabaha Facility Agreement)) have occurred or will occur on the same date;
- (b) the Utilisation Date under the Conventional Facility B2, the Murabaha B2 Long Facility and the Murabaha B2 Short Facility (but only in relation to an Initial Murabaha B2 Short Facility Contract (as defined in the Murabaha Facility Agreement)) have occurred or will occur on the same date; and
- (c) the amounts and other terms of any Utilisation so requested comply with the terms of this Agreement and the other Global Finance Documents.

### 2.4 Ancillary Facility

Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender or Fronted Ancillary Lender and Fronting Ancillary Lender may make available an Ancillary Facility or a Fronted Ancillary Facility to any of the Revolving Facility Borrowers in place of all or part of its Commitment under the Revolving Facility.

## 2.5 Incremental Facility

Subject to the terms of this Agreement, a Financier may make available (but is not committed to making available) an Incremental Facility.

## 2.6 Increase

- (a) The Company may by giving prior notice to the Global Agent and each other relevant 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 Financier in accordance with Clause 8.7 (*Right of cancellation in relation to a Defaulting Financier, Non-Consenting Financier or Non Acceptable L/C Lender*);
  - (ii) the Commitments of a Financier in accordance with Clause 8.6 (*Right of cancellation and repayment in relation to a single Financier or Issuing Bank*);
  - (iii) the Commitments of a Financier in accordance with Clause 8.1 (*Illegality*); or
  - (iv) the Commitment of a Financier in accordance with Clause 37.5 (*Replacement of Financier*),

request that the Commitments relating to any Facility be increased (and the Commitments under that Facility shall be so increased) in an aggregate amount in the Base Currency 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 Financiers or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Financier**") selected by the Company (each of which shall not be a member of the Group, and which satisfies all the relevant Agents' and the Security Agent's '*know your customer*' or similar checks referred to in paragraph (b)(ii)(B) below, and each of which confirms its willingness to assume and does assume all the obligations of a Financier corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Financier in respect of those Commitments (for the avoidance of doubt, no Party shall be obliged to assume the obligations of a Financier pursuant to this paragraph (A) without the prior consent of that Party));
- (B) each of the Company and the Obligors and any Increase Financier shall assume obligations towards one another and/or acquire rights against one another as the Company and the Obligors and the Increase Financier would have assumed and/or acquired had the Increase Financier been an Original Financier in respect of that part of the increased Commitments which it is to assume;
- (C) each Increase Financier shall become a Party as a Financier and any Increase Financier and each of the other Global Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Financier and those Global Finance Parties would have assumed and/or acquired had the Increase Financier been an Original Financier;
- (D) the Commitments of the other Financiers shall continue in full force and effect; and

- (E) any increase in the Commitments relating to a Facility 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) Pursuant to paragraph (a) above, an increase in the Total Commitments will only be effective on:
  - (i) the execution by the Global Agent and each other relevant Agent of an Increase Confirmation from the relevant Increase Financier (provided that the Global Agent and each other relevant Agent shall execute any Increase Confirmation which on its face appears duly completed promptly on receipt);
  - (ii) in relation to an Increase Financier which is not a Financier immediately prior to the relevant increase:
    - (A) the Increase Financier entering into the documentation required for it to accede as a party to the Intercreditor Agreement in the applicable capacities; and
    - (B) the performance by each of the Global Agent, each other relevant Agent and the Security 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 Financier, the completion of which the Global Agent shall promptly notify to the Company, the Increase Financier and, if the increase is to commitments under a Revolving Facility, each Issuing Bank under such Revolving Facility.
- (c) Each Increase Financier, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Global Agent and each other relevant Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Financier or Financiers in accordance with the Global Finance Documents on or prior to the date on which the increase becomes effective.
- (d) The Company shall within five Business Days of demand pay to the Global Agent, each other relevant Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them (and/or any Receiver or Delegate) in connection with any increase in Commitments under this Clause 2.6.
- (e) The Company may pay to the Increase Financier a fee in the amount and at the times agreed between any member of the Group and the Increase Financier in a Fee Letter.
- (f) Clause 25.6 (*Limitation of responsibility of Existing Financiers*) shall apply *mutatis mutandis* in this Clause 2.6 (*Increase*) in relation to an Increase Financier as if references in that Clause to:
  - (i) an “**Existing Financier**” were references to all the Financiers immediately prior to the relevant increase;
  - (ii) the **New Financier**” were references to that “Increase Financier”; and
  - (iii) a “**re-transfer**” and “**re-assignment**” were references to respectively a transfer and assignment.

- (g) The Global Agent shall as soon as reasonably practicable send to the Company a copy of each executed Increase Confirmation and, if applicable, the relevant documentation required for the Increase Financier to accede as a party to the Intercreditor Agreement in the applicable capacities.
- (h) The Global Finance Parties shall be required to enter into any amendment to the Global Finance Documents (including in relation to any changes to, the taking of, or the release coupled with the retaking of, Transaction Security, in accordance with the Intercreditor Agreement) required by the Company in order to facilitate or reflect any of the matters contemplated by this Clause 2.6. The Global Agent, each other relevant Agent and the Security Agent are each authorised and instructed by each Global Finance Party (without any consent, sanction, authority or further confirmation from them) to execute any such amended or replacement Global Finance Documents (and shall do so on the request of and at the cost of the Company).
- (i) No Agent nor any Financier shall have any obligation to find an Increase Financier and in no event shall any Financier whose Commitment is replaced by an Increase Financier be required to pay or surrender any of the fees received by such Financier prior to such replacement pursuant to the Global Finance Documents.

## 2.7 Incremental Facility

- (a) The Company may, at any time after the Closing Date, confirm that one or more Financiers or any other entity has agreed to commit Incremental Facility Commitments by delivering to the Global Agent an Incremental Facility Commitment Notice duly signed by those parties that have agreed to participate in the relevant Incremental Facility.
- (b) No consent of any Global Finance Party is required to establish an Incremental Facility at any time (other than, in relation to an Incremental Facility, the relevant Incremental Facility Financiers) provided that (unless otherwise agreed by the Majority Financiers) each of the following applicable conditions are met:
  - (i) if an Incremental Facility B is proposed to be subject to amortisation, (i) no such amortisation occurs or is required to occur prior to the Termination Date applicable to Facility B or (ii) the Facility B Financiers are also offered an amortisation profile that reflects the amount of the proposed amortisation profile of the relevant Incremental Facility (and provided that each relevant individual Financier will be deemed to have rejected such offer unless such Financier notifies the Global Agent and the relevant Agent that it has accepted such offer by 11:00 a.m. 15 Business Days after the date of such offer); or
  - (ii) the Incremental Facility ranks *pari passu* with Facility B with respect to the application of proceeds from enforcement of the Transaction Security;
  - (iii) the establishment of the Incremental Facility would not cause the Permitted Incremental Facility Cap to be exceeded;
  - (iv) any Incremental Facility shall be guaranteed and secured by the same (or fewer) Guarantors and the same (or less) Transaction Security as is guaranteeing and securing the other Facilities (except as otherwise may be agreed by the Majority Financiers); and
  - (v) no Event of Default is continuing at the time of, or would result from, the implementation of the Incremental Facility or the incurrence of such Financial Indebtedness.

- (c) Each Incremental Facility Commitment Notice is irrevocable and will not be regarded as having been duly completed unless it specifies:
- (i) the date on which the Incremental Facility Commitments are to become effective and the applicable Availability Period;
  - (ii) the amount and currency of the Incremental Facility Commitments;
  - (iii) the final repayment or payment (as applicable) date for the Incremental Facility Utilisations to be made under the relevant Incremental Facility, being a date not before, in respect of an Incremental Facility B, the Termination Date in relation to Facility B, or in respect of an Incremental Revolving Facility, the Termination Date in relation to the Revolving Facility, in each case, unless the Termination Date in respect of Facility B or the Revolving Facility (as applicable) is amended to be the same as or earlier than that of the relevant Incremental Facility on or prior to the date of implementation of the relevant Incremental Facility;
  - (iv) the name(s) of the Borrower(s) and/or the Purchaser (as applicable) under the relevant Incremental Facility;
  - (v) the amount of the Incremental Facility Commitment allocated to each entity named in the Incremental Facility Commitment Notice as a Financier;
  - (vi) the interest rate or profit rate (as applicable) (and any applicable Margin adjustment mechanism) and/or any interest rate floors, profit rate floors, commission and upfront fees applicable to each Loan or Murabaha Contract to be made available under the relevant Incremental Facility;
  - (vii) the commitment fees or commission payable to the relevant Incremental Facility Financiers and any other fees or commission payable in connection with the provisions of the relevant Incremental Facility;
  - (viii) the purpose of the Incremental Facility Commitments (which must be limited to one or more of Permitted Acquisitions or the Capital Expenditure, working capital and/or general corporate purposes of the Group);
  - (ix) any provisions agreed between the Company and the entity providing the Incremental Facility Commitments relating to fees, commission and conditionality; and
  - (x) whether such Incremental Facility Commitments are designated as Incremental Facility B Commitments and/or Incremental Revolving Facility Commitments.
- (d) Each Incremental Facility Commitment Notice shall be countersigned by each entity to which an Incremental Facility Commitment is allocated. Any entity to which an Incremental Facility Commitment is allocated shall comply with the provisions of Clause 25 (*Changes to the Financiers*) to the extent applicable. By countersigning the Incremental Facility Commitment Notice each such entity agrees to commit the Incremental Facility Commitment set out against its name and in the case of an entity which is not already a Financier, to become a Financier and party to this Agreement and to the Intercreditor Agreement as a Senior Financier.



- (e) Clause 25.6 (*Limitation of Responsibility of Existing Financiers*) shall apply *mutatis mutandis* in this Clause 2.7 in relation to an entity named in the relevant Incremental Facility Commitment Notices as a Financier as if references in that Clause to:
- (i) an “**Existing Financier**” were references to all the Financiers immediately prior to the relevant Incremental Facility Commitment;
  - (ii) the “**New Financier**” were references to each entity named in the relevant Incremental Facility Commitment Notice as a Financier; and
  - (iii) a “**re-transfer**” and “**re assignment**” were references to respectively, a transfer and assignment.
- (f) Upon receipt of a duly completed Incremental Facility Commitment Notice, the Global Agent, each other relevant Agent and the Security Agent shall acknowledge receipt of such notice and, if appropriate, the accession of the relevant Financiers to each of this Agreement and the Intercreditor Agreement and each relevant Agent shall inform the Financiers of such receipt. The Global Agent, each other relevant Agent and the Security Agent are authorised to disclose details of the Incremental Facility Commitment Notice and in relation to any Incremental Facility to the Financiers on request. The Global Agent, each other relevant Agent and the Security Agent shall only be obliged to sign an Incremental Facility Commitment Notice upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the accession of any entity as a Financier.
- (g) The Global Agent shall notify the Company and the Financiers of the changed amounts of the Incremental Facility Commitments promptly after each Incremental Facility Commitment Notice and each Incremental Facility Commitment Cancellation Notice becomes effective.
- (h) The Incremental Facility B Commitments and the Incremental Revolving Facility Commitments shall have the same terms as the relevant Facility B (in the case of an Incremental Facility B) or the Original Revolving Facility (in the case of an Incremental Revolving Facility), other than as to each item required to be specified in the Incremental Facility Commitment Notice provided that the Company and the relevant Financiers of the relevant Incremental Facility Commitment may agree a provision which is inconsistent with this paragraph (h), subject to the prior written consent of the Majority Financiers under Facility B or the Revolving Facility (as applicable, and, in each case, acting reasonably).
- (i) For the purposes of this Agreement, save where it is expressly provided otherwise or the context otherwise requires, any reference to:
- (i) a Facility B Utilisation or the Term Facilities shall be deemed to include an Incremental Facility B Utilisation or an Incremental Facility B (as the case may be); and
  - (ii) a Revolving Facility Loan or the Revolving Facility shall be deemed to include an Incremental Revolving Facility Loan or an Incremental Revolving Facility (as the case may be).
- (j) The Financiers hereby authorise the Security Agent, in the event of delivery by the Parent of an Incremental Facility Commitment Notice, to execute any necessary amendments to the Global

Finance Documents reasonably required to accommodate the establishment of the Incremental Facility (to the extent not prejudicial to the Financiers (taken as a whole)).

- (k) If the other provisions of this Clause 2.7 are met, each Party:
- (i) agrees that Incremental Facility Commitments may be made available to the relevant Borrowers and/or the Purchaser (as applicable) specified in the Incremental Facility Commitment Notice; and
  - (ii) irrevocably authorises and instructs the Global Agent, each other relevant Agent and the Security Agent to sign an Incremental Facility Commitment Notice to record the Incremental Facility Commitments as set out in the relevant Incremental Facility Commitment Notice and the establishment of (or the increase in Incremental Facility Commitments in respect of) the relevant Incremental Facility.
- (l) Upon the relevant Incremental Facility Commitment Notice being signed by the Global Agent, each other relevant Agent, the Security Agent, the Company and the relevant Financiers, the relevant Incremental Facility, and corresponding Incremental Facility Commitments will be established for the purpose of this Agreement and the other Global Finance Documents.
- (m) Each Obligor confirms:
- (i) the authority of the Company to agree and implement the establishment of Incremental Facility Commitments and the relevant Incremental Facility in accordance with the procedures and up to the amounts permitted by this Agreement (as amended or modified from time to time);
  - (ii) that all its guarantee and indemnity obligations recorded in this Agreement and/or in any Accession Deed or other Global Finance Document will extend to include the relevant Incremental Facility Utilisations and other obligations arising under the relevant Incremental Facility subject to any limits as specifically recorded in Clause 19 (*Guarantees and Indemnity*), the relevant Accession Deed or elsewhere in the Global Finance Documents; and
  - (iii) subject to the limitations under this Agreement and under the Transaction Security Documents, for the benefit of the Security Agent, that all Transaction Security created by or purported to be created by such Obligor pursuant to each Transaction Security Document to which it is a party shall (in accordance with the terms of such Transaction Security Document), notwithstanding the establishment of the Incremental Facility:
    - (A) continue in full force and effect; and
    - (B) secure all of the "Secured Obligations" (as defined in the Intercreditor Agreement) (including any such "Secured Obligations" arising under the relevant Incremental Facility).

## 2.8 Global Finance Parties' rights and obligations

- (a) The obligations of each Global Finance Party under the Global Finance Documents are several. Failure by a Global Finance Party to perform its obligations under the Global Finance Documents does not affect the obligations of any other Party under the Global Finance Documents. No Global

Finance Party is responsible for the obligations of any other Global Finance Party under the Global Finance Documents.

- (b) The rights of each Global Finance Party under or in connection with the Global Finance Documents are separate and independent rights and any debt or payment obligation (as applicable) arising under the Global Finance Documents to a Global Finance Party from the Company or an Obligor shall be a separate and independent debt or payment obligation (as applicable).
- (c) A Global Finance Party may, except as otherwise stated in the Global Finance Documents, separately enforce its rights under the Global Finance Documents.

## 2.9 Financier Affiliates

- (a) At any time (after the end of the Certain Funds Period (unless the Company elects, acting in its sole discretion, that this Clause shall apply in respect of any such Utilisation during the Certain Funds Period, in which case, this Clause shall so apply as so elected), a Financier may nominate (by written notice to the Global Agent, each other relevant Agent and the Company) a branch or Affiliate (a “**Designated Affiliate**”) to discharge its obligations to participate in one or more Utilisations (a “**Designated Loan**”) as set out in paragraph (b) below, provided that (where a Financier nominates an Affiliate) the relevant Financier would have been entitled to transfer its commitments and/or participations under a Revolving Facility to that Affiliate pursuant to Clause 25 (*Changes to the Financiers*) without the consent of the Company.
- (b) Any branch or Affiliate nominated by a Financier to participate in a Utilisation shall:
  - (i) participate therein in compliance with the terms of this Agreement;
  - (ii) be entitled, to the extent of its participation, to all the rights and benefits of a Financier under the Global Finance Documents **provided that** such rights and benefits shall be exercised on its behalf by its nominating Financier save where law or regulation requires the branch or Affiliate to do so; and
  - (iii) in the case of an Affiliate, become party to the Intercreditor Agreement as a “Senior Secured Finance Party” by delivery of a duly completed “Creditor/Agent Accession Undertaking” (each as defined in the Intercreditor Agreement).
- (c) Each Financier shall remain liable and responsible for the performance of all obligations assumed by a Designated Affiliate on its behalf under this Clause 2.9 and non-performance of a Financier’s obligations by its Designated Affiliate following a nomination under this Clause 2.9 shall not relieve such Financier from its obligations under this Agreement (but without prejudice to a Financier’s rights under Clause 25 (*Changes to the Financiers*)).
- (d) No member of the Group shall be liable and/or required to pay (i) any amount otherwise required to be paid by the Company or any member of the Group under Clause 14 (*Taxes*) or Clause 15.1 (*Increased Costs*) (arising as a result of laws or regulations in force or known to be coming into force on the date the relevant branch or Affiliate was nominated and/or arising as a result of laws or regulations not then in force but known to be coming into force on such date which will trigger or result in a gross up, indemnity or increased cost or other increased payment under Clause 14 (*Taxes*) or Clause 15.1 (*Increased Costs*)) or (ii) any cash repayment of a Utilisation to the extent

that paragraph (h) of clause 10.2 (*Repayment of Revolving Facility Loans*) of the Conventional Facilities Agreement would otherwise apply to such Utilisation, in each case, in excess of the amount it would have been obliged to pay if that Financier had not nominated its branch or Affiliate to participate in the Facility or, to the extent that such Financier nominated such branch or Affiliate for particular Utilisations, in excess of the amount which it would have been obliged to pay had that Financier continued to make only those particular Utilisations through that branch or Affiliate. Each Financier shall promptly notify the Global Agent and the Company of the Tax jurisdiction from which its branch or Affiliate will participate in the relevant Utilisations and such other information regarding that branch or Affiliate as the Company may reasonably request.

- (e) Any notice or communication to be made to a Designated Affiliate pursuant to Clause 33 (*Notices*):
  - (i) may be served directly upon the branch or Affiliate, at the address supplied to the relevant Agent by the nominating Financier pursuant to its nomination of such branch or Affiliate, where the Financier or the relevant branch or Affiliate requests this in order to mitigate any legal obligation to deduct Tax from any payment to such branch or Affiliate or any payment obligation which might otherwise arise pursuant to Clauses 14 (*Taxes*) and 15 (*Increased Costs*); or
  - (ii) in any other circumstance, may be delivered to the Facility Office of the Financier, who will act as the representative of any Affiliate it nominates for all administrative purposes under this Agreement.
- (f) If a Financier nominates an Affiliate as a Designated Affiliate, that Financier and that Affiliate:
  - (i) will be treated as having a single Commitment (being the Commitment of that Financier) but for all other purposes (other than those referred to in paragraphs (b)(iii) and (e)(i) above and paragraph (ii) below) will be treated as separate Financiers; and
  - (ii) will be regarded as a single Financier for the purpose of:
    - (A) voting in relation to any matter in connection with a Global Finance Document; and
    - (B) compliance with Clause 25.2 (*Assignments and Transfers by Financiers*).
- (g) The Obligors, the Global Agent, each other relevant Agent the Security Agent and the other Global Finance Parties will be entitled to deal only with the designating Financier, except all payments of principal, interest, profit, fees, costs, taxes and commissions in connection with a Designated Loan shall be for the account of the relevant Designated Affiliate. For the avoidance of doubt, this shall not apply to any commitment fee which shall be for the account of the relevant Financier.
- (h) A Financier that has made a nomination in accordance with paragraph (a) above may revoke such nomination in relation to any future Utilisations by giving the Global Agent and each other relevant Agent at least five Business Days' written notice.
- (i) Upon such Designated Affiliate ceasing to be a Designated Affiliate, the Financier will automatically assume (and be deemed to assume without further action by any Party) all rights and obligations previously vested in the Designated Affiliate provided that paragraph (d) above shall apply *mutatis mutandis* with respect to such Financier as at the date it assumes the rights and obligations previously vested in the Designated Affiliate.

- (j) This Clause 2.9 is without prejudice to a Financier's right to transfer its Commitments to an Affiliate under Clause 25 (*Changes to the Financiers*).

**2.10 Obligors' Agent**

- (a) Each Obligor (other than the Company), by its execution of this Agreement or an Accession Deed, irrevocably (to the extent permitted by law) appoints the Company to act severally on its behalf as its agent in relation to the Global Finance Documents and irrevocably (to the extent permitted by law) authorises:

- (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Global Finance Parties and to give all notices and instructions (including, in the case of a Borrower or the Purchaser (as applicable) Requests, to execute on its behalf any Accession Deed, to agree any Incremental Facility Terms and to deliver any Incremental Facility Commitment Notice, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor, notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (ii) each Global Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Global 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 Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication and each Global Finance Party may rely on any action taken by the Company on behalf of that Obligor.

- (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 Global Finance Document on behalf of another Obligor or in connection with any Global Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Global Finance Document shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it (to the extent permitted by law)). 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) For the purpose of this Clause 2.10, (i) each Obligor (to the extent necessary under applicable law) shall grant a specific power of attorney (notarised and apostilled) to the Company and comply with any necessary formalities in connection therewith and (ii) to the extent legally possible, each Obligor (other than the Company) hereby releases the Company from any restrictions on self-dealing and multi-representation under any applicable law, in each case to the extent legally possible for such Obligor.
- (d) Any Accession Deed may include provisions as to the appointment of the Company as Obligors' Agent by any Additional Guarantor or Additional Borrower as required pursuant to any local law requirements (including as to self-dealing and other similar concepts).

- (e) For the avoidance of doubt, no other corporate authorisation, approval or determination is required by the Group in extending any guarantee or indemnity obligations to an Incremental Facility unless, in the Company's sole discretion, such corporate authorisation, approval or determination is considered prudent and/or necessary, or is otherwise required by law.

### 3. PURPOSE

#### 3.1 Purpose

- (a) Each Conventional Facility B1 Borrower shall apply all amounts borrowed by it under Facility B1 (directly or indirectly), and the Purchaser shall apply all amounts received by it in connection with Murabaha Facility B1 (directly or indirectly), in or towards (including by way of funding to, or investment in, any other member of the Group or Neptune Group) financing, refinancing, discharging and/or replacing:
- (i) the consideration or any other amounts payable under or in connection with the Neptune Acquisition Documents or otherwise in connection with the Neptune Acquisition, including, for the avoidance of any doubt, any consideration or any other amounts paid or payable under or in connection with the purchase of Neptune Shares, the Offer, the Scheme and/or the Squeeze-out;
  - (ii) any Interim Facility (to the extent drawn) and existing indebtedness and/or financial arrangements (of whatsoever type) of the Neptune Group, bridging Neptune Group cash or obligations or liabilities and backstopping or providing cash cover in respect of any of the foregoing or any letter of credit, bank guarantee, or other documentary credit (or similar)), together with any related fees, break costs and any foreign exchange mismatches;
  - (iii) any payment, purpose or funding requirement expressly contemplated in the Base Case Model, the Tax Structure Memorandum, the Funds Flow Statement or the Transaction Documents in connection with the Neptune Acquisition;
  - (iv) any fees (including any upfront, structuring, arrangement, commitment or other fees), costs, taxes and/or expenses in connection with any of the matters referred to in paragraphs (i) to (iii) above, the Interim Documents, the Bridge Commitment Documents, and/or the Global Finance Documents including any legal or other service provider costs, security or other registration costs in connection therewith; and/or
  - (v) Closing Overfunding (including maintaining any Closing Overfunding) and/or working capital requirements and/or general corporate purposes of the Group (including any purpose for which any Utilisation of the Original Revolving Facility may be used)
- (b) Each Conventional Facility B2 Borrower shall apply all amounts borrowed by it under Facility B2 (directly or indirectly), and the Purchaser shall apply all amounts received by it in connection with Murabaha Facility B2 (directly or indirectly) in or towards (including by way of funding to, or investment in, any other member of the Group or Moon Group) financing, refinancing, discharging and/or replacing:
- (i) the consideration or any other amounts payable under or in connection with the Moon Acquisition;

- (ii) any existing indebtedness and/or financial arrangements (of whatsoever type) of the Moon Group;
  - (iii) any payment, purpose or funding requirement expressly contemplated in the Base Case Model, the Tax Structure Memorandum, the Funds Flow Statement or the relevant acquisition documents in connection with the Moon Acquisition; and/or
  - (iv) any fees (including any upfront, structuring, arrangement, commitment or other fees), costs, taxes and/or expenses in connection with any of the matters referred to in paragraphs (i) to (iii) above, including any legal or other service provider costs, security or other registration costs in connection therewith.
- (c) Each Revolving Facility Borrower shall apply all amounts drawn by it under the Original Revolving Facility (directly or indirectly) in or towards (including by way of on-lending to, or investment in, any other member of the Group, Neptune Group and/or, in connection with or following the Moon Acquisition, Moon Group) financing, refinancing, replacing and/or rolling over (as applicable):
- (i) the general corporate purposes and/or working capital requirements of the Group (including the financing or refinancing of Capital Expenditure, Permitted Acquisitions (including the Neptune Acquisition), investments (including any joint venture), earn-out, contingent or deferred consideration or interest or working capital or other post-closing purchase price adjustments (howsoever structured) in connection with any acquisition, investment or disposal, financing (including financing the debt service on) or refinancing any indebtedness of the Group (including that of any target or target group acquired after the Closing Date), any Group Initiative, any restructuring (including operational restructurings) organisational requirements of the Group (together with, in each case, any fees (including any M&A-related fee (howsoever described), arrangement fee, up-front fee, OID, structuring or work fee, amendment or waiver fee, ticking fee and any OID (or other fee) flex), costs, taxes and/or expenses incurred in connection therewith or otherwise in connection with any Global Finance Document or other indebtedness of the Group)); and
  - (ii) any other purpose for which any Utilisation of Facility B may be used (including, for the avoidance of any doubt, in respect of any working capital adjustment or other post-closing adjustments),
- but excluding (i) financing the consideration for the acquisition of Neptune Shares and (ii) refinancing indebtedness under any term loan facility or note purchase agreement of the Neptune Group that constitutes Neptune Refinancing Debt.
- (d) Each Borrower or the Purchaser (as applicable) shall apply all amounts borrowed by it under an Incremental Facility towards the purposes specified in the Incremental Facility Commitment Notice relating to the relevant Incremental Facility Commitments including, but not limited to, any purpose contemplated under paragraph (a)(v) of Clause 3.1 (*Purpose*).
- (e) The Purchaser shall only apply amounts received by it in connection with a Murabaha Facility (directly or indirectly) for Sharia compliant purposes and shall not apply any such amount received by it for the payment of interest.

### 3.2 **Monitoring**

No Global Finance Party is bound to monitor or verify the application of any amount utilised or applied pursuant to the Global Finance Documents.

## 4. **CONDITIONS OF UTILISATION**

### 4.1 **Initial conditions precedent**

- (a) In relation to a Utilisation on the Closing Date, the Conventional Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) of the Conventional Facilities Agreement and the Murabaha Investment Agent will only be obliged to comply with its obligations under clause 4.5 (*Purchase of Commodities by the Investment Agent*) of the Murabaha Facility Agreement in relation to any such Utilisation if on or before the Utilisation Date for that Utilisation, each of the Conventional Facility Agent and the Murabaha Investment Agent, the Majority Financiers or the Majority Arrangers has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) (the "**Initial Conditions Precedent**") and (unless specified therein to be in another form or substance or expressly not required to be in form and substance satisfactory to the relevant Agent, the Majority Financiers or the Majority Arrangers or any other Global Finance Party) such documents or other evidence are in all material respects in the agreed form or otherwise in form and substance satisfactory to the relevant Agent, the Majority Financiers or the Majority Arrangers (each acting reasonably and in good faith) or receipt of all or any such documents and/or evidence has been waived by the Global Agent, the Majority Financiers or the Majority Arrangers. Each of the Conventional Facility Agent and the Murabaha Investment Agent (or, as the case may be, the Majority Financiers or the Majority Arrangers) shall notify the other Agents, the Company and the Financiers promptly upon being so satisfied. Other than to the extent that the Majority Lenders notify the Conventional Facility Agent or the Majority Islamic Participants notify the Murabaha Investment Agent (as applicable) in writing to the contrary before the Conventional Facility Agent or the Murabaha Investment Agent (as applicable) gives such notification, the Conventional Lenders and the Islamic Participants authorise (but do not require) the Conventional Facility Agent or the Murabaha Investment Agent, as applicable, to give that notification. Neither the Conventional Facility Agent nor the Murabaha Investment Agent shall be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (b) Any Initial Condition Precedent (or other conditions to, or requirements in respect of, the initial Utilisation of the Facilities (howsoever described)) may be amended or (including the requirement to deliver any Initial Conditions Precedent) waived by the Global Agent, the Majority Financiers or the Majority Arrangers, each acting reasonably and in good faith.
- (c) For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, a Request may be delivered at any time prior to:
- (i) the delivery of (or any waiver of the requirement to deliver) the Initial Conditions Precedent; and/or
  - (ii) any or all such Initial Conditions Precedent being confirmed as having been delivered in a form and substance that is satisfactory.
- (d) Pursuant to the CP Satisfaction Letter, each of the Conventional Facility Agent and the Murabaha Investment Agent, the Majority Financiers and the Majority Arrangers have confirmed that they



have received and are satisfied with all Initial Conditions Precedent and confirm and agree that the Initial Conditions Precedent, and the requirements of paragraph (a) above, are irrevocably satisfied.

#### 4.2 Further conditions precedent (after the Certain Funds Period)

Subject to Clause 4.1 (*Initial conditions precedent*), at any time after the Certain Funds Period, the Conventional Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) of the Conventional Facilities Agreement in relation to a Utilisation and the Murabaha Investment Agent will only be obliged to comply with its obligations under clause 4.5 (*Purchase of Commodities by the Investment Agent*) of the Murabaha Facility Agreement in relation to a proposed Initial Murabaha Contract (other than, for the avoidance of any doubt, a Utilisation to which Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) applies), if on the date of the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Declared Default is continuing or would result from the making of the Rollover Loan; and
- (b) in the case of any other Utilisation, no Event of Default is continuing or would result from the making of the Utilisation.

#### 4.3 Conditions relating to Optional Currencies

(a) A currency will constitute an Optional Currency if it is:

- (i) in the case of the Original Revolving Facility, AED;
- (ii) in the case of an Incremental Facility, it is any currency specified in the Incremental Facility Commitment Notice relating to that Incremental Facility;
- (iii) any other currency readily available in the amount required and freely convertible into the Base Currency in the Relevant Market on the Quotation Day and the Utilisation Date for that Utilisation and which has been approved by the relevant Agent (acting on the instructions of all the Financiers under the relevant Facility (acting reasonably and in good faith); or
- (iv) with the consent of all of the Financiers participating in the relevant Utilisation in the relevant currency and under the Facility concerned (each acting reasonably and in good faith), any other currency.

(b) If by the Specified Time the relevant Agent has received a written request from the Company for a currency to be approved under paragraph (a)(iv) above, the relevant Agent will confirm to the Company by the Specified Time:

- (i) whether or not the Financiers under the relevant Facility have granted their approval; and
- (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

#### 4.4 Utilisations during the Certain Funds Period/Agreed Certain Funds Period

(a) Subject to Clause 4.1 (*Initial conditions precedent*), at any time during the Certain Funds Period, the Conventional Lenders will only be obliged to comply with clause 5.4 (*Lender's participation*) of the Conventional Facilities Agreement and the Murabaha Investment Agent will only be obliged to

comply with its obligations under clause 4.5 (*Purchase of Commodities by the Investment Agent*) of the Murabaha Facility Agreement in relation to a Certain Funds Utilisation if on the proposed Utilisation Date:

- (i) no Change of Control has occurred in respect of which that Financier is entitled to and has exercised its rights under paragraph (a)(ii) of Clause 9.1 (*Exit*) (provided that this shall not in any way affect the obligations of any other Financier which is not entitled to or which has not exercised its rights under paragraph (a)(ii) of Clause 9.1 (*Exit*) in respect of that Change of Control);
  - (ii) it has not, since it became a party to the Global Finance Documents as a Financier, become unlawful in any applicable jurisdiction for that Financier to perform any of its obligations to lend or participate, or to maintain its Commitment or participation in that Certain Funds Utilisation and in respect of which that Financier is entitled to and has exercised its rights under Clause 8.1 (*Illegality*) (provided that any such exercise of rights by any Financier under Clause 8.1 (*Illegality*) shall not in any way affect the obligations of any other Financier);
  - (iii) no Major Event of Default has occurred and is continuing or would result from the making of that Utilisation; and
  - (iv) the Company has, on or prior to the proposed Utilisation Date, confirmed (which such confirmation may be contained in the Request or a certificate provided by the Company to the Global Agent and the relevant Agent) that:
    - (A) in respect of the first Utilisation only, the Scheme Effective Date or Offer Unconditional Date has occurred; and
    - (B) (only in the case of a Utilisation of Facility B for the purposes of financing the acquisition of Neptune Shares pursuant to the Neptune Acquisition as determined by the Company (acting reasonably and in good faith)) the Minimum Equity Condition, calculated as at the proposed Utilisation Date, has been or will be received by the Group on or before the proposed Utilisation Date,unless the Global Agent and each other relevant Agent, the Majority Financiers or the Majority Arrangers have waived the requirement to deliver the same. For the avoidance of any doubt, the confirmations referred to in this paragraph (iv) are not required to be in form and substance satisfactory to any Agent, the Majority Financiers or the Majority Arrangers, provided they are given in writing by the Company in favour of the Global Agent.
- (b) Notwithstanding any other provision of the Global Finance Documents, (except for the reasons set out in paragraph (a) above (provided that if such reason is as a result of any matter or circumstance falling under paragraph (a) of Clause 4.1 (*Initial conditions precedent*) or paragraph (a)(iv) of this Clause 4.4, then in such case the relevant Global Finance Party shall only be entitled to take the action referred to in paragraph (ii) below (and no other action) and it shall only be entitled to take that action until such time (if any) as the relevant document or evidence referred to in Clause 4.1 (*Initial conditions precedent*) or, as applicable, confirmation pursuant to such paragraph (a)(iv) of this Clause 4.4 has been (as applicable) provided, delivered, satisfied or

waived by the Global Agent and each other relevant Agent, the Majority Financiers or the Majority Arrangers)), until after the end of the Certain Funds Period, no Global Finance Party shall:

- (i) cancel (or seek to cancel) any of its Commitments (whether in whole or part);
- (ii) refuse (or seek to refuse) to participate in the making of a Certain Funds Utilisation (or take any similar or analogous step or action);
- (iii) exercise (or seek to exercise) any right of netting, set-off or counterclaim in respect of any Certain Funds Utilisation (or any other payment or amount under any Global Finance Document or any other agreement);
- (iv) exercise (or seek to exercise) any rights (i) to cancel or accelerate (including placing any amount on demand, making any demand or exercising any rights of cancellation) or to otherwise cause, demand, claim or enforce cancellation, repayment or early payment of, any Commitment, participation, Utilisation or any other amount or sum under any Global Finance Document (ii) to declare that cash cover in respect of each or any outstanding Letter of Credit or Ancillary Facility is payable on demand or (iii) under or in connection with the Intercreditor Agreement or any Transaction Security Document to enforce (or give instructions to enforce) any Transaction Security (or exercise any similar right or remedy, including any under any other Global Finance Document);
- (v) rescind, terminate or cancel (or seek to rescind, terminate or cancel) any Global Finance Document (or any term or provision thereof) or Certain Funds Utilisation or take (or seek to take) any similar or analogous step or action or exercise any similar right or remedy in respect of any Global Finance Document or any other agreement; or
- (vi) take (or seek to take) any other action or step, or to enforce or invoke (or seek to enforce or invoke) any other claim, right, benefit or remedy (including any which might be available as a matter of general law) or take any action that might (directly or indirectly) prevent, limit, frustrate, restrict, condition and/or delay the making, or reduce the principal amount, of any Certain Funds Utilisation,

unless the entitlement to take that action arises solely as a result of any matter expressly contemplated by paragraphs (a)(i) to (a)(iii) of this Clause 4.4).

For the avoidance of doubt, immediately upon the expiry of the Certain Funds Period, (i) all such rights, remedies and entitlements shall be available to the Global Finance Parties (to the extent that the relevant Global Finance Party is then entitled to take any such action) notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

- (c) If each of the Global Agent and each other relevant Agent has been notified accordingly by the Company on not less than three Business Days' notice, the Revolving Facility Commitments under a Revolving Facility or the Incremental Facility Commitments under an Incremental Facility shall, in connection with any Permitted Acquisition, investment, Capital Expenditure, refinancing or other transaction permitted by this Agreement required (as determined by the Company, acting reasonably) to be undertaken on a certain funds basis, be made available (and may be utilised, including, as applicable, by way of a Letter of Credit) on a certain funds basis for a certain funds period and on such terms as so notified by the Company (provided that such period does not

exceed six Months (plus 20 Business Days) from the later of (i) the date of the relevant notice and (ii) the date of any legally binding commitment entered into in respect of the relevant transaction (or such longer period as agreed between the Company and the Majority Financiers participating in the relevant Revolving Facility Utilisation or Incremental Facility Utilisation, as applicable) and, in any event, not exceeding the Termination Date applicable to the Revolving Facility or the Incremental Facility (as applicable)). For the avoidance of any doubt, any such subsequent certain funds period in respect of the Revolving Facility may commence during or immediately upon the expiry of the initial Certain Funds Period applicable to the Revolving Facility in connection with the Neptune Acquisition.

For purposes of this paragraph (c), "**on a certain funds basis**" shall mean (unless otherwise agreed between the Company and the Majority Lenders participating in the relevant Revolving Facility Utilisation) on a basis, *mutatis mutandis*, such that is in all materials respects consistent with paragraphs (a) (to the extent so specified by the Company) and paragraph (b) above, save that the Major Events of Default, Major Undertakings and Major Representations will only apply in respect of the relevant Borrower of the relevant Revolving Facility specified by the Company in the relevant notice to the Conventional Facility Agent (and no other person (including the Parent) will be subject to any Major Events of Default, Major Undertakings, Major Representations or any other certain funds "outs" or "drawstops" (or similar)).

## 5. UTILISATION

### 5.1 Delivery of Requests

- (a) A Borrower or the Purchaser (as applicable) (or the Company on its behalf) may utilise a Facility by delivery to the relevant Agent of a duly completed Request not later than the Specified Time (or such other date and/or time as may be agreed between the Company and the relevant Agent (acting reasonably)).
- (b) Subject to paragraph (d) below, a Request may not be delivered in respect of a Utilisation of Facility B1, unless a Request is delivered at the same time in respect of Conventional Facility B1, the Murabaha B1 Long Facility and the Murabaha B1 Short Facility (but only in relation to an Initial Murabaha B1 Short Facility Contract (as defined in the Murabaha Facility Agreement)).
- (c) Subject to paragraph (d) below, a Request may not be delivered in respect of a Utilisation of Facility B2, unless a Request is delivered at the same time in respect of Conventional Facility B2, the Murabaha B2 Long Facility and the Murabaha B2 Short Facility (but only in relation to an Initial Murabaha B2 Short Facility Contract (as defined in the Murabaha Facility Agreement)).
- (d) Requests may be delivered in respect of Subsequent Murabaha B1 Short Facility Contracts and Subsequent Murabaha B2 Short Facility Contracts in accordance with the Murabaha Facility Agreement.

### 5.2 Completion of a Request

- (a) Each Request shall be revocable in accordance with paragraph (b) below and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) in respect of a Conventional Facility, it identifies the relevant Borrower;

- (iii) the proposed Utilisation Date:
  - (A) in respect of a Conventional Facility, is a Business Day within the Availability Period applicable to that Facility; and
  - (B) in respect of a Murabaha Facility, complies with clause 4.3 (*Value Date*) of the Murabaha Facility Agreement;
- (iv) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (v) the proposed Interest Period or Murabaha Contract Period, as applicable, complies with Clause 12 (*Interest Periods and Murabaha Contract Periods*);
- (vi) in respect of a Murabaha Facility, it complies with clause 4.2 (*Completion of a Notice of Request to Purchase*) of the Murabaha Facility Agreement; and
- (vii)
  - (A) in the case of a Utilisation Request for a Term Loan, it specifies a principal amount that bears the same proportion to the Total Conventional Facility B Commitments as the principal amount specified in the Notice of Request to Purchase then delivered in respect of the Murabaha Facility bears to the Total Murabaha Commitments; and
  - (B) in the case of a Notice of Request to Purchase (other than in respect of a Subsequent Murabaha B1 Short Facility Contract or a Subsequent Murabaha B2 Short Facility Contract, and considering each Murabaha Long Facility Contract in aggregate with its corresponding Murabaha Short Facility Contract), it specifies a principal amount that bears the same proportion to the Total Murabaha Commitments as the principal amount specified in the Utilisation Request for a Term Loan then delivered bears to the Total Conventional Facility B Commitments.
- (b) A Request delivered prior to the Scheme Effective Date or Offer Unconditional Date may be expressly conditional upon the occurrence of the Scheme Effective Date or Offer Unconditional Date (as applicable).

### 5.3 **Currency and amount**

- (a) The currency specified in a Request must be:
  - (i) in relation to the Original Revolving Facility, the Base Currency or an Optional Currency; and
  - (ii) in relation to Facility B, the Base Currency.
- (b) The amount of a proposed Utilisation of a Term Facility must:
  - (i) in respect of a Conventional Facility, be in a minimum amount of USD 250,000 or, if less, the Available Facility and in any event such that its Base Currency Amount is less than or equal to the Available Facility; and
  - (ii) in respect of a Murabaha Facility, comply with the provisions of clause 4.4 (*Purchase Price*) of the Murabaha Facility Agreement.

- (c) The amount of a proposed Revolving Facility Utilisation must be in a minimum amount of USD 250,000 for Revolving Facility Utilisations in the Base Currency or its equivalent in the relevant currency for Revolving Facility Utilisations in an Optional Currency or, if less, the Available Facility.

#### 5.4 **Limitations on Utilisations**

- (a) Unless otherwise agreed by the Conventional Facility Agent, the Original Revolving Facility may not be utilised unless Facility B1 has been utilised in full or will, on the same date, be utilised in full and either:
- (i) Facility B2 has also been utilised in full or will, on the same date, be utilised in full; or
  - (ii) the proceeds of the relevant Revolving Facility Utilisation will not be applied towards the financing of the Moon Acquisition.
- (b) An Incremental Facility may only be utilised after the requirements of Clause 2.7 (*Incremental Facility*) have been met.

#### 5.5 **Cancellation of Commitment**

- (a) The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.
- (b) The Original Revolving Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the Original Revolving Facility or if the Closing Date has not occurred on or prior to the end of the Certain Funds Period, at the end of the Certain Funds Period.
- (c) The Incremental Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for the relevant Incremental Facility.

### 6. **OPTIONAL CURRENCIES**

A Borrower (or the Company on its behalf) shall select the currency of a Utilisation in a Utilisation Request in accordance with this Agreement and clause 8 (*Optional Currencies*) of the Conventional Facilities Agreement.

### 7. **REPAYMENT AND PAYMENT**

#### 7.1 **Repayment of Loans**

Each Borrower shall repay the Loans made to it in accordance with the Conventional Facilities Agreement.

#### 7.2 **Payment of Deferred Payment Prices**

The Purchaser shall pay the Deferred Payment Prices in respect of each Murabaha Contract in accordance with the Murabaha Facility Agreements.

### 8. **ILLEGALITY, EARLY PAYMENT AND CANCELLATION**

#### 8.1 **Illegality**

- (a) If after the date of this Agreement (or, if later, the date the relevant Financier became a Party as a Financier) it becomes unlawful in any applicable jurisdiction for a Financier to perform any of its obligations as contemplated by the Global Finance Documents or to fund, issue or maintain its Commitment or participation in any Utilisation:

- (i) that Financier, shall promptly notify the Conventional Facility Agent or the Murabaha Investment Agent (as applicable) and the relevant Agent shall promptly notify the Global Agent upon becoming aware of that event setting out the details thereof (such notice a "**Financier Illegality Notice**");
- (ii) upon the Global Agent notifying the Company, the Commitment of that Financier will be immediately cancelled; and
- (iii) to the extent that Financier's participation in the relevant outstanding Loans and the relevant outstanding Murabaha Contracts has not been transferred pursuant to Clause 37.5 (*Replacement of Financier*), each Borrower and the Purchaser (as applicable) shall make an early payment of that Financier's Participation Amount in respect of the Utilisations made to that Borrower or the Purchaser (as applicable) on the earlier of:
  - (A) the next Payment Date; and
  - (B) the date specified by the Financier in the Financier Illegality Notice (being no earlier than the last day of any applicable grace period permitted by law),

and that Financier's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid (or paid, as applicable).

- (b) Any early payment made under this Clause 8.1 in respect of an Islamic Participant must be in respect of a Murabaha Long Facility Contract and the associated Murabaha Short Facility Contract at the same time
- (c) Each Financier confirms on the date that it becomes a Financier that, based on information available to it and applicable laws in effect at that time, it is not unlawful in any applicable jurisdiction for that Financier to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its Commitment or participation in any Utilisation.

## 8.2 **Illegality in relation to Issuing Bank**

If after the date of this Agreement (or, if later, the date on which the relevant Letter of Credit is issued) it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit, then:

- (a) that Issuing Bank shall promptly notify the Conventional Facility Agent and the Conventional Facility Agent shall promptly notify the Global Agent upon becoming aware of that event, setting out the details thereof (such notice an "**Issuing Bank Illegality Notice**");
- (b) upon the Global Agent notifying the Company, the Issuing Bank shall not be obliged to issue any Letter of Credit to the extent that such issuance would be unlawful;
- (c) to the extent it would be unlawful for any such Letter of Credit to remain outstanding, the Company shall procure that the relevant Borrower shall use all reasonable endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time on the date specified by the Issuing Bank in the Issuing Bank Illegality Notice (being no earlier than the last day of any applicable grace period permitted by law); and

- (d) unless any other Conventional Lender is or has agreed to be an Issuing Bank pursuant to the terms of this Agreement, the Revolving Facility under which the relevant Conventional Lender was the Issuing Bank shall cease to be available for the issue of Letters of Credit until such time as another Conventional Lender agrees to be an Issuing Bank.

Each Issuing Bank confirms on the date that it becomes a party to this Agreement in such capacity that, based on information available to it and applicable laws in effect at that time, it is not unlawful in any applicable jurisdiction for it to issue or leave outstanding any Letter of Credit.

### 8.3 **Voluntary cancellation**

- (a) The Company may by notice to each Agent:
  - (i) immediately cancel the whole or any part of an Available Facility provided that, in respect of any cancellation after the Closing Date, such notice (such notice being irrevocable) is received by each Agent not less than five (5) Business Days prior to the date of such cancellation (or such shorter period as each Agent and the Company may agree);
  - (ii) immediately upon any early payment in accordance with Clause 8.4 (*Voluntary early payment of Facility B Utilisations*) cancel the whole or any part of any Available Facility under the relevant Term Facility; or
  - (iii) immediately upon any prepayment in accordance with Clause 8.5 (*Voluntary prepayment of Revolving Facility Utilisations*) cancel the whole or any part of any Revolving Facility Commitments subject to such prepayment.
- (b) The amount of any partial cancellation of an Available Facility must:
  - (i) if a Term Facility, be a minimum of USD 250,000 or, if less, the Available Facility; or
  - (ii) if a Revolving Facility, be in a minimum of USD 100,000 or, if less, the Available Facility.
- (c) Any cancellation under this Clause 8.3 shall reduce the Commitments of the Financiers rateably under that Facility.

### 8.4 **Voluntary early payment of Facility B Utilisations**

- (a) A Borrower to which a Term Loan has been made, together with the Purchaser may, in their sole discretion, if they or the Company notify each Agent (which notice is irrevocable) not less than five (5) Business Days prior to the proposed early payment date in respect of a Term Loan or a Deferred Payment Price (or such shorter period as each Agent may agree) make a voluntary early payment for application against all then outstanding Term Loans and Deferred Payment Prices of Murabaha Contracts in an amount that reduces the aggregate amount of:
  - (i) the outstanding Term Loans;
  - (ii) the Purchase Price component of the Deferred Payment Price of the outstanding Murabaha Contracts relating to the Murabaha Facility B1; and
  - (iii) the Purchase Price component of the outstanding Deferred Payment Price of the outstanding Murabaha Contracts relating to the Murabaha Facility B2),on a pro rata basis by a minimum of USD 250,000 (or its equivalent) or, if less, the Available Facility.



- (b) The voluntary early payments referred to in paragraph (a) above shall be paid by the relevant Borrower or the Purchaser (as applicable) to:
- (i) the Conventional Facility Agent; and
  - (ii) the Murabaha Investment Agent,

for application towards the payment and discharge of:

- (A) each Term Loan under the Conventional Facilities Agreement; and
- (B) each Purchase Price component of the Deferred Payment Price of the relevant outstanding Murabaha Contracts under the Murabaha Facility Agreement,

and the amount of such voluntary early payment must be applied to reduce each Term Loan and (subject to Clause 10.2 (Murabaha Facilities)) each relevant outstanding Murabaha Contract by the same proportion and the relevant Borrower or the Purchaser (as applicable) shall provide to each Agent reasonable detail of the calculation of such amounts.

#### **8.5 Voluntary prepayment of Revolving Facility Utilisations**

A Borrower to which a Revolving Facility Utilisation has been made may in its sole discretion if it or the Company gives the Conventional Facility Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders under the Revolving Facility (acting reasonably) may agree) prior notice prepay the whole or any part of a Revolving Facility Utilisation (but if in part, being an amount that reduces the amount of the Revolving Facility Utilisation) by a minimum amount of USD 100,000 for Utilisation in USD (and for Utilisation in any other currency, an amount equivalent to USD 100,000). The Company or a Borrower may elect to apply a prepayment of any Revolving Facility Utilisation of any Revolving Facility Borrower and (in each case) made under this Clause 8.5 against any or all of the Revolving Facility Utilisations under that Revolving Facility and in such proportions as it selects in its sole discretion (on a pro rata basis as between the relevant commitments/participations of the relevant Financiers in the Revolving Facility Utilisation so elected to be prepaid by the Company or, as applicable, the relevant Borrower).

#### **8.6 Right of cancellation and repayment in relation to a single Financier or Issuing Bank**

- (a) If:
- (i) any sum payable to any Financier or Issuing Bank by the Company or an Obligor is required to be increased under Clause 14.2 (*Tax Gross-Up*);
  - (ii) any Financier or Issuing Bank claims indemnification or payment from the Company or an Obligor under Clause 14.3 (*Tax Indemnity*) or Clause 15.1 (*Increased Costs*); or
  - (iii) any Financier requests payment from the Company or any Obligor based on the occurrence of a Market Disruption Event,

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Conventional Facility Agent or the Murabaha Investment Agent, as applicable, notice:

- (A) (if such circumstances relate to a Financier) of cancellation of the Commitment(s) of that Financier and its intention to procure the early payment of that Financier's Participation Amount; or
  - (B) (if such circumstances relate to the Issuing Bank) of repayment of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Financier, the Available Commitment(s) of that Financier shall immediately be reduced to zero.
- (c) On the next Payment Date which occurs after the Company has given notice under paragraph (a) above in relation to a Financier (or, if earlier, the date specified by the Company in that notice), either (i) each Borrower to which a Utilisation is outstanding or the Purchaser in respect of an outstanding Murabaha Contract shall make an early payment of that Financier's Participation Amount together with all interest and other amounts accrued under the Global Finance Documents or (ii) the Company may, on 10 Business Days' prior notice to the relevant Agent and the Financier (or such shorter period as agreed by the relevant Agent and the Company), replace that Financier by requiring that Financier to (and that Financier shall to the extent permitted by law) assign and transfer all of its rights and obligation under the Global Finance Documents pursuant to Clause 25 (*Changes to the Financiers*) to a financial institution identified by the Company which confirms its willingness to assume the obligation of that Financier for a purchase price in cash equal to the outstanding Participation Amount of that Financier plus accrued (but unpaid) interest or profit (as applicable).

**8.7 Right of cancellation in relation to a Defaulting Financier, Non-Consenting Financier or Non Acceptable L/C Lender**

If any Financier becomes a Defaulting Financier, a Non-Consenting Financier or a Non Acceptable L/C Lender, the Company may, at any time whilst the Financier continues to be a Defaulting Financier, a Non-Consenting Financier or a Non Acceptable L/C Lender (as applicable) cancel on three Business Days' notice (or such shorter period as the Global Agent, each other relevant Agent and the Company may agree) some or all of the Available Commitment of that Financier.

**8.8 Right of prepayment of a Defaulting Financier, Non-Consenting Financier or Non Acceptable L/C Lender**

If any Financier becomes a Defaulting Financier, Non-Consenting Financier or a Non Acceptable L/C Lender, the Company may within 90 days after the date on which that Financier is deemed to be a Defaulting Financier, Non-Consenting Financier or a Non Acceptable L/C Lender (as applicable) cancel the Commitments of such Defaulting Financier, Non-Consenting Financier or a Non Acceptable L/C Lender and prepay all (but not part only) of the Participation Amounts of such Defaulting Financier, Non-Consenting Financier or Non Acceptable L/C Lender together with all interest and other amounts accrued under the Global Finance Documents in respect of such Commitment and Participation Amounts.

## 9. MANDATORY EARLY PAYMENT

### 9.1 Exit

- (a) If a Change of Control occurs (unless waived by the Majority Financiers prior to each Financier's entitlement under paragraph (ii) below arising in respect thereof):
- (i) the Company shall promptly notify the Global Agent upon becoming aware of that (or at the Company's election in anticipation of any) Change of Control (such notice, a "**CoC Notice**") and the Global Agent shall promptly notify each other Agent, the Financiers and any Issuing Banks accordingly; and
  - (ii) provided the Company has provided a CoC Notice to the Global Agent, either (at the election of the Company, acting in its sole and absolute discretion, as specified by the Company in the CoC Notice):
    - (A) each Financier shall (unless that Financier has agreed in advance not to do so) be entitled to cancel its Commitments and require early payment of all of its Participation Amounts and payment of all other amounts owing to it under the Global Finance Documents and each Issuing Bank shall be entitled to require that any Letters of Credit issued by it are prepaid and cancelled, in each case by notification to the Global Agent within 15 Business Days of the Company notifying the Global Agent of the Change of Control (such 15 Business Day period, the "**CoC Notice Period**"), whereupon:
      - I. the unutilised Commitments of such Financier shall, by no less than five Business Days' prior notice to the Company (or in the case of a Change of Control which results from a Listing, on the settlement date in respect of that Listing), be cancelled (provided that no such cancellation may take effect at any time prior to the occurrence of the relevant Change of Control) and such Financier shall have no obligation to fund or participate in any new Utilisation or utilisation of an Ancillary Facility or Fronted Ancillary Facility (in each case other than (x) a Rollover Loan, (y) a Letter of Credit issued or to be issued pursuant to a Renewal Request or (z) a Utilisation or utilisation of an Ancillary Facility or Fronted Ancillary Facility to refinance any amount falling due under an Ancillary Facility or a Fronted Ancillary Facility) and, in the case of an Issuing Bank, such Issuing Bank shall have no obligation to issue any new Letter of Credit; and
      - II. on the date specified by such Financier (provided that such date so specified is not earlier than the date which is the later of (x) the date falling 10 Business Days after (but excluding) the last day of the CoC Notice Period and (y) the date on which the Change of Control occurs), all outstanding Participation Amounts of such Financier and Ancillary Outstandings of such Financier (and/or, in the case of an Issuing Bank, all Letters of Credit provided by that Issuing Bank), together with accrued interest or Profit Amount (as applicable), and all other amounts accrued or owing to such Financier (or such Issuing Bank, as the case may be) under

the Global Finance Documents shall become immediately due and payable (or in the case of a Change of Control which results from a Listing, on the settlement date in respect of that Listing), and the relevant Borrower or the Purchaser (as applicable) will immediately make an early payment of all Participation Amounts and other amounts provided by or owing to that Financier and procure that any cash collateral provided by that Financier is released and (unless otherwise agreed between the Company and that Financier) any Letter of Credit, Ancillary Facility or Fronted Ancillary Facility provided by that Financier (or such Issuing Bank, as the case may be) is prepaid and cancelled,

and, for the avoidance of any doubt, without the prior consent of the Company (acting in its sole and absolute discretion), a Financier cannot exercise cancellation rights under (I) without also exercising early payment rights under (II); or

- (B) on a date specified by the Company (being a date no later than the date falling five Business Days after the occurrence of the relevant Change of Control), all unutilised and available Commitments of each Financier shall be immediately cancelled and all Participation Amounts, Ancillary Outstandings and Letters of Credit shall become immediately due and payable together with accrued interest and any other amounts accrued to each Financier under the relevant Global Finance Documents

If the Company elects that paragraph (A) above shall apply, and a Financier or Issuing Bank has not notified the Global Agent in accordance with the provisions of such paragraph (A) within the time frame set out therein, that Financier shall not be able to require the release of any cash collateral held in respect of its Commitments, cancel its Commitments or require early payment of all or any part of its Participation Amount and the early payment of any other amount owing to it under the Global Finance Document and an Issuing Bank shall not be entitled to require that any Letter of Credit issued by it are repaid and cancelled or require the release of any cash collateral, in each case pursuant to such paragraph (A) of this Clause 9.1.

If the Company elects that paragraph (A) above shall apply, to the extent that any Financier or Issuing Bank does not exercise its right to cancellation and early payment pursuant to that paragraph (or a Financier or Issuing Bank has not notified the Global Agent in accordance with the provisions of such paragraph (A) within the time frame set out therein), then the relevant Person(s) specified in the CoC Notice (or, if no such Persons are specified, any Person who is a direct or indirect shareholder of the relevant entity acquired pursuant to such Change of Control) shall be deemed to fall within the definition of Sponsor and that term and the Global Finance Documents shall be interpreted and construed accordingly.

Notwithstanding anything to the contrary, the Company may elect to deliver any CoC Notice in advance of, or in anticipation of, the occurrence of any Change of Control. Any CoC Notice delivered prior to the occurrence of a Change of Control may be revocable, and/or may be conditional upon the Change of Control occurring.

- (b) For the purposes of this Clause 9.1:

- (i) **"Change of Control"** means:
- (A) the Investors and the Abu Dhabi Affiliated Co-investors (together) cease to control (directly or indirectly) more than 50 per cent. of the issued voting share capital of the Parent;
  - (B) the Investors cease to control the right to appoint the composition of the majority of the board of directors of the Parent;
  - (C) the Parent ceases to directly own 100 per cent. of the issued share capital of the Company; or
  - (D) there has been a sale, lease, transfer, conveyance or other disposition (other than by way of merger, amalgamation, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Group taken as a whole to a person, other than another member of the Group or one or more Permitted Holders;

provided that, notwithstanding the foregoing, no such event or circumstance shall constitute a Change of Control (i) where that event or circumstance has been approved by the Majority Financiers or (ii) as a result of any step, circumstance, payment, event, reorganisation or transaction expressly contemplated by the Transaction Documents, the Funds Flow Statement, the Tax Structure Memorandum (other than any exit steps described therein), the Reports and any intermediate steps or actions necessary to implement the steps, circumstances, payments or transactions described in each such document (including, for the avoidance of any doubt, any roll-up of any investment being rolled over or replaced in connection with the Neptune Acquisition); and

- (ii) **"Abu Dhabi Affiliated Co-investors"** means persons controlled by the Government of Abu Dhabi and members of the Ruling Family of Abu Dhabi.

**9.2 Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds**

- (a) Subject to paragraph (c) below, the Company shall ensure that, after the last day of the Certain Funds Period, an amount equal to any Listing Proceeds, Disposal Proceeds and/or Relevant Debt Incurrence Proceeds received by the Group at any time after the last day of the Certain Funds Period is applied in early payment of the Facilities in a manner contemplated by Clause 9.3 (*Application of early payments*).
- (b) Subject to paragraph (c) below, the Company shall ensure that, for any Financial Year of the Company, commencing with the first full Financial Year after the Closing Date, an amount equal to the Excess Cashflow Proceeds (with such amount to be set out the Annual Compliance Certificate in respect of such Financial Year) generated by the Group in respect of such period is applied in early payment of the Facilities in a manner contemplated by Clause 9.3 (*Application of early payments*), which early payment shall be made either (i) within 20 Business Days after the last date permitted under this Agreement for delivery of the relevant Annual Compliance Certificate or (b) if later, in relation to the early payment of a Utilisation, on the next occurring Payment Date relating to that Utilisation.

- (c) Any obligation to make an early payment pursuant to paragraph (a) or paragraph (b) above (whether in whole or part) shall be subject to (and shall only be required to the extent permitted or able to be achieved having regard to) permissibility under applicable local law and/or regulation (including with respect to capital constraints or restrictions in connection with any upstreaming, distribution or repatriation) and any matter that the Company determines could reasonably be expected to give rise to personal liability on the part of any directors (or similar office holder) of any member of the Group or to liability of any member of the Group (and/or any similar matters). In addition, and without limiting the foregoing, there shall be no obligation to make any early payment pursuant to, or in connection with, paragraph (a) or paragraph (b) above (whether in whole or part) if the Company determines that the cost to the Group (whosoever arising, including as a result of any applicable potential taxes) could reasonably be expected to be equal to (or more than) 5 per cent. of the amount required to be prepaid as a result of making (or moving the relevant funds (including on an intra-Group basis) to make) such payment. Any early payment shall be net of such costs, including any associated break costs or hedging termination costs.

### 9.3 Application of early payments

- (a) Early payments contemplated to be made in an amount equal to any Excess Cashflow, Listing Proceeds, Disposal Proceeds and/or any Relevant Debt Incurrence Proceeds in respect of any Relevant Debt Incurrence falling under (i) of the definition of Relevant Debt Incurrence, in each case, pursuant to paragraph (a) of Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*), shall be applied in early payment as follows:
- (i) first, against the then outstanding Term Loans and the Deferred Payment Prices for the then outstanding Murabaha Contracts (on a pro rata basis as between those Term Loans and the Purchase Price component of those Deferred Payment Prices, and the relevant commitments/participations of the Financiers in such Term Loans and Deferred Payment Prices) until all such Term Loans and Deferred Payment Prices have been paid in full;
  - (ii) second, in (permanent) cancellation of the then Available Commitments of the Conventional Lenders under the Revolving Facilities and/or Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments (on a pro rata basis as between the relevant commitments of the Conventional Lenders under the Revolving Facilities and/or Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments) until all such available and undrawn commitments have been cancelled in full; and
  - (iii) third, against the then outstanding Utilisations and/or Ancillary Outstandings under the Revolving Facilities (on a pro rata basis as between those Utilisations and/or Ancillary Outstandings, and the relevant commitments/participations of the Conventional Lenders in such Utilisations and/or Ancillary Outstandings) until all such Utilisations and/or Ancillary Outstandings have been repaid in full and the corresponding commitments have been (permanently) cancelled in full.
- (b) Early payments contemplated to be made in an amount equal to any Relevant Debt Incurrence Proceeds in respect of any Relevant Debt Incurrence falling under paragraph (ii) of the definition of Relevant Debt Incurrence, in each case, pursuant to paragraph (a) of Clause 9.2 (*Disposal*

*Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*), shall be applied in early payment as follows:

- (i) first, against the then outstanding Utilisations and/or Ancillary Outstandings under the Revolving Facilities (on a pro rata basis as between those Utilisations and/or Ancillary Outstandings, and the relevant commitments/participations of the Financiers in such Utilisations and/or Ancillary Outstandings) until all such Utilisations and/or Ancillary Outstandings have been repaid in full and the corresponding commitments have been (permanently) cancelled in full; and
  - (ii) second, in (permanent) cancellation of the then Available Commitments of the Lenders under the Revolving Facilities and/or Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments (on a pro rata basis as between the relevant commitments of the Lenders under the Revolving Facilities and/or Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments) until all such available and undrawn commitments have been cancelled in full.
- (c) If any Facility B Utilisations are paid early in accordance with Clause 8.4 (*Voluntary early payment of Facility B Utilisations*), then:
- (i) the Company may, by giving not less than three Business Days' notice to each relevant Agent, select in the case of Facility B which Borrower(s) or the Purchaser (as applicable) under Facility B shall effect early payment of a Utilisation; or
  - (ii) if the Company does not make an election under this paragraph, each Borrower or the Purchaser (as applicable) shall effect such repayment on a pro rata basis.
- (d) The Obligors' Agent may elect that any early payment to be made pursuant to Clause 9.2 (*Disposal Proceeds, Listing Proceeds and Relevant Debt Incurrence Proceeds*) be applied in early payment in accordance with this Agreement on the next occurring Payment Date relating to the relevant Utilisation(s) to be paid early.

#### 9.4 **Right to Refuse Early Payment**

- (a) The Global Agent shall notify the Financiers as soon as practicable of any proposed early payment of Facility B Utilisations under Clause 8.4 (*Voluntary early payment of Facility B Utilisations*) or Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*).
- (b) If a Facility B Financier (as applicable) (a "**Waiving Financier**") to which the proposed payment under Clause 8.4 (*Voluntary early payment of Facility B Utilisations*) or Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*) would otherwise be made, gives notice to the Global Agent and each other relevant Agent by 9:30 a.m. two Business Days prior to the date of the proposed early payment referred to in paragraph (a) above is to be made, that Financier will waive its right to receive such early payment to the extent specified in its notice, the amount in respect of which that Waiving Financier has waived its right to early payment (the "**Waived Amount**") shall be retained by the Group (and may be applied for any purpose not prohibited by the terms of the Global Finance Documents) or, at the election of the Company (such election to be communicated to the Global Agent and each other relevant Agent in writing by no later than 9.30am on the Business Day prior to the date on

which a early payment referred to in paragraph (a) above is to be made), prepaid to the relevant Waiving Financiers.

- (c) For the avoidance of doubt, no Agent shall be responsible for administering payments to lenders, participants and/or creditors in respect of any Financial Indebtedness other than in respect of the Facilities.

#### 9.5 **Excluded proceeds**

Any proceeds of a Listing, Permitted Disposal and Relevant Debt Incurrence shall, pending early payment under the provisions of this Agreement (and without prejudice to any potential future early payment obligation), be available for use by the Group for any purposes not prohibited by this Agreement. For the avoidance of any doubt, there shall be no requirement for any proceeds or other amounts pending early payment or other application to be paid into or held in an early payment or secured or blocked or any other account.

#### 9.6 **Murabaha Short Facility Contracts**

The Purchaser shall make an early payment of the relevant Murabaha Contracts in accordance with the provisions of clauses 5.1 (*Early payment – Murabaha B1 Short Facility Contract*) and 5.2 (*Early payment – Murabaha B2 Short Facility Contract*) of the Murabaha Facility Agreement.

### 10. **RESTRICTIONS**

#### 10.1 **Notices of Cancellation or Early Payment**

Any notice of cancellation, early payment, authorisation or other election given by any Party under Clause 8 (*Illegality, Early Payment and Cancellation*) or Clause 9.4 (*Right to Refuse Early Payment*) shall (subject to the terms of those Clauses), unless a contrary indication appears in any Global Finance Document, specify the date or dates upon which the relevant cancellation or early payment is to be made and the amount of that cancellation or early payment.

#### 10.2 **Murabaha Facilities**

- (a) Any early payment made under Clause 8 (*Illegality, Early Payment and Cancellation*) or Clause 9 (*Mandatory Early Payment*) must:
- (i) in respect of a Murabaha Facility B1:
    - (A) be made on the same day in respect of each Murabaha Facility B1; and
    - (B) be applied pro rata across each Murabaha Facility B1 such that the amount of the early payment of the relevant Murabaha Contracts under the Murabaha B1 Long Facility (as defined in the Murabaha Facility Agreement) bears the same proportion to the Total Murabaha B1 Long Facility Commitments (as defined in the Murabaha Facility Agreement) as the amount of the early payment of the relevant Murabaha Contract under the Murabaha B1 Short Facility (as defined in the Murabaha Facility Agreement) bears to the Total Murabaha B1 Short Facility Commitments (as defined in the Murabaha Facility Agreement); and
  - (ii) in respect of a Murabaha Facility B2:
    - (A) be made on the same day in respect of each Murabaha Facility B2; and



- (B) be applied pro rata across each Murabaha Facility B2 such that the amount of the early payment of the relevant Murabaha Contracts under the Murabaha B2 Long Facility (as defined in the Murabaha Facility Agreement) bears the same proportion to the Total Murabaha B2 Long Facility Commitments (as defined in the Murabaha Facility Agreement) as the amount of the early payment of the relevant Murabaha Contract under the Murabaha B2 Short Facility (as defined in the Murabaha Facility Agreement) bears to the Total Murabaha B2 Short Facility Commitments (as defined in the Murabaha Facility Agreement).
- (b) Any partial cancellation made under Clause 8 (*Illegality, Early Payment and Cancellation*) or Clause 9 (*Mandatory Early Payment*) must:
  - (i) in respect of a Murabaha Facility B1:
    - (A) be made on the same day in respect of each Murabaha Facility B1; and
    - (B) be applied pro rata across each Murabaha Facility B1 such that the amount of the cancellation of the Available Facility for the Murabaha B1 Long Facility (as such term is defined in the Murabaha Facility Agreement) bears the same proportion to the Total Murabaha B1 Long Facility Commitments (as defined in the Murabaha Facility Agreement) prior to such cancellation as the amount of the cancellation of the Available Facility for the Murabaha B1 Short Facility (as defined in the Murabaha Facility Agreement) bears to the Total Murabaha B1 Short Facility Commitments (as defined in the Murabaha Facility Agreement) prior to such cancellation; and
  - (ii) in respect of a Murabaha Facility B2
    - (A) be made on the same day in respect of each Murabaha Facility B2; and
    - (B) be applied pro rata across each Murabaha Facility B2 such that the amount of the cancellation of the Available Facility for the Murabaha B2 Long Facility (as such term is defined in the Murabaha Facility Agreement) bears the same proportion to the Total Murabaha B2 Long Facility Commitments (as defined in the Murabaha Facility Agreement) prior to such cancellation as the amount of the cancellation of the Available Facility for the Murabaha B2 Short Facility (as defined in the Murabaha Facility Agreement) bears to the Total Murabaha B2 Short Facility Commitments (as defined in the Murabaha Facility Agreement) prior to such cancellation.

### 10.3 Interest, profit and other amounts

- (a) Any early payment under this Agreement in respect of a Conventional Facility shall be made together with accrued interest on the amount paid early and, subject to any Break Costs, without premium or penalty.
- (b) Any early payment under this Agreement of the Murabaha Facility Agreement in respect of a Murabaha Facility shall be made together with:
  - (i) if the payment is made on a Deferred Payment Date or a Deferred Instalment Payment Date, the Deferred Payment Price or Deferred Instalment Payment Price (as applicable)

payable on that Deferred Payment Date or Deferred Instalment Payment Date (as applicable); or

- (ii) if the early payment is made on a date other than a Deferred Payment Date or a Deferred Instalment Payment Date, the Deferred Payment Price or Deferred Instalment Payment Price (as applicable) payable on the next Deferred Payment Date or next Deferred Instalment Payment Date (as applicable),

in respect of the amount paid early.

#### 10.4 **No reutilisation of Facility B**

Neither a Borrower nor the Purchaser (as applicable) may reborrow or re-utilise any part of Facility B which is paid early.

#### 10.5 **Reborrowing of Revolving Facility**

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

#### 10.6 **Early payment in accordance with the Global Finance Documents**

Neither a Borrower nor the Purchaser shall repay or pay early 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 the Global Finance Documents.

#### 10.7 **No reinstatement of Commitments**

Subject to Clause 2.6 (*Increase*), no amount of the Total Commitments cancelled under the Global Finance Documents may be subsequently reinstated.

#### 10.8 **Global Agent's receipt of Notices**

If the Global Agent receives a notice under Clause 8 (*Illegality, Early Payment and Cancellation*) or an election under Clause 9.4 (*Right to Refuse Early Payment*), it shall promptly forward a copy of that notice or election to either the Company or the affected Financier and each relevant Agent, as appropriate.

#### 10.9 **Effect of Repayment and Early Payment on Commitments**

If all or part of a participation of a Financier in a Facility B Utilisation is repaid or paid early and is not available for reutilisation, that Financier's Commitment under the relevant Facility shall be reduced and cancelled by an amount equal to the amount repaid or prepaid.

### 11. **INTEREST AND PROFIT**

#### 11.1 **Calculation of interest**

The interest rate in the relation to the Conventional Facility shall be calculated in accordance with the provisions in the Conventional Facilities Agreement.

#### 11.2 **Calculation of profit**

The profit in the relation to each Murabaha Contract shall be calculated in accordance with the provisions of the Murabaha Facility Agreement.

## 12. **INTEREST PERIODS AND MURABAHA CONTRACT PERIODS**

Each Interest Period shall be determined in accordance with clause 14 (*Interest Periods*) of the Conventional Facilities Agreement and each Murabaha Contract Period shall be determined in accordance with clause 6.1 (*Murabaha Contract Periods*) of the Murabaha Facility Agreement.

## 13. **FEES**

### 13.1 **No deal, no fees**

Except to the extent otherwise stated in a Fee Letter and the commitment fee contemplated by clause 16.1 (*Commitment fee*) of the Conventional Facilities Agreement, no fees (including for the avoidance of doubt, arrangement, underwriting, market participation, ticking and commitment fees, other than pre-agreed agency and legal fees payable in the manner explicitly set out in the relevant Fee Letter), commissions, taxes, costs, expenses (other than registration fees or similar amounts incurred with respect to the registration of any Transaction Security) or other amounts referred to in any Global Finance Document will be payable unless the Closing Date occurs and either the Scheme Effective Date or the Offer Unconditional Date occurs.

### 13.2 **Upfront or documentation fee**

The Company shall pay (or procure there is paid) to the Mandated Lead Arrangers upfront or (as applicable) documentation fees in the amount and at the times agreed in the Arrangement Fee Letters.

### 13.3 **Co-ordination fee**

The Company shall pay (or procure there is paid) to the Mandated Lead Arrangers a co-ordination fee in the amount and at the times agreed in the Arrangement Fee Letters.

### 13.4 **Additional co-ordination fee**

The Company shall pay (or procure there is paid) to the Islamic Participant an additional co-ordination fee in the amount and at the times agreed in the Arrangement Fee Letters.

### 13.5 **Structuring fee**

The Company shall pay (or procure there is paid) to the Mandated Lead Arrangers a structuring fee in the amount and at the times agreed in the Arrangement Fee Letters.

### 13.6 **No other fee**

For the avoidance of any doubt, there shall be no other fee payable in respect of (or accruing on) the Facilities.

### 13.7 **Global Agent and Security Agent fees**

The Company shall pay (or procure there is paid) to the Global Agent and the Security Agent (in each case for its own account) a fee in the amount and at the times agreed in any Agency Fee Letter.

## 14. **TAXES**

### 14.1 **Tax Definitions**

In this Agreement:

**"Protected Party"** means a Global 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 Global Finance Document.

**"Tax Credit"** means a credit against, refund of, 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 Global Finance Document, other than a FATCA Deduction.

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Global Finance Party under Clause 14.2 (*Tax Gross-Up*) or a payment under Clause 14.3 (*Tax Indemnity*).

Unless a contrary indication appears, in this Clause 14 a reference to: (i) determines or determined means a determination made in the absolute discretion of the person making the determination acting reasonably; and (ii) a Financier includes any Issuing Bank, Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender.

#### 14.2 **Tax Gross-Up**

- (a) Each Obligor shall make all payments to be made by it under the Global Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is a change in the rate or the basis of any Tax Deduction) notify the Agents accordingly. Similarly, a Financier or Issuing Bank shall promptly notify the Agents on becoming so aware in respect of a payment payable to that Financier or Issuing Bank. In addition, a Financier or Issuing Bank shall promptly notify the Agents if it ceases to be entitled to receive any payment under any Global Finance Document from the relevant Obligor without that Obligor being required to make (or as the case may be, being exempt from) any Tax Deduction, stating the reasons (and providing supporting evidence) as to why it believes it is no longer so entitled. If an Agent receives any such notification from a Financier or Issuing Bank it shall promptly notify the Company and any relevant Obligor.
- (c) Subject to the limitations and exclusions herein, if a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor under a Global Finance Document 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) If an Obligor is required by law 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.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the relevant Agent for the relevant Financier entitled to the payment evidence reasonably satisfactory to that Global Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid or account for to the relevant Tax authority.

#### 14.3 **Tax Indemnity**

- (a) If a Protected Party 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 Global Finance Document, then the Company shall,

within 10 Business Days of demand by an Agent, pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines (acting reasonably) will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Global Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any loss, liability or cost which has been directly or indirectly suffered by a Global Finance Party for or on account of Tax under the laws of the jurisdiction in which:

(A) that Global Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Global Finance Party is treated as resident for tax purposes; or

(B) that Global Finance Party's Facility Office or substitute 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 by that Global Finance Party or an Affiliate of that Global Finance Party (but not any sum only deemed to be received or receivable) by that Global Finance Party; or

(ii) if and to the extent that a loss, liability or cost which has been directly or indirectly suffered by a Global Finance Party for or on account of Tax:

(A) is compensated for by an increased payment under Clause 14.2 (*Tax Gross-Up*) or a payment under 14.5 (*Stamp taxes*);

(B) is attributable to a Bank Levy;

(C) would have been so compensated for under Clause 14.5 (*Stamp taxes*) or (as applicable) Clause 14.6 (*VAT*) but was not so compensated solely because one or more of the exclusions contained in Clause 14.5 (*Stamp taxes*) or, as the case may be, Clause 14.6 (*VAT*) applied; or

(D) 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 its Agents of the event which will give, or has given, rise to the claim together with reasonable supporting evidence, following which the relevant Agent will notify the Company and provide such evidence to it.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify its Agents.

(e) Each Protected Party and each Obligor which makes a payment to which that Protected Party is entitled shall, upon the reasonable request of the Obligor, co-operate in completing any procedural formalities necessary and as may be required by law to reduce any Taxes that will be subject to indemnification pursuant to this Clause 14.3.

#### 14.4 Tax Credits

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

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

the Global Finance Party shall pay an amount to the Obligor which that Global 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 that Obligor.

#### 14.5 Stamp taxes

The Company shall pay (or procure that there is paid) and, within 20 Business Days of demand by the Agent, indemnify each Secured Party against any cost, loss or liability that Global Finance Party incurs in relation to any stamp duty, registration and other similar Taxes payable in respect of any Global Finance Document, other than:

- (a) in respect of any stamp duty, registration or other Taxes payable in connection with any Transfer Certificate, Assignment Agreement, Incremental Facility Commitment Notice or the Increase Confirmation or any assignment, transfer, sub-participation, sub-contract or other Transfer Arrangement (or documentation relating thereto) by any Global Finance Party of, or in connection with, any of its rights and/or obligations under any Global Finance Document; or
- (b) in respect of any stamp duty, registration or other Taxes relating to a voluntary filing or registration by or on behalf of any of the Global Finance Parties.

#### 14.6 VAT

- (a) All amounts expressed to be payable under a Global Finance Document by any Party to a Global Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Global Finance Party to any Party under a Global Finance Document, and such Global Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Global Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of the VAT (and such Global Finance Party must promptly provide an appropriate VAT invoice to that Party). Any obligation of a Party to pay any amount in respect of VAT pursuant to this Clause 14.6 is subject to the relevant Global Finance Party promptly providing an appropriate invoice to such Party.
- (b) If VAT is or becomes chargeable on any supply made by any Global Finance Party (the "**Supplier**") to any other Global Finance Party (the "**Recipient**") under a Global Finance Document and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Global Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Global Finance Document requires any Party to reimburse or indemnify a Global Finance Party for any costs or expenses, that Party shall reimburse or indemnify (as the case may be) such Global Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Global Finance Party reasonably determines that it is entitled to credit or receive repayment in respect of the VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.6 to any party shall, at any time when such party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply or (as appropriate) receiving the supply under the grouping rules (provided for in Section 43 of the Value Added Tax Act 1994, Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction other than the United Kingdom or a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).
- (e) In relation to any supply made by a Global Finance Party to any Party under a Global Finance Document, if reasonably requested by such Global Finance Party, that Party must promptly provide such Global Finance Party with (if applicable) details of that Party's VAT registration and such other information as is reasonably requested in connection with such Global Finance Party's VAT reporting requirements in relation to such supply.

#### 14.7 **FATCA Deduction**

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

#### 14.8 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of tax 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 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 Global Finance Documents (and payment 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.

#### 15. **INCREASED COSTS**

##### 15.1 **Increased Costs**

- (a) Subject to Clause 15.3 (*Exceptions*) the Company shall, within 20 Business Days of a demand by an Agent in respect of the Conventional Facility or in accordance with Clause 15.4 (*Islamic Participants*) in respect of the Murabaha Facility, pay for the account of a Global Finance Party the amount of any Increased Costs incurred by that Global Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or treaty after the date of this Agreement (or, if later, the date it became a Party); or
  - (ii) compliance with any law or regulation or treaty made after the date of this Agreement (or, if later, the date it became a Party),



which (in each case) the relevant Finance Party is seeking to pass on to all equivalent obligors generally (as confirmed in writing by that Finance Party to the Company).

(b) In this Agreement:

**"Increased Costs"** in respect of:

- (i) a Conventional Facility, means:
  - (A) a reduction in the rate of return from a Facility or on a Global Finance Party's (or its Affiliate's) overall capital;
  - (B) an additional or increased cost; or
  - (C) a reduction of any amount due and payable under any Global Finance Document, which is incurred or suffered by a Global Finance Party or any of its Affiliates to the extent that it is attributable to that Global Finance Party having entered into its Commitment or an Ancillary Commitment, Fronted Ancillary Commitment or Fronting Ancillary Commitment or funding or performing its obligations under any Global Finance Document or Letter of Credit; and
- (ii) in respect of a Murabaha Facility, has the meaning given to it in the Murabaha Facility Agreement.

#### 15.2 **Increased cost claims**

- (a) A Global Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased Costs*) shall promptly notify the Agents and the Company of the event giving rise to the claim.
- (b) Each Global Finance Party shall, together with the notification made pursuant to paragraph (a) above, provide a certificate confirming the amount of Increased Costs.

#### 15.3 **Exceptions**

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law;
  - (ii) attributable to a Published Rate Replacement Event or any alternative or replacement calculation, reference or screen rate (including, without limitation, any event, circumstance or change contemplated by clause 23.2 (*Replacement of Published Rate*) of the Conventional Facilities Agreement);
  - (iii) attributable to a FATCA Deduction required to be made by a Party;
  - (iv) compensated for by or under, or by an increased payment under, Clause 14.2 (*Tax Gross-Up*), Clause 14.3 (*Tax Indemnity*), Clause 14.5 (*Stamp taxes*) or Clause 14.6 (*VAT*) or any other provision of this Agreement (or would have been compensated for under Clause 14.2 (*Tax gross-up*), Clause 14.3 (*Tax Indemnity*), Clause 14.5 (*Stamp taxes*) or Clause 14.6 (*VAT*) or any other provision of a Global Finance Document but was not so compensated solely because any of the exclusions contained in that Clause or that provision applied);
  - (v) in respect of any amount of VAT (which shall be dealt with in accordance with Clause 14.6 (*VAT*));

- (vi) in respect of any stamp duty, registration or similar Taxes payable in respect of or relating to a Transfer Certificate, Increase Confirmation, Assignment Agreement or Transfer Arrangement;
  - (vii) attributable to a Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy);
  - (viii) 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, Global Finance Party or any of its Affiliates);
  - (ix) attributable to the breach by the Global Finance Party (or any Affiliate of it) of (A) any law, regulation or treaty or (B) the terms of any Global Finance Document;
  - (x) as a consequence of a Global Finance Party being incorporated, domiciled, established, located, resident or acting through a facility office situated in a Blacklisted Jurisdiction;
  - (xi) attributable to any financial transactions taxes (or other taxes) of a kind proposed by the European Commission on 28 September 2011;
  - (xii) attributable to the implementation or application of or compliance with Basel III or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Global Finance Party or any of its Affiliates);
  - (xiii) attributable to the implementation or application of or compliance with CRD IV or any other law or regulation which implements CRD IV (whether such implementation, application or compliance is by a government, regulator, Global Finance Party or any of its Affiliates);
  - (xiv) attributable to the implementation or application of or compliance with Basel IV, unless the relevant Global Finance Party could not reasonably have been aware of that increased cost on the date on which it became a Global Finance Party; or
  - (xv) not notified or confirmed to the relevant Agent or the Company in accordance with Clause 15.2 (*Increased cost claims*).
- (b) In this Clause 15.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (*Tax Definitions*).
- (c) In this Agreement:
- "Basel III"** means:
- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision on 16 December 2010, each as amended, supplemented or restated;

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

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

"**EU CRD IV**" means:

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

"**UK CRD IV**" means:

- (i) "CRR" as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "**Withdrawal Act**");
- (ii) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020 ("**WAA**")) implemented "CRD" and its implementing measures;
- (iii) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the WAA) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and
- (iv) any law or regulation of the United Kingdom which introduces into domestic law of the United Kingdom a provision which is equivalent to a provision set out in "CRR" or "CRD" and/or implements Basel III standards.

#### 15.4 **Islamic Participants**

Any Increased Costs payable to an Islamic Participant shall only be paid by the Company as a component of the Profit Amount in relation to a Murabaha Contract and in accordance with the terms of the Murabaha Facility Agreement and the Murabaha Investment Agency Agreement.

### 16. **OTHER INDEMNITIES**

#### 16.1 **Currency indemnity**

- (a) If any sum due from an Obligor under the Global 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,

the Company or that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Mandated Lead Arrangers and each other Secured 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 Global Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

#### 16.2 **Other indemnities**

- (a) The Company shall (or shall procure that an Obligor will subject to the applicable Guarantee Limitations), within 20 Business Days of demand indemnify each Global Finance Party against any cost, loss or liability incurred by it as a result of:

- (i) the occurrence of any Event of Default;
- (ii) a failure by the Company or an Obligor to pay any amount due under a Global Finance Document on its due date, including, any cost, loss or liability arising as a result of Clause 30 (*Sharing Among the Global Finance Parties*);
- (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower, the Purchaser or the Company in a Request but not made by reason of the operation of any one or more of the provisions of the Global Finance Documents (other than by reason of default or negligence by that Secured Party alone);
- (iv) issuing or making arrangements to issue a Letter of Credit requested by the Company or a Borrower in a Utilisation Request but not issued 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 Global Finance Party alone); or
- (v) any early payment payable by any Borrower or the Purchaser (as applicable) under the Global Finance Documents not being paid after irrevocable notice of such early payment has been made to the relevant Agent.

#### 16.3 **Indemnity to the Global Agent**

Each Obligor shall within 20 Business Days of demand indemnify the Global Agent against any third party cost, loss or liability incurred by the Global Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is an Event of Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (c) instructing lawyers, accountants, tax advisers or other professional advisers or experts as permitted under the Global Finance Documents; and

- (d) (except to the extent relating to the utilisation of the Global Agent's management time or other resources relating to the Global Agent carrying out its function as global agent) any cost, loss or liabilities (including, without limitation, for negligence or any other category of liability) incurred by the Global Agent (otherwise than by reason of the Global Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems*) notwithstanding the Global Agent's negligence, gross negligence or other category of liability but not including any claim based on the fraud of the Global Agent) in acting as Global Agent under the Global Finance Documents.

## 17. MITIGATION BY THE FINANCIERS

### 17.1 Mitigation

- (a) Each Global Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 8.2 (*Illegality in relation to Issuing Bank*)), Clause 14 (*Taxes*) or Clause 15 (*Increased Costs*), including (but not limited to), in each case, transferring its rights and obligations under the Global Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Company or any Obligor under the Global Finance Documents.
- (c) Without prejudice to the ability to effect, make or grant any amendment, waiver or consent pursuant to or in accordance with Clause 37 (*Amendments and Waivers*), any exclusion, exception or obligation set out in Clause 14 (*Taxes*) or Clause 15 (*Increased Costs*) which applies to any Financier may also be waived with the prior written consent of the Company and that Financier.

### 17.2 Limitation of liability

- (a) The Company shall (or shall procure that an Obligor will), within 20 Business Days of demand, indemnify each Global Finance Party to which 17.1 (*Mitigation*) applies, for all costs and expenses reasonably incurred by that Global Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Global Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Global Finance Party (acting reasonably), to do so might be prejudicial to it in any material respect.

## 18. COSTS AND EXPENSES

### 18.1 Transaction expenses

The Company shall within five (5) Business Days of demand pay (or procure payment to) each Administrative Party, the Issuing Bank and the Security Agent (and, in the case of the Security Agent, any Receiver or Delegate) the amount of all out-of-pocket costs and expenses (including, but not limited to, legal fees (subject to agreed caps, if any)) properly and reasonably incurred by any of them (evidence of which shall be provided to the Company) in relation to the Neptune Acquisition, the Global Finance Documents and the arrangement, negotiation, preparation,

printing, execution and syndication and perfection of the Facilities and any other Global Finance Documents referred to in this Agreement up to a maximum amount agreed (if any).

#### 18.2 **Amendment costs**

If (a) the Company or an Obligor requests an amendment, waiver, release or consent (including in respect of Reference Rate Terms, any Methodology Supplement and/or any amendments resulting from a Published Rate Replacement Event but, for the avoidance of doubt, not in relation to any Global Finance Party's internal checklist (or similar) requirements in respect of the foregoing and it being the Company's position is that no additional, confirmatory or extensions of (or similar) Transaction Security (or other conditions precedent) are required in relation to any such amendments), or (b) an amendment or other step or action is required pursuant to Clause 31.10 (*Change of currency*), the Company shall (or shall procure that a member of the Group will), within 20 Business Days of demand, reimburse each Agent and the Security Agent for the amount of all costs and expenses (including, but not limited to, legal fees) properly and reasonably incurred by each Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) (in each case, subject to agreed caps (if any)) in responding to, evaluating, negotiating or complying with that request or requirement.

#### 18.3 **Enforcement and preservation costs**

The Company shall, within 5 Business Days of demand, pay to each Mandated Lead Arranger and each other Secured Party the amount of all costs and expenses (including, but not limited to, legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Global Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

#### 18.4 **Transfer costs and expenses**

Notwithstanding any other term of this Agreement or the other Global Finance Documents, if a Global Finance Party assigns or transfers any of its rights, benefits or obligations under the Global Finance Documents or enters into any sub-participation, no member of the Group shall be required to pay any fees, costs, expenses or other amounts relating to, or arising in connection with, that assignment, transfer or sub-participation (including, without limitation, any transfer Taxes (including stamp duty) and any amounts relating to the perfection or amendment of the Transaction Security during or after the date of this Agreement).

### 19. **GUARANTEES AND INDEMNITY**

#### 19.1 **Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Global Finance Party punctual performance by the Company and each other Obligor of all the Company's or that Obligor's obligations under the Global Finance Documents;
- (b) undertakes with each Global Finance Party that whenever another Obligor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Global Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

- (c) agrees with each Global 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 Global Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Company or an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Global 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 19 if the amount claimed had been recoverable on the basis of a guarantee.

#### **19.2 Continuing Guarantee**

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

#### **19.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Company or any Obligor or any security for those obligations or otherwise) is made by a Global 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 19 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **19.4 Waiver of defences**

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

- (a) any time, waiver or consent granted to, or composition with, the Company any Obligor or other person;
- (b) the release of any other Obligor, the Company 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, the Company 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 the Company, an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Global 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 Global Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Global Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

#### **19.5 Guarantor Intent**

Without prejudice to the generality of Clause 19.4 (*Waiver of defences*) but subject to any Guarantee Limitations each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental and of whatsoever nature and (other than in respect of a Guarantor incorporated in Egypt) whether or not more onerous) variation, increase, extension or addition of or to any of the Global Finance Documents and/or any facility or amount made available under any of the Global 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 or purchasers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **19.6 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Global 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 19. This waiver applies irrespective of any law or any provision of a Global Finance Document to the contrary.

#### **19.7 Appropriations**

Until all amounts which may be or become payable by the Company or the Obligors under or in connection with the Global Finance Documents have been irrevocably paid in full, each Global 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 Global 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) in respect of any amounts received or recovered by any Global Finance Party after a claim pursuant to this guarantee in respect of any sum due and payable by any Obligor under this Agreement place such amounts in a suspense account (bearing interest or profit at a market rate usual for accounts of that type) unless and until such moneys are sufficient in aggregate to discharge in full all amounts then due and payable under the Global Finance Documents.

#### **19.8 Deferral of Guarantors' and the Company's rights**

Until all amounts which may be or become payable by the Company or the Obligors under or in connection with the Global Finance Documents have been irrevocably paid in full and unless the



Global Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Global Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

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

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Global Finance Parties by the Company or the Obligors under or in connection with the Global Finance Documents to be repaid in full on trust for, or if the concept of trust is not recognised in the jurisdiction of incorporation of that Guarantor, for the benefit of the Global Finance Parties and shall promptly pay or transfer the same to the relevant Agent or as the Global Agent may direct for application in accordance with Clause 31 (*Payment Mechanics*).

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

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Global Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor or any of its Holding Companies, 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 Global Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Global Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Global Finance Parties under any Global Finance Document or of any other security taken pursuant to, or in connection with, any Global Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

#### 19.10 **Additional security**

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

#### 19.11 **Guarantee Limitations: General**

(a) Without limiting any specific exemptions set out below:

(i) No Guarantor's obligations and liabilities under this Clause 19.11 and under any other guarantee or indemnity provision in a Global Finance Document (the "**Guarantee Obligations**") will extend to include any obligation or liability; and

(ii) no Transaction Security granted by a Guarantor will secure any Guarantee Obligation, if to the extent doing so would be unlawful financial assistance (notwithstanding any applicable exemptions and/or undertaking of any applicable prescribed whitewash or similar financial assistance procedures) in respect of the acquisition of shares in itself, its Holding Company or a member of the Group under the laws of its jurisdiction of incorporation.

(b) If, notwithstanding paragraph (a) above, the giving of a guarantee in respect of the Guarantee Obligations or Transaction Security would be unlawful financial assistance, then, to the extent necessary to give effect to paragraph (a) above (and only to the extent legally effective in the relevant jurisdiction), the obligations under the Global Finance Documents will be deemed to have been split into two tranches; Tranche 1 comprising those obligations which can be secured by the Guarantee Obligations or Transaction Security without breaching or contravening relevant financial assistance laws and Tranche 2 comprising the remainder of the obligations under the Global Finance Documents. The Tranche 2 obligations will be excluded from the relevant Guarantee Obligations.

#### 19.12 **Additional Guarantee Limitations**

The guarantee of any Additional Guarantor is subject to any Guarantee Limitations relating to that Additional Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the Accession Deed or any other Global Finance Document applicable to such Additional Guarantor (which may include any amendment to the terms of any limitations set out in this Clause 19) and agreed with the Global Agent (acting reasonably and in accordance with the Agreed Security Principles).

#### 19.13 **Additional Guarantee Limitations (UAE)**

Each UAE Guarantor agrees that this guarantee is entered into for commercial purposes and the requirements of Articles 1080, 1089, 1092, 1101 and 1105 of the UAE Civil Code shall not apply to this guarantee. No Global Finance Party (nor any trustee or agent on its behalf) shall be obliged to make any demand under this guarantee within the six month period mentioned in Article 1092 of the UAE Civil Code.

#### 19.14 **Additional Guarantee Limitations (Egypt)**

Notwithstanding anything to the contrary in any Global Finance Document, except as otherwise agreed in writing by each Party, the amount guaranteed by any Guarantor incorporated in Egypt shall not exceed, at any time, and in aggregate in respect of all "Liabilities" (as defined in the Intercreditor Agreement), the amount of the "Secured Obligations" (as defined in the Intercreditor Agreement) in addition to any applicable interest, default interest, costs, expenses or fees and

shall not extend to include any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital.

## 20. REPRESENTATIONS AND WARRANTIES

Subject to Clause 20.20 (*Repetition*), Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) and Clause 24.15 (*Excluded Matters*), each Obligor and, solely in the case of (i) Clause 20.8 (*Financial statements*), the Company represents and warrants to each of the Global Finance Parties (at the times specified in Clause 20.20 (*Repetition*)) with respect to itself only that:

### 20.1 Status

- (a) It is duly incorporated (or, as the case may be, organised) and validly existing under the laws of its jurisdiction of its incorporation (or, as the case may be, organisation).
- (b) It has the power to own its assets and carry on its material business substantially as it is now being conducted in all material respects (in each case insofar as it is part of the material business of the Group (taken as a whole)), save to the extent that failure to do so would not have a Material Adverse Effect.

### 20.2 Binding obligations

Subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it under the Global Finance Documents to which it is a party are valid, legally binding and enforceable obligations.

### 20.3 Non-conflict with other obligations

- (a) Subject to the Legal Reservations and the Perfection Requirements, the entry into and performance by it of the Global Finance Documents to which it is a party does not contravene:
  - (a) any law or regulation applicable to it in its jurisdiction of incorporation and with which it is required to comply, to an extent which would have a Material Adverse Effect;
  - (b) its constitutional documents in any material respect and in a manner that would be materially adverse to the interests of the Financiers (taken as a whole) under the Global Finance Documents; or
  - (c) any agreement or instrument binding upon it to an extent which would have a Material Adverse Effect.

### 20.4 Power and authority

Subject to the Legal Reservations and the Perfection Requirements, it has the power to enter into and perform and deliver, and has taken all necessary corporate action to authorise its entry into each of the Global Finance Documents to which it is a party.

#### 20.5 **Validity and admissibility in evidence**

Subject to the Legal Reservations and Perfection Requirements, all material Authorisations required by it in order:

- (a) to enable it to lawfully enter into and perform material obligations under the Global Finance Documents to which it is a party; and
- (b) to make the Global Finance Documents to which it is a party admissible in evidence (except for any requirement to translate documents into Arabic) in its Relevant Jurisdictions,

have been obtained or effected (or will be obtained or effected within the period allowed by applicable law), in each case, excluding any voluntary filing or registration or any action in connection with any Transfer Arrangement by any party.

#### 20.6 **Governing law and enforcement**

- (a) Subject to the Legal Reservations and Perfection Requirements, the choice of governing law of the Global Finance Documents as expressed in such Global Finance Document will be recognised in its jurisdiction of incorporation, save to the extent that such failure to do so would have a Material Adverse Effect.
- (b) Subject to the Legal Reservations and the Perfection Requirements, any judgment obtained in relation to a Global Finance Document in the jurisdiction of the governing law of that Global Finance Document will be recognised and enforced in its jurisdiction of incorporation, save to the extent that such failure to do so would have a Material Adverse Effect.

#### 20.7 **Compliance with laws**

It is in compliance with all material laws and regulations applicable to it in its jurisdiction of incorporation, save to the extent that such non-compliance would not have a Material Adverse Effect.

#### 20.8 **Financial statements**

To the Company's knowledge and save as otherwise disclosed to the Global Agent in writing:

- (a) the Annual Financial Statements most recently delivered were prepared on a basis consistent in all material respects with the applicable Accounting Principles and present a true and fair view of the consolidated financial position of the Group, as at the date to which they were prepared and for the financial year then ended (save as referred to in the statements and notes thereto); and
- (b) the Semi-Annual Financial Statements most recently delivered:
  - (i) were prepared on a basis consistent in all material respects with the applicable Accounting Principles; and
  - (ii) fairly present the consolidated financial position of the Group as at the date to which they were prepared and for the relevant period then ended,
- (c) in each case, (i) save as set out therein or the notes thereto, (ii) having regard to the fact they are management accounts prepared for management purposes and not subject to audit procedures and (iii) subject to customary year-end adjustments.

## 20.9 **Pari passu ranking / ranking of Security**

- (a) Subject to the Legal Reservations, its unsecured and unsubordinated payment obligations under each of the Global Finance Documents rank at least *pari passu* in right and priority of payment with the claims of all its other unsecured and unsubordinated creditors, except for obligations preferred by laws of general application (or applying to companies generally) and except pursuant to a Notifiable Debt Purchase Transaction.
- (b) Subject to the Legal Reservations and obligations mandatorily preferred by law, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

## 20.10 **Insolvency**

No:

- (a) corporate action, legal proceeding or other formal procedure or step described in paragraph (a) of Clause 24.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 24.9 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in writing (and is, in each case, outstanding) in relation to it or any Material Subsidiary and none of the circumstances described in Clause 24.7 (*Insolvency*) applies to it or any Material Subsidiary, excluding any such actions, proceedings, steps or process which have been discharged, revoked or otherwise lapsed.

## 20.11 **No filing or stamp taxes**

Subject to the Legal Reservations (and, in relation to Transaction Security Documents, subject to the Perfection Requirements), under the laws of its Relevant Jurisdiction it is not necessary that the Global 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 Global Finance Documents or the transactions contemplated by the Global Finance Documents except:

- (a) any filing, notification, recording, notarisation or enrolling of any tax or fee payable in relation to the Transaction Security, which is necessary to perfect the same and which (subject to the Agreed Security Principles) will be made promptly after the date of the relevant Global Finance Documents; or
- (b) such Taxes or fees payable in connection with transfer, assignment, sub-participation or sub-contract by a Financier of any of its rights, benefits or obligations under any Global Finance Document.

## 20.12 **No default**

No Event of Default is continuing or will result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, the Global Finance Documents, save where failure to do so would not have or would not reasonably be expected to have a Material Adverse Effect.

### 20.13 **No misleading information**

- (a) Save to the extent disclosed to the Mandated Lead Arrangers in writing and to the Company's knowledge:
- (i) any material factual information (other than information of a general economic nature) relating to the Group (including the Neptune Group or Moon Group) supplied by the Group and contained in the Reports (taken as a whole) (the "**Information**") was true and accurate in all material respects as at the date of applicable Report or, if earlier, the date the information is expressed to be to be given;
  - (ii) no Information was omitted from the Reports where the omission results in the Reports, taken as a whole, being misleading in any material respect in the context of the Transaction as a whole; and
  - (iii) no event or circumstance has occurred since the date of any Report that results in the Reports, taken as a whole, being untrue or inaccurate or misleading in any material respect in the context of the Transaction as a whole; and
  - (iv) all other written information provided by any member of the Group to a Global Finance Party pursuant to any express provision of any Global Finance Document on or after the date of this Agreement is, taken as a whole, true, complete and accurate in all material respects and is, taken as a whole, not misleading in any respect (in each case) as at the date on which such information is provided,

provided that the Company is not required to review or make any enquiry in relation to matters within the technical or professional expertise of the provisions of the relevant Reports.

- (b) Any financial projections or forecasts contained in the Reports and the Base Case Model were prepared on the basis of recent historical information and assumptions (or grounds for opinions) believed by the Company in good faith to be reasonable at the time of being prepared (it being understood that such financial projections or forecasts are subject to significant uncertainties and contingencies many of which may be beyond the control of the Group and that no assurances can be given that such financial projections or forecasts will be realised.

### 20.14 **No proceedings**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which have or are reasonably likely to have a Material Adverse Effect (to the best of its knowledge (having made due and careful enquiry)) are pending, have been commenced or threatened against any member of the Group.

### 20.15 **Shares**

The shares subject to the Transaction Security are fully paid. Subject to the Agreed Security Principles, on and from the Closing Date the constitutional documents of companies whose shares are subject to Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security, other than where such transfer has been consented to by the shareholders or other applicable body.

#### 20.16 Legal and beneficial ownership

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

#### 20.17 Anti-corruption law/Sanctions

- (a) It or (to its knowledge) its respective directors (in their capacity as such) is not:
- (i) is a Sanctioned Person; or
  - (ii) knowingly engaged in any material activity that would:
    - (A) result in it being designated as a Sanctioned Person; or
    - (B) violate in all material respect Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions Laws.
- (b) It and (to its knowledge) its respective directors (in their capacity as such), is conducting its business in compliance in all material respects with applicable Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions Laws.
- (c) It and (to its knowledge) none of its respective directors or officers (in their capacity as such) is the subject of any formal claim, proceeding or investigation involving it with respect to a breach of applicable Sanctions Laws.
- (d) This representation and warranty shall not, and nothing in the Global Finance Documents shall, (i) apply to the extent that this representation and warranty and/or any obligations of any person under or in relation to this representation and warranty would violate or expose any such person or any Investor, any member of the Group (or any subsidiary of any member of the Group) or Global Finance Party (or any their respective Affiliates and/or Related Funds or their or such Affiliates' or Related Funds' directors, officers, employees, agents, management or advisers) to any liability under any Blocking Law that is in force from time to time in any jurisdiction or (ii) create or establish an obligation or right for any person to the extent that, by agreeing to it, complying with it, exercising it, having such obligation or right, or otherwise, such person or any Investor, any member of the Group (or any subsidiary of any member of the Group) or Global Finance Party (or any their respective Affiliates and/or Related Funds or their or such Affiliates' or Related Funds' directors, officers, employees, agents, management or advisers) would be in violation of any foreign trade law or anti-boycott law or Blocking Law (or similar), and any representation or undertaking made in or pursuant to the above shall be so limited in relation to such person and to that extent shall not be made by nor apply to any such person.
- (e) This Clause 20.17 shall not be interpreted or applied in relation to it, any Investor, any Holding Company, any Obligor, any member of the Group (or any subsidiary of any member of the Group) or any Global Finance Party (or any their respective Affiliates and/or Related Funds or their or such Affiliates' or Related Funds' directors, officers, employees, agents, management or advisers) to the extent that the representations and warranties under this Clause 20.17 would:
- (i) Violate or expose such entity or any directors, officer or employee thereof to any liability under any anti-boycott or blocking law, regulation or statute that is in force from time to time in the European Union (and/or any of its member states) that are applicable to such entity (including EU Regulation (EC) 2271/96) (or any law or regulation implementing such

Regulation in any member state of the European Union), Council Regulation (EC) No 2271/1996 of 22 November 1996, as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 and section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung – AWV*) in connection with the German Foreign Trade Law (*Außenwirtschaftsgesetz*) (each, a "**Blocking Law**"); or

- (ii) prevent or prohibit such person from, or result in a misrepresentation by such person as a result of, engaging (or having engaged) in business, transactions, activities or other conduct pursuant to a general or specific license from OFAC, any license or authorisation from HM Treasury, the European Union, or any European Union Member State, or any other registration, authorisation, permit, license exemption, or license from any other applicable governmental authority.

#### 20.18 **Holding Companies**

Save to the extent permitted by Clause 23.17 (*Holding Companies*), before the date of this Agreement, the Parent and the Company has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of it acting as a Holding Company.

#### 20.19 **Neptune Acquisition Documents**

The Neptune Acquisition Documents contain all the material terms of the Neptune Acquisition.

#### 20.20 **Repetition**

- (a) The representations and warranties (other than the representations and warranties in Clause 20.8 (*Financial statements*)) contemplated in this Clause 20 shall only be made on the date of this Agreement, other than to the extent required to be made or repeated on a different date pursuant to paragraphs (b) to (d) below.
- (b) The representations and warranties set out in Clauses 20.1 (*Status*) to Clause 20.5 (*Validity and admissibility in evidence*) (inclusive) (such representations and warranties being the "**Repeating Representations**") shall be deemed to be repeated by reference to the facts and circumstances existing on such date on each Utilisation Date, on the first day of each Interest Period (other than with respect to a Rollover Loan) and on the first day of each Murabaha Contract Period and, if not already qualified by Material Adverse Effect, shall be deemed to be qualified by Material Adverse Effect.
- (c) The Repeating Representations shall in addition be repeated in relation to an Additional Obligor on the relevant date (only) on which it first becomes an Obligor (in respect of itself only).
- (d) The representations and warranties set out in Clause 20.8 (*Financial statements*) shall not be made on this date of this Agreement but shall instead be made by the Company (only), in respect of each applicable set of Semi-Annual Financial Statements and Annual Financial Statements only, once in respect of each such set of financial statements, being on the date such financial statements are delivered by the Company to the Global Agent pursuant to the requirements of Clause 21.1 (*Information Undertakings*).
- (e) Notwithstanding any other provisions to the contrary in this Clause 20:
  - (i) the representations and warranties set out in this Clause 20 shall be qualified by all of the publicly available information and by all of the information included in the Reports



(including any annexes thereto), the Tax Structure Memorandum, the Original Financial Statements and the most recently publicly available financial statements of Neptune prior to the date of this Agreement, the Transaction Documents and any other information disclosed to the Mandated Lead Arrangers, the Security Agent or an Agent in writing prior to the date of this Agreement;

- (ii) any representation or warranty shall, at all times, be qualified by the actual (and not any imputed or implied or constructive) knowledge, belief and awareness of the management of the Company or, as applicable, the management of the relevant Obligor making the relevant representation or warranty and shall not extend to matters beyond such awareness (which shall not include the knowledge, belief and/or awareness of any member of the Neptune Group and/or Moon Group or its or their respective management, other than, as applicable, after the Neptune Completion Date or Moon Completion Date (as applicable) in respect of any Repeating Representation);
- (iii) any representation or warranty made on or prior to the Neptune Completion Date or the Moon Completion Date shall not be (nor deemed to be) made in respect of any matters relating to the Neptune Group or Moon Group (as applicable);
- (iv) the representations and warranties set out in this Clause 20 shall be subject to any transactions permitted by the Global Finance Documents and to the Excluded Matters; and
- (v) there shall be no obligation to update any information previously given by (or on behalf of) any member of the Group in connection with any representation or warranty.

## 21. INFORMATION AND ACCOUNTING UNDERTAKINGS

The undertakings in this Clause 21 shall continue for so long as any sum remains payable or capable of becoming payable under the Global Finance Documents or any Commitment is in force. Each of the undertakings and obligations in this Clause 21 shall be subject to the provisions of Clause 21.6 (*Restrictions*) and Clause 21.1 (*Information Undertakings*).

### 21.1 Information Undertakings

- (a) Following the Neptune Completion Date, the Company will furnish to the Global Agent the following reports:
  - (i) within 150 days after the end (and in respect) of each Financial Year of the Company ending after the Neptune Completion Date (provided that the last day of such first Financial Year does not fall earlier than the last day of the first complete Financial Half Year of Neptune to commence (and to be completed) after the Neptune Completion Date), the audited annual unconsolidated financial statements of the Company (such financial statements furnished being the "**Annual Financial Statements (Company)**");
  - (ii) within 150 days after the end (and in respect) of each Financial Year of Neptune ending after the Neptune Completion Date (provided that the last day of such first Financial Year does not fall earlier than the last day of the first complete Financial Half Year of Neptune to commence (and to be completed) after the Neptune Completion Date), the audited

- annual consolidated financial statements of Neptune (such financial statements furnished being the "**Annual Financial Statements (Neptune)**");
- (iii) within 150 days after the end (and in respect) of each Financial Year of Moon ending after the Moon Completion Date (provided that the last day of such first Financial Year does not fall earlier than the last day of the first complete Financial Half Year of Moon to commence (and to be completed) after the Moon Completion Date), the audited annual consolidated financial statements of Moon (such financial statements furnished being the "**Annual Financial Statements (Moon)**") and, together with the Annual Financial Statements (Company) and the Annual Financial Statements (Neptune), the "**Annual Financial Statements**";
  - (iv) within 150 days after the end (and in respect) of the first Financial Half Year of the Company ending after the Neptune Completion Date (commencing with the first Financial Half Year to commence (and to be completed) after the Neptune Completion Date in respect of which semi-annual reporting is required) (but in each case excluding the last Financial Half Year of any Financial Year of the Company), the semi-annual consolidated management accounts of the Company (such accounts being the "**Semi-Annual Financial Statements (Company)**");
  - (v) within 150 days after the end (and in respect) of the first Financial Half Year of Neptune ending after the Neptune Completion Date (commencing with the first Financial Half Year to commence (and to be completed) after the Neptune Completion Date in respect of which semi-annual reporting is required) (but in each case excluding the last Financial Half Year of any Financial Year of Neptune), the semi-annual consolidated management accounts of Neptune (such accounts being the "**Semi-Annual Financial Statements (Neptune)**") and
  - (vi) within 150 days after the end (and in respect) of the first Financial Half Year of Moon ending after the Moon Completion Date (commencing with the first Financial Half Year to commence (and to be completed) after the Moon Completion Date in respect of which semi-annual reporting is required) (but in each case excluding the last Financial Half Year of any Financial Year of Moon), the semi-annual consolidated management accounts of Moon (such accounts being the "**Semi-Annual Financial Statements (Moon)**") and, together with the Semi-Annual Financial Statements (Company) and Semi-Annual Financial Statements (Neptune), the "**Semi-Annual Financial Statements**".
- (b) All financial statement information shall be prepared in accordance with, in all material respects, the Accounting Principles but without prejudice to the operation or requirements of paragraph 21.3(a) of Clause 21.3 (*Agreed Accounting Principles*) (or otherwise on the basis of the Original Accounting Principles) and on a consistent basis for the periods presented, except as may otherwise be described in such information or set out therein and/or except as may be required or necessary to reflect financial or related definitions in this Agreement and, in the case of the Semi-Annual Financial Statements, subject to year-end adjustments and having regard to the fact they were prepared for management purposes; provided, however, that the reports set forth in paragraph (a) above may, in the event of a change in the Accounting Principles and if elected by the Company, present earlier periods on a basis that applied to such periods.

- (c) No other financial statements will be required to be delivered other than the Annual Financial Statements and Semi-Annual Financial Statements contemplated in paragraph (a) above.
- (d) All Financial Statements provided pursuant to paragraph (a) above shall be in English, or with a certified English translation.
- (e) The Company may comply with any requirement of this Agreement to provide reports, information, financial statements or management accounts (in lieu of such reports, information, financial statements or management accounts being provided by the Company) by providing (x) any report, information, financial statements or management accounts of a direct or indirect Parent Entity of the Company or (y) any report, information, financial statements or management accounts of a direct or indirect Subsidiary of the Company (including Neptune and its Subsidiaries) that represents substantially all the assets of the Group (the "**Reporting Subsidiary**") in each case, so long as such reports, information, financial statements or management accounts (a) meet the applicable requirements (including as to content and time of delivery) of this Agreement as if references to the Company therein were references to such Reporting Subsidiary and (b) (in the case of any financial statements or management accounts) includes an unaudited summary description (prepared by the Company) of the material differences between the financial information disclosed in such financial statements or, as applicable, management accounts and the financial information relating to the Group for the same period for the purposes of determining compliance with the relevant Financial Covenant and/or (as applicable) determining the applicable Margin, being, in the case of (x), the removal of the financial information of the Parent Entities which are not members of the Group or, in the case of (y), the inclusion of the financial information of the Company and any other member of the Group which is a Holding Company of the Reporting Subsidiary, and, upon complying with the foregoing requirement, the Company will be deemed to have complied with the relevant requirement of this Agreement to provide the relevant reports, information, financial statements or management accounts.
- (f) In the event any member of the Group makes an acquisition of any person after the Closing Date (each such person, together with its Subsidiaries, being an "**Acquired Entity**"), for accounting periods any part of which fall on or prior to the first anniversary of the date of completion of such acquisition:
  - (i) to the extent management accounts and/or financial statements are required to be delivered in relation to any such accounting period, separate management accounts or, as the case may be, financial statements may be delivered in respect of the Acquired Entity for that period (and in the event separate accounts or statements are delivered pursuant to this paragraph (i), any representation, statement or requirement in Clause 20.8 (*Financial statements*) or this Clause 21.1 referring to management accounts and/or financial statements of, or the consolidated financial position of, the Group (or Reporting Entity) (or similar language) shall be construed as to be a reference to the Group (or Reporting Entity on a consolidated basis) excluding the Acquired Entity);
  - (ii) any management accounts and financial statements delivered pursuant to paragraph (i) above may be in a form as customarily prepared by the Acquired Entity prior to the date of completion of such acquisition (and management accounts and financial statements delivered in such form shall satisfy the requirements of this Agreement); and

- (iii) for the purpose of calculating any financial ratio or other Applicable Metric under this Agreement any management accounts and financial statements delivered pursuant to paragraph (i) above may be aggregated with the Semi-Annual financial Statements or, as the case may be, the Annual Financial Statements for the relevant period (and appropriate adjustments made for any intra-Group transactions).

#### 21.2 **Provision and contents of Compliance Certificates**

- (a) The Company shall deliver to the Global Agent with each set of Semi-Annual Financial Statements, a Semi-Annual Compliance Certificate signed by an authorised signatory:
  - (i) in the case of any such Semi-Annual Financial Statements which relate to a Relevant Period ending on or after the First Test Date, confirming or evidencing whether or not the Group was in compliance with the Financial Covenant and setting out (in reasonable detail, a reasonable reconciliation of the relevant material financial elements included in such Semi-Annual Financial Statements to enable the Financiers to make an accurate comparison between the material financial elements as included in such Semi-Annual Financial Statements and such material financial elements had those Semi-Annual Financial Statements been prepared in accordance with the Applicable Accounting Principles and to determine whether the Financial Covenant has been complied with) computations as to compliance with the Financial Covenant; and
  - (ii) confirming that, so far as the Company is aware, no Event of Default is continuing or, if an Event of Default is continuing, what Event of Default is continuing and the steps being taken to remedy that Event of Default.
- (b) The Company shall deliver to the Global Agent with each set of Annual Financial Statements an Annual Compliance Certificate signed an authorised signatory:
  - (i) (in the case of any such Annual Financial Statements which relate to a Relevant Period ending on or after the First Test Date, confirming or evidencing whether or not the Group was in compliance with the Financial Covenant and setting out (in reasonable detail, a reasonable reconciliation of the relevant material financial elements included in such Annual Financial Statements to enable the Financiers to make an accurate comparison between the material financial elements as included in such Annual Financial Statements and such material financial elements had those Annual Financial Statements been prepared in accordance with the Applicable Accounting Principles and to determine whether the Financial Covenant has been complied with) computations as to compliance with the Financial Covenant;
  - (ii) confirming that, so far as the Company is aware, no Event of Default is continuing or, if an Event of Default is continuing, what Event of Default is continuing and the steps being taken to remedy that Event of Default;
  - (iii) confirming the Material Subsidiaries and compliance or lack of compliance with paragraph (a) of Clause 23.23 (*Guarantees and Security*); and
  - (iv) (in the case of any such Annual Financial Statements which relate to a Relevant Period ending on or after the first full Financial Year after the Closing Date), confirming the amount

of any Excess Cashflow Proceeds together with reasonable detail as to the computations of any such amount.

- (c) For the avoidance of any doubt, no auditor sign-off or input shall be required on or in respect of any Compliance Certificate or any other matter under the Global Finance Documents (other than with respect to the requirements of this Agreement that the Annual Financial Statements be audited).
- (d) The Company may at any time, and from time to time, voluntarily opt to evidence or confirm the applicable Margin by reference to any LTM period (and any available internal financial statements) by delivering a certificate to the Global Agent (together with such financial statements), whereupon the applicable Margin will be determined (and, as applicable, adjusted) accordingly.

### 21.3 **Agreed Accounting Principles**

- (a) The Company shall procure that all its Financial Statements delivered or to be delivered to the Global Agent under this Agreement shall be prepared in accordance with the requirements of this Clause 21.3. If such Financial Statements are prepared on a materially different accounting basis to the requirements of the Original Accounting Principles (including in the case of a material change of Accounting Principles or accounting practices, provided that the Company provides the relevant reconciliation in each Compliance Certificate to the extent required pursuant to Clause 21.2 (*Provision and contents of Compliance Certificates*)):
  - (i) the Company shall promptly so notify the Global Agent (unless the Global Agent has been notified of the relevant change in relation to a previous set of Financial Statements);
  - (ii) if requested by the Global Agent (acting on the instructions of the Majority Financiers) within 30 days following notification under paragraph (i) above, the Company must promptly supply to the Global Agent a description of the material changes notified under paragraph (i) above to the extent such changes relate to the calculation or determination of the Margin or the Financial Covenant (the "**Reconciliation Statement**") signed by the CEO or CFO (or, if the CEO or CFO is not available, another authorised signatory);
  - (iii) if requested by the Global Agent (acting on the instructions of the Majority Financiers) following delivery of the Reconciliation Statement, or if requested by the Company, the Company and the Global Agent shall promptly after such notification enter into negotiations in good faith with a view to agreeing (A) such amendments to the terms contemplated in Clause 22 (*Financial Covenant*), and/or the definitions of any or all of the terms used therein as are necessary to give the Financiers and the Company and Group comparable protection (and in the case of the Company and Group, flexibility and headroom) to that contemplated at the date of this Agreement and (B) any other amendments to this Agreement which are necessary to ensure that the adoption by the Group of such different accounting basis does not result in any material alteration in the commercial effect of the obligations of the Company or any Obligor in the Global Finance Documents, provided that if no request under paragraph (ii) above is received by the Company from the Global Agent within the specified time period then the Company shall not be required to provide any further information pursuant to this Clause 21.3 in respect

of the change notified under paragraph (i) above or make any amendments to the Global Finance Documents;

- (iv) if amendments satisfactory to the Majority Financiers (acting reasonably and in accordance with the provisions of this Clause 21.3) are agreed by the Company and the Global Agent in writing within 30 days a request under this Clause 21.3, those amendments shall take effect and be binding on all Parties in accordance with the terms of that agreement and any change in the Accounting Principles, the accounting practices or the reference periods referred to shall, to the extent relevant, become part of the Original Accounting Principles on that basis (subject to any further application of this paragraph (iv)); and
- (v) if such amendments are not so agreed within 30 days, the Company shall promptly deliver to the Global Agent:
  - (A) in reasonable detail, details of all such material adjustments as need to be made to the relevant financial statements in order to reflect the applicable accounting principles at the date of delivery of the relevant financial statements; and
  - (B) only to the extent the Financial Covenant is applicable with respect to the most recently ended Relevant Period, sufficient information to enable the Majority Financiers (acting reasonably) to determine whether the Financial Covenant has been complied with including a Reconciliation Statement to be delivered with each set of Financial Statements.
- (b) The Accounting Reference Date of the Company (or any other member of the Group or the Neptune Group or the Moon Group) may be changed at any time and from time to time in the sole discretion of the Company.

#### 21.4 **Annual Business Plan**

The Company shall supply to the Global Agent, in respect of a Financial Year, by 31 January of that Financial Year, an annual business plan for that Financial Year (for information purposes only) which shall include the budgeted Capital Expenditure of the Group for that Financial Year, commencing with the first full Financial Year to commence (and to be completed) after the Neptune Completion Date.

#### 21.5 **"Know your customer" checks**

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

obliges the Security Agent, any Agent or any Financier (or, in the case of paragraph (iii) above, any prospective new Financier) to comply with "*know your customer*" or similar identification procedures in circumstances where the necessary information has not previously been provided to it, the relevant Agent or the Security Agent or is not already available to it (including from public sources), each Obligor shall promptly, upon the request of the Security Agent, any Agent or any Financier, supply, or procure the supply of, such documentation and other evidence as is requested by that Agent (for itself or on behalf of any Financier) or any Financier (for itself or on behalf of any prospective New Financier provided it has entered into a confidentiality undertaking as required by Clause 39 (*Confidentiality*)) or the Security Agent in order for the Security Agent, such Agent, such Financier or any prospective New Financier to carry out and be satisfied with the results of all necessary "*know your customer*" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Global Finance Documents.

- (b) Each Financier shall promptly, upon the request of an Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Agent (for itself) in order for that Agent to carry out and be satisfied with the results of all necessary "*know your customer*" or other similar checks that it is required to carry out under all applicable laws and regulations pursuant to the transactions contemplated in the Global Finance Documents.
- (c) The Company shall, by not less than five Business Days' written notice to each Agent (or such shorter notice period agreed with each Agent), notify each Agent (which shall promptly notify the relevant Financiers) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 27 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Security Agent, any Agent or any Financier to comply with "*know your customer*" or similar identification procedures in respect of that Additional Obligor in circumstances where the necessary information has not previously been provided to it, the relevant Agent or the Security Agent or is not already available to it (including from public sources), the Company shall promptly upon the request of the Security Agent, any Agent or any Financier supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Agent (for itself or on behalf of any Financier (for itself or on behalf of any prospective New Financier) provided it has entered into a confidentiality undertaking as required by Clause 39 (*Confidentiality*)) or the Security Agent in order for the Security Agent, any Agent, any Financier or any prospective New Financier to carry out and be satisfied with the results of all necessary "*know your customer*" or other similar checks that it is required to carry out under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor pursuant to Clause 27 (*Changes to the Obligors*).

#### 21.6 **Restrictions**

- (a) Notwithstanding any other term of the Global Finance Documents all reporting and other information requirements in the Global Finance Documents shall be subject to (and no information undertaking or other reporting requirement in any Global Finance Document shall apply to the extent that compliance with it would, in the opinion of the Company, reasonably be expected to result in a breach of) any confidentiality, legal, regulatory, listing or stock exchange rules or other restrictions relating to the supply of information concerning the Group or Reporting Entity (and/or

its subsidiaries) or otherwise binding on any member of the Group or Reporting Entity (and/or its subsidiaries) and in no circumstances shall any member of the Group or Reporting Entity be required to disclose (and in no circumstances shall any breach, Default or Event of Default arise from a failure to disclose) any information subject to such restrictions or any other information that the Company (acting reasonably and in good faith) considers to constitute a "trade secret" or to be commercially sensitive with respect to a Global Finance Party including, for the avoidance of doubt and without limitation, a Global Finance Party that is or becomes an Industry Competitor and no such disclosure shall be required if as a result of such disclosure a member of the Group or Reporting Entity (and/or its subsidiaries) would be obliged to make an announcement to the relevant listing authorities and/or stock exchange which it would not otherwise have been required to make or would contravene any applicable laws or regulations or stock exchange requirements.

- (b) For the avoidance of any doubt, there will be no requirements for any budget, commentary or reporting by management or auditors or comparison against prior year performance or any other financial or other information or reporting (for the avoidance of doubt, excluding any requirement to deliver a reconciliation statements under Clauses 21.2 (*Provision and contents of Compliance Certificate*) and 21.3 (*Agreed Accounting Principles*)).

#### 21.7 **Notice of Material Events of Default**

The Company will notify the Global Agent of any Material Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

## 22. **FINANCIAL COVENANT**

### 22.1 **Financial definitions**

For the purposes of this Agreement:

**"Borrowings"** means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group required to be shown on a (consolidated) balance sheet of the Company for or in respect of:

- (a) moneys borrowed or raised through conventional or Shari'a compliance financing arrangements and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument (but not, in any case, Trade Instruments) issued by a bank or financial institution in respect of an underlying liability of an entity which is not a



member of the Group which liability would fall within one of the other paragraphs of this definition;

- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the latest Termination Date;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing and required to be accounted for as such under the Accounting Principles; and
- (j) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above,

but in any event excluding the following:

- (a) any intra-Group item;
- (b) any Equity Contributions;
- (c) any indebtedness under any Permitted Treasury Transaction;
- (d) any intra-day exposures or indebtedness arising under any intraday or daylight facilities relating to arrangements in the ordinary course of trading with credit card providers (or similar) and/or any indebtedness (which would otherwise constitute indebtedness) to the extent cash collateralised (or otherwise secured by cash deposited with (or on behalf of) the relevant creditor) any working capital facilities incurred in the ordinary course of business to bridge short term receivables from major card schemes;
- (e) any obligations, claims, liabilities or other amounts under or in connection with any Cash Management Services;
- (f) any obligations and/or any amount due or outstanding at any time under or in respect of any concession, license, permit or other approval (including any in respect of any property) (or any guarantee thereof) incurred in the ordinary course of business, or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;
- (g) any obligations, claims, liabilities or other amounts (including any joint and several liability or any netting or set-off arrangement) under or in connection with or by operation of law or any tax grouping as a result of the existence or establishment of a fiscal or tax unity solely for corporate tax, value added tax or other tax purposes to which a member of the Group is or becomes a party;
- (h) liabilities in relation to the minority interests line in the balance sheet of any member of the Group;

- (i) any obligations, claims, liabilities or other amounts under or in connection with any Incentive Plan;
- (j) accruals for payroll and other liabilities accrued in the ordinary course of business; and
- (k) any guarantee of any item excluded from or otherwise not otherwise constituting Financial Indebtedness.

**"Capital Expenditure"** means any expenditure or obligation which, in accordance with the Accounting Principles, is or should be treated as capital expenditure.

**"Cashflow"** means, in respect of any Relevant Period, EBITDA of the Group for that Relevant Period after:

- (a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;
- (b) adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any member of the Group;
- (c) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in EBITDA;
- (d) deducting any non-operating cash expenditure (including for the avoidance of doubt any amount of any Capital Expenditure actually made (or due to be made) in cash during that Relevant Period by any member of the Group and the aggregate of any cash consideration paid for, or the cash cost of, any Permitted Acquisitions, Permitted Joint Ventures and/or other investments permitted under this Agreement);
- (e) deducting (to the extent not already deducted in establishing EBITDA) the amount of any dividends or other profit distributions paid in cash during that Relevant Period to minority shareholders (or such holders of another ownership interest other than a Holding Company of any member of the Group) in members of the Group and deducting Permitted Distributions to persons who are not members of the Group;
- (f) deducting the amount of operating profit before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA) of a member of the Group (or attributable to a business or assets) acquired during the Relevant Period for that part of the Relevant Period prior to its becoming a member of the Group or (as the case may be) prior to the acquisition of the business or assets;
- (g) deducting the amount of any cash funding, cost, expense, charge, or other cash payment, attributable to a post-employment benefit scheme for the beneficial account of and paid by the Group during that Relevant Period; and adding the amount of any cash income or receipts attributable to a post-employment benefit scheme for the beneficial account of and received by the Group during that Relevant Period, in each case, to the extent not taken into account in establishing EBITDA; and

- (h) and so that no amount shall be added (or deducted) more than once and there shall be excluded the effect of all cash movements associated with the Neptune Acquisition and the Transaction Expenses.

**"Consolidated Depreciation and Amortisation Expense"** means, with respect to any member of the Group for any period, the total amount of depreciation and amortisation expense, including amortisation or write-off of (a) intangibles and non-cash organisation costs, (b) deferred financing fees or costs and (c) capitalised expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, the amortisation of original issue discount resulting from the issuance of Financial Indebtedness at less than par and amortisation of favourable or unfavourable lease assets or liabilities, of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with the Applicable Accounting Principles and any write down of assets or asset value carried on the balance sheet

**"Consolidated EBITDA"** means, in respect of any relevant period, EBITDA as adjusted in accordance with Clause 22.4 (*Calculations*).

**"Current Assets"** means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in relation to operating items and sundry debtors (but excluding cash and Cash Equivalent Investments) expected to be realised within twelve months from the date of computation but excluding amounts in respect of:

- (a) receivables in relation to Tax;
- (b) Exceptional Items and other non-operating items;
- (c) insurance claims;
- (d) any interest owing to any member of the Group; and
- (e) amounts owed by the vendor(s) under and in connection with the Neptune Acquisition.

**"Current Liabilities"** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group expected to be settled within twelve months from the date of computation but excluding amounts in respect of:

- (a) liabilities for Borrowings and Finance Charges;
- (b) liabilities for Tax;
- (c) Exceptional Items and other non-operating items;
- (d) insurance claims;
- (e) liabilities in relation to dividends declared but not paid by the Company or by a member of the Group in favour of a person which is not a member of the Group; and
- (f) amounts owed by the vendor(s) under and in connection with the Neptune Acquisition.

**"EBITDA"** means, in respect of any relevant period, the consolidated operating profit of the Group before taxation (current or deferred) (excluding the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that relevant period;
- (b) after adding back any amount attributable to the Consolidated Depreciation and Amortisation Expense of members of the Group and/or impairment of assets of members of the Group in that relevant period (and taking no account of the reversal of any previous impairment charge made in that relevant period);
- (c) before taking into account any Exceptional Items;
- (d) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity;
- (e) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (f) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset;
- (g) after adding (or deducting) any realised gains or losses from foreign exchange translations in the ordinary course of trading activities; and
- (h) not including any accrued interest owing to any member of the Group;
- (i) after adding the amount received in cash by members of the Group through dividends, profit distributions, returns on investments, royalties or similar payments by any Non-Group Entity (grossed up in respect of any applicable withholding tax and including any repayment to the Group of loans to, or other investments in, associates or Joint Ventures);
- (j) after adding any:
  - (i) Transaction Expenses;
  - (ii) fees, costs, expenses or charges (other than Consolidated Depreciation and Amortisation Expense) related to any actual, proposed or contemplated Specified Transaction, litigation or arbitration, equity offering (including any expense relating to enhanced accounting functions or other transactions costs associated with becoming a public company) or Listing, Permitted Acquisition, Permitted Reorganisation, restructuring, disposition, recapitalisation, share for share exchange, merger, business combination, Permitted Distribution, Permitted Loan or any similar transaction or the incurrence of Financial Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (in each case, whether or not successful), in each case, whether or not consummated, and including associated Taxes, to the extent the same were deducted (and not added back) in computing consolidated operating profit; and

- (iii) board of director (or equivalent) fees or other compensation, management, monitoring, consulting, advisory, refinancing, re-pricing, subsequent transaction, exit and/or termination fees;
- (k) after adding purchase price adjustments, earn-out and contingent or deferred consideration obligations or liabilities (including to the extent accounted for as bonuses or otherwise) and/or or put options (or similar) and adjustments or revaluations thereof;
- (l) after adding any losses, costs, charges or expenses (or other negative impact) incurred by the Company or a member of the Group pursuant to any incentive plan, management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses comprise the issuance of securities or are funded with cash proceeds contributed to the capital of the Company or net cash proceeds of an issuance of share capital of the Company or member of the Group;
- (m) after adding any net pension or other post-employment benefit costs representing amortisation of unrecognised prior service costs, actuarial losses, including amortisation of such amounts arising in prior periods, amortisation of the unrecognised net obligation (and loss or cost), and any other pension or post-employment items or items of a similar nature;
- (n) (for the avoidance of doubt, without double counting any amounts contemplated by paragraph (i) above) in respect of any Non-Group Entity, if so elected by the Company for that relevant period, after adding back the Group's proportionate interest of any "EBITDA" of such Non-Group Entity (calculated on the same basis as EBITDA);
- (o) after adding the proceeds or other benefit of any business interruption insurance, government support measures (including any subsidies, bursaries, grants, awards or other support) (provided that any such government support measures are in respect of costs, losses, charges or expenses and represent the replacement of an item in respect of which the Group would otherwise be entitled to include in its calculation or determination of EBITDA but for the relevant circumstance(s) as a result of which the Group is entitled to the relevant support measure) and/or compensation claims and rights against third parties (to the extent received or receivable); and
- (p) to the extent not already otherwise included herein, after adding positive adjustments and add-backs (including anticipated synergies) made in the Base Case Model, any Report and any model or quality of earnings report relating to a Permitted Acquisition (including the Neptune Acquisition), or confirmed or approved by the auditors of the Group or otherwise consistent with the past practice of management or included in any audited financial statements of the Neptune Group or the Moon Group,

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

**"Equity Contribution"** means:

- (a) any subscription for, investment in or shares issued by, and any capital contributions (including by way of share capital, premium and/or contribution to the capital reserves and on a cash or cashless basis) to, the Company via the Parent (but excluding the proceeds of any Senior Unsecured Liabilities which (in each case) benefit from Senior Unsecured Shared Security (as defined in the Intercreditor Agreement) or are guaranteed by a member of the Group ("**Excluded Senior Unsecured Proceeds**")); and/or
- (b) any loans, notes, bonds or like instruments issued by or made to the Company via the Parent which are subordinated to the Facilities as "*Investor Liabilities*" pursuant to the Intercreditor Agreement or otherwise on terms satisfactory to the Global Agent (acting reasonably) (but excluding any Senior Unsecured Proceeds Loan which is made from Excluded Senior Unsecured Proceeds).

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

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring including any expenditure in connection with any restructuring of the Group or any business or assets of any Group member (including, without limitation, disposals, relocating, redundancies, carve-outs, corporate reorganisations, the shut down and/or re-branding of sites and extraordinary measures to comply with any legal or regulatory requirements) and the payment of costs and expenses incurred in connection with such restructuring;
- (b) one-off exceptional expense items not incurred in the ordinary course of business
- (c) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;
- (d) disposals of assets associated with discontinued operations;
- (e) realised or unrealised gains or losses from foreign exchange translations from any other activity; and
- (f) impact of changes in accounting policies or accounting estimates.

**"Excess Cashflow"** means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow):

- (a) any amount applied in such period towards payment of principal, interest, fees or other amounts paid in respect of any Permitted Financial Indebtedness of the Group;
- (b) to the extent included in such Cashflow, any amount applied towards any Permitted Acquisition, investment permitted under this Agreement and/or Capital Expenditure which is committed to be spent in the subsequent Financial Year (provided that if any such committed Capital Expenditure amount is not spent in such subsequent Financial Year, such amount so deducted will be added to Excess Cashflow in such Financial Year);
- (c) distributions made to the Company for the purposes of financing the payments described in paragraph (a) of the definition of "Permitted Distribution";

- (d) to the extent included in such Cashflow, the proceeds of any Permitted Disposal and any proceeds of insurance claims made by a member of the Group;
- (e) to the extent included in such Cashflow, (i) the cash proceeds of any Equity Contributions and/or Permitted Financial Indebtedness made during the Relevant Period and (ii) any Listing Proceeds received by the Group during the Relevant Period; and
- (f) any amounts which constitute Trapped Cash (or that constitute Trapped Cash in connection with any upstreaming, distribution or repatriation, including on an intra-Group basis);
- (g) an amount equal to the greater of USD 75,000,000 and 25 per cent. of EBITDA for that period;
- (h) any amount applied towards payment of interest, profit, fees or other amounts due under the Global Finance Documents (including any payment and/or prepayment of the principal); and
- (i) any payment or amount described in the preceding paragraphs made after the end of the applicable Financial Year for which such Excess Cashflow calculation applies to and before the date on which an early payment is required to be made in accordance with Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*) which the Company elects to deduct in such Excess Cashflow calculation (provided that any such amount deducted under this paragraph may not be deducted in any subsequent calculation of Excess Cashflow).

**"Finance Charges"** means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings under the Facilities paid or payable by any member of the Group (calculated on a consolidated basis) in cash in respect of that Relevant Period and without double counting:

- (a) excluding any upfront fees or costs;
- (b) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;
- (c) including the interest (but not the capital) element of payments in respect of Finance Leases (and, for purposes of this definition, interest on a Finance Lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Finance Lease in accordance with the Applicable Accounting Principles);
- (d) excluding any costs and expenses incurred in connection with the Transaction or Hedging Obligations;
- (e) taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis; and

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

**"Finance Lease"** means any lease or hire purchase contract, a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability, but excluding for all purposes under this Agreement, other than the definition of "Borrowings", any operating lease entered into at any time which, but for the operation of IFRS 16, would have been considered an operating lease under the Accounting Principles.

**"Financial Half Year"** means the period commencing on the day immediately following a Half Year Date and ending on the next occurring Half Year Date.

**"Financial Quarter"** means the period commencing on the day immediately following a Quarter Date and ending on the next occurring Quarter Date.

**"Financial Year"** means each annual accounting period of 12 months of the relevant Reporting Entity ending on the Accounting Reference Date in each year.

**"First Test Date"** means the first Half Year Date falling at the end of the first complete Financial Half Year of the Company to commence (and to be completed) after the Closing Date.

**"Forward-Looking Period"** means a forward-looking period of 18 months commencing on the relevant calculation date.

**"Group Initiative"** means any action or step taken, committed (unilaterally, conditionally or otherwise) or implemented or any other circumstance brought about (or to be brought about) by any member of the Group (as determined by the Company).

**"Half Year Date"** means each of 30 June and 31 December or such other dates which correspond to the half year end dates within the Financial Year.

**"Hedging Obligations"** means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contracts, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks or any other risk either generally or under specific contingencies including any, in each case, on a "deal contingent" basis).

**"LTM"** means, in respect of any date, the immediately preceding 12 months from that date.

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

**"Quarter Date"** means each of 31 March, 30 June, 30 September and 31 December or such other dates which correspond to the quarter end dates within the Financial Year.

**"Relevant Period"** means each period of two consecutive Financial Half Years ending on a Half Year Date, which for the avoidance of doubt and in each case, may include periods prior to the Closing Date in accordance with Clause 22.4 (*Calculations*).



**"Relevant Transaction"** means any acquisition, investment, disposition, merger (or other reorganisation or business combination), incurrence or discharge of security, payment (including any restricted payment), transaction with any Investor or affiliate of the Company, indebtedness (including its incurrence, assumption, commitment, issuance, repayment, repurchase or refinancing and the use of proceeds thereof), share issuance, Listing or any other action or transaction, including, in each case, the use of proceeds of any of the foregoing, provided that, if there are multiple related transactions which may occur at different times, the Company may elect to treat those transactions as a single transaction or different transactions and elect the Relevant Transaction Test Date and Applicable Measurement Period accordingly.

**"Relevant Transaction Test Date"** has the meaning given to that term in paragraph (o)(v) of Clause 22.4 (*Calculations*).

**"Restructuring Costs"** means costs or expenses relating to employee relocation, retraining, severance and termination, business interruption, reorganisation and other restructuring or cost cutting measures, the rationalisation, re-branding, start up, reduction or elimination of product lines, assets or businesses, the consolidation, relocation or closure of retail, administrative or production locations and other similar items (for the avoidance of doubt, excluding any related Capital Expenditure).

**"Specified Transaction"** means acquisitions (including of any person, business, property and/or fixed asset), investments, disposals, Capital Expenditure, debt incurrence, debt reduction or rescheduling, refinancing, new or amended or waived or terminated or discontinued or closure or suspended or developed contracts (including tenancy or concession agreements) or products or business lines or locations or operations or facilities, new territories, start-ups, integration, research and development (or so-called R&D), payment, restructuring, reorganisation, redundancy programmes (including retraining or severance or termination or similar), rationalisation measures, relocation (including employee relocation), footprint rationalisation, cost and/or other expense reductions, cost savings, cost optimisation, operating cost improvements, efficiency improvements, operating improvements, profit margin increases and/or any Group Initiative.

**"Test Date"** means each Half Year Date or if such date is not a Business Day, the Company may elect that such date shall be the next Business Day or the immediately preceding Business Day.

**"Total Net Debt"** means, as of any date of determination, the sum of (a) all Borrowings (excluding any Subordinated Indebtedness) as of such date less the aggregate amount of cash and Cash Equivalent Investments of the Group and on a consolidated basis, other than any cash that as a matter of law and/or regulation (including currency controls) is not readily available to be applied in repayment or prepayment of Borrowings of the Group or balances due to merchants in the ordinary course of the Group's payments processing business and (b) the Group's proportionate interest of any "Total Net Debt" (calculated on the same basis as Total Net Debt) of any Non-Group Entity in respect of which the Company has made an election under paragraph (n) of the definition of "EBITDA" in this Clause 22.1 (but only for any relevant period in respect of which such election has been made).

**"Total Net Leverage Ratio"** means, as of any date of determination, the ratio of (x) the sum of Total Net Debt as of such date to (y) Consolidated EBITDA.

**"Working Capital"** means, on any date, Current Assets less Current Liabilities.

## 22.2 **Financial Condition**

- (a) The undertaking in this Clause 22.2 shall unless otherwise indicated in this Agreement remain in full force from the date of this Agreement for so long as any amount is outstanding under a Facility or any Commitment is in force.
- (b) The Company shall ensure, but only on and after the First Test Date, that the Total Net Leverage Ratio on the last day of each Relevant Period ending on each Test Date (in respect of that Relevant Period) will not exceed:
  - (i) in respect of the First Test Date and the next Test Date thereafter, 6.75:1.00;
  - (ii) in respect of the two subsequent Test Dates thereafter, 6.50:1.00; and
  - (iii) for each subsequent Test Date thereafter, 6.00:1.00.

## 22.3 **Capex covenant**

- (a) Subject to paragraph (b) below, the Company shall ensure that, for each full Financial Year of the Company after the Closing Date, Capital Expenditure for that Financial Year (as tested by reference to the Annual Financial Statements delivered in accordance with this Agreement in respect of such Financial Year) does not exceed 150 per cent. of the amount of Capital Expenditure included in the Annual Business Plan for that Financial Year except to the extent funded from amounts constituting Acceptable Funding Sources under paragraph (a), (b) or (c) of that definition (the "**Capex Covenant**").
- (b) Upon delivery of a Compliance Certificate that evidences the Total Net Leverage Ratio on the last day of a Relevant Period (in respect of that Relevant Period) is equal to or less than 3.50:1.00, the Capex Covenant will cease to apply in respect of the Financial Year immediately following the delivery of that Compliance Certificate, provided that if a further Compliance Certificate is delivered prior to the commencement of a subsequent Financial Year that evidences the Total Net Leverage Ratio on the last day of a Relevant Period (in respect of that Relevant Period) is greater than 3.50:1.00, the Capex Covenant shall apply to that subsequent Financial Year (in each case using the Compliance Certificate most recently delivered prior to the commencement of that Financial Year).

## 22.4 **Calculations**

- (a) The first Test Date for testing and determining whether the Financial Covenant is met will be the First Test Date and Clause 22.2 (*Financial Condition*) will be construed and interpreted accordingly.
- (b) The Financial Covenant will be tested:
  - (i) on a rolling basis for the Relevant Periods ending on each Test Date; and
  - (ii) on the date of delivery of, and by reference to, the Compliance Certificate delivered alongside the Semi-Annual Financial Statements or, as the case may be, the Annual

Financial Statements for the applicable Relevant Period, but only on and after the First Test Date.

- (c) For the purposes of calculating the Financial Covenant, any ratio, any financial definitions (or components thereof) or any other Applicable Metric or related, usage, ratchet or permission, such calculations will be calculated in accordance with the Global Finance Documents.
- (d) Without in any way limiting paragraph (e) below, for the purposes of this Clause 22 in respect of any Relevant Period and to the extent the Total Net Leverage Ratio, or any other ratio, financial definition (or any component thereof) is used as the basis (in whole or in part) for testing the Financial Covenant, permitting any transaction or making any determination under this Agreement (including on a pro forma basis and including for the purposes of determining any interest rate) the principal amount of any Borrowings shall be converted into US Dollars in accordance with paragraph (e) below.
- (e) For the purposes of calculating the Financial Covenant, any other ratio, financial definition (or any component thereof) or any other Applicable Metric or Relevant Transaction the exchange rates (including for the purposes of determining any interest rate) used in the calculation of EBITDA, Consolidated EBITDA and any Borrowings or any other financial definition or components thereof shall be, at the sole discretionary election and determination of the Company at any time and from time to time any or a combination of (and, where applicable, including the inverse of) (i) the average (or weighted average) spot conversion or exchange rates for the Relevant Period or other calculation period (or up to the relevant date of calculation or determination); (ii) the conversion or exchange rates used or otherwise consistent with the exchange rate methodology applied in the financial statements or management accounts delivered pursuant to Clause 21.1 (*Information Undertakings*) or other internally available financial statements or management accounts or any other any sufficient available internal information used to make a determination as to the Financial Covenant, other ratio, financial definition (or any component thereof) or any other Applicable Metric or Relevant Transaction (as applicable) Applicable Metric; (iii) such rate taking into account any cross-currency or other foreign exchange derivatives, hedging agreements or other hedging transactions entered into by the Group; and/or (iv) the spot conversion or exchange rate as at the last day of the Relevant Period or other calculation period (or as at the relevant date of calculation or determination) (elected and determined by the Company acting reasonably); and/or (v) such other conversion or exchange rates selected by the Company (acting reasonably and in good faith), including (without limitation) the spot rate of exchange on a Test Date and/or any rate used in connection with determining any Optional Currency.
- (f) For the purpose of calculating (or re-calculating) any financial covenant (including the Financial Covenant) or ratio or Applicable Metric or Relevant Transaction or related usage, ratchet or permission when determining (or, as applicable, forecasting) Consolidated EBITDA for any Relevant Period or other applicable calculation or testing period (including any Relevant Period or other Applicable Measurement Period and the portion of any Relevant Period or other Applicable Measurement Period occurring prior to any Specified Transaction), the Company may:
  - (i) if during such period or, if calculating Consolidated EBITDA for a Relevant Period or other calculation or testing period which ended prior to a Specified Transaction being made or committed to (unilaterally, conditionally, unconditionally or otherwise, and whether or not

consummated or completed at that time), after such period, any member of the Group (by merger or otherwise) has made or committed to (unilaterally, conditionally, unconditionally or otherwise, and whether or not consummated or completed at that time) a Specified Transaction (including, without limitation, an investment in any Person that thereby becomes (or that the Company expects, based upon such commitment, will become) a member of the Group or otherwise has acquired or committed to (unilaterally, conditionally, unconditionally or otherwise, and whether or not consummated or completed at that time) acquire any person, entity or business, property, contract or fixed assets (including the acquisition, opening and/or development of any new site operation)), including any such Specified Transaction occurring in connection with a transaction causing a calculation to be made under this Agreement or the other Global Finance Documents, the Company may elect to calculate Consolidated EBITDA for such Relevant Period on the basis that the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as (and with any adjustments and add-backs permitted in respect of) Consolidated EBITDA, *mutatis mutandis*) of or attributable to such Specified Transaction (including, as applicable, the assets which are the subject of such Specified Transaction) shall be included as if that Specified Transaction occurred on the first day of such Relevant Period or other calculation or testing period, provided that, if the Company makes any such election, then (for the purpose of such calculation only, only to the extent an Applicable Metric of Borrowings is required to be calculated in connection with such calculation of Consolidated EBITDA in connection with such Specified Transaction, including for the avoidance of doubt in connection with any calculation of Total Net Leverage Ratio) it shall calculate Total Net Debt for such Relevant Period on the basis that the Borrowings (to the extent constituting Total Net Debt) of or attributable to such Specified Transaction (including, as applicable, the assets which are the subject of such Specified Transaction) shall be included as if that Specified Transaction occurred on the first day of such Relevant Period or other calculation or testing period;

- (ii) include "run rate" adjustments (including on a pro forma basis) required to give effect to synergies (including revenue synergies and/or cost synergies), revenue increases, revenue enhancements, efficiency improvements, profit margin increases or other operating improvements, procurement optimisation or other procurement initiative, cost savings, operating cost improvements, expense reductions that have been realised (in full or in part) for some, but not all, of such period and that are related to the Transaction or any Specified Transaction (in each case, as if realised at the beginning of the relevant calculation period) and with such inclusion at the maximum run rate (being the highest level) so realised) and with any such adjustments being incremental to any other adjustments or pro forma adjustments made pursuant to this Agreement;
- (iii) include (on a full and maximum run-rate basis (being at the highest level expected to be achieved at any time during the relevant Forward-Looking Period) and for the entirety of the relevant calculation period) any add-backs and/or any other adjustments, including any in respect of any actual or anticipated synergies (including revenue synergies and/or cost synergies), revenue increases, revenue enhancements, efficiency improvements, profit margin increases or other operating improvements, procurement optimisation or

other procurement initiative, cost savings, operating cost improvements, expense reductions and any other expense and/or cost reductions in connection with any Specified Transaction, including pursuant to any Specified Transaction committed (unilaterally, conditionally or otherwise) or implemented (or expected to be so committed or implemented) at any time prior to the last day of the relevant Forward-Looking Period (in each case, as if the relevant Specified Transaction, and all related steps and transactions, had been consummated and occurred at the beginning of the relevant calculation period), which the Company believes (in good faith) have or can be obtained or realised at any time prior to the last day of the relevant Forward-Looking Period, provided that the Company may not elect to include a pro forma add-back or other adjustment which increases Consolidated EBITDA in reliance on this paragraph (iii) in connection with a Specified Transaction to the extent that the relevant forward-looking (but not realised, whether in whole or in part) pro forma add-back or other adjustment, when taken together with any applicable forward-looking (but not realised, whether in whole or in part) pro forma add-back or other adjustment which increases Consolidated EBITDA in reliance on paragraph (i) above, exceeds 22.5 per cent. of Consolidated EBITDA (calculated pro forma for all add-backs and other adjustments in respect of that calculation period) for that Relevant Period or other calculation or testing period (the "**Pro Forma Adjustment Cap**"), provided that, where the add-backs and/or adjustments to be made in reliance on this paragraph (f)(iii) above would exceed 15 per cent. of Consolidated EBITDA (calculated pro forma for all add-backs and other adjustments in respect of that calculation period) for that Relevant Period or other calculation or testing period, the relevant add-backs and/or adjustments shall be certified by the CEO or CFO of the Company; and/or

- (iv) exclude any non-recurring fees, costs and expenses directly or indirectly related to the Transaction and/or any Specified Transaction.
- (g) For the purpose of calculating (or re-calculating) the Financial Covenant, the Company may elect to give pro forma effect to any Relevant Transaction in respect of which the Relevant Transaction Test Date has occurred after the last day of the applicable Relevant Period (but on or prior to the date on which the Company delivers the relevant Compliance Certificate to the Global Agent in respect of the Financial Covenant) as if such Relevant Transaction had been consummated or completed on the first day of such Relevant Period.
- (h) In relation to the definitions set out in Clause 22.1 (*Financial definitions*), any Applicable Metric and all other related provisions of the Global Finance Documents (including this Clause 22):
  - (i) all adjustments and calculations will be as determined in good faith by the CEO or CFO or the Board of the Directors of the Company (including in respect of synergies, margin improvements, revenue increases, cost savings, operating expense reductions, operating improvements or other similar initiatives determined as being reasonably anticipated to be achieved) and the CEO or CFO or Board of the Directors of the Company shall determine if and when they will make adjustment and whether an adjustment has or has not been made previously shall not have any effect on including that adjustment subsequently (and vice versa);

- (ii) all calculations in respect of synergies, cost savings, operating expense reductions, operating improvements or other similar initiatives (in each case actual or anticipated) may be made as though the full run-rate effect of such synergies, cost savings, operating expense reductions, operating improvements or other similar initiatives were realised on the first day of the Relevant Period or other calculation or testing period (including, for the avoidance of doubt, any portion thereof occurring prior to the Relevant Transaction or other event); and
  - (iii) other than as specified in paragraph (f)(iii) above, there shall be no requirement to deliver any certificates or any third-party (or other) due diligence or comfort in connection with any add-backs or other adjustments included in calculating or determining EBITDA, Consolidated EBITDA or any other Applicable Metric (other than, in the case of the Financial Covenant, a Compliance Certificate to the extent required by this Agreement).
- (i) In the event that EBITDA or Consolidated EBITDA is to be calculated prior to the end of the second complete Financial Half Year after the Closing Date, EBITDA or Consolidated EBITDA for any part of the applicable Relevant Period falling prior to the date on which the Neptune Group became part of the Group will be calculated, on an actual basis over the Relevant Period (whereby for any part of the applicable Relevant Period falling prior to the date on which the Neptune Group became part of the Group, such amount shall be calculated based on actual aggregate historic data for the corresponding period available and by reference to the Neptune Group on a pro forma basis as set out herein), in each case, with any adjustments and add-backs permitted by this Agreement (including without limitation pursuant to paragraph (f) above).
- (j) In the event that EBITDA or Consolidated EBITDA is to be calculated prior to the end of the second complete Financial Half Year after the Moon Completion Date, EBITDA or Consolidated EBITDA for any part of the applicable Relevant Period falling prior to the date on which the Moon Group became part of the Group will be calculated, on an actual basis over the Relevant Period (whereby for any part of the applicable Relevant Period falling prior to the date on which the Moon Group became part of the Group, such amount shall be calculated based on actual aggregate historic data for the corresponding period available and by reference to the Moon Group on a pro forma basis as set out herein), in each case, with any adjustments and add-backs permitted by this Agreement (including without limitation pursuant to paragraph (f) above).
- (k) In the event that:
  - (i) any Accounting Reference Date or Quarter Date is adjusted by the Company to avoid an Accounting Reference Date or Quarter Date falling on a day which is not a Business Day and/or to ensure that an Accounting Reference Date or Quarter Date falls on a particular day of the week; or
  - (ii) there is any adjustment to a scheduled payment date to avoid payments becoming due on a day which is not a Business Day,

if that adjustment results in any amount being paid in a Relevant Period in which it would otherwise not have been paid, for the purpose of calculating the Financial Covenant, any financial definition or ratio or Applicable Metric under the Global Finance Documents the Company may (at its

election) treat such amount as if it was paid in the Relevant Period in which it would have been paid save for any such adjustment.

- (l) Unless a contrary indication appears, a reference to EBITDA or Consolidated EBITDA is to be construed as a reference to the EBITDA or Consolidated EBITDA of the Group on a fully consolidated basis.
- (m) Notwithstanding anything to the contrary (including anything in the financial definitions set out in this Agreement), when calculating any financial covenant (including the Financial Covenant) or ratio or Applicable Metric under the Global Finance Documents or related usage, ratchet or permission, the Company shall be permitted to (including on a pro forma basis):
  - (i) exclude all or any part of any expenditure or other negative item (and/or the impact thereof) directly or indirectly relating to or resulting from:
    - (A) the Transaction, any other acquisition or investment not prohibited by the terms of this Agreement or the impact from purchase price or push-down accounting;
    - (B) start-up costs for new businesses or business lines and branding or re-branding of existing businesses;
    - (C) Restructuring Costs;
    - (D) research and development costs or other expenditure (and/or the capitalisation thereof), provided any such add-backs or deductions shall be as set out in or as otherwise consistent with the research and development costs in the Reports; and
    - (E) any changes in the Accounting Principles (including any from the Original Accounting Principles), but without prejudice to Clause 21.3 (*Agreed Accounting Principles*); and/or
  - (ii) exclude the effect of cash movements associated with the Transaction;
  - (iii) include the margin on booked (even if not billed) revenues and/or make any other adjustments consistent with or otherwise give effect to IFRS 15; and
  - (iv) make any add-backs and/or any other adjustments, including any in respect of any actual or anticipated synergies (including revenue synergies and/or cost synergies), revenue increases, revenue enhancements, efficiency improvements, profit margin increases or other operating improvements, procurement optimisation or other procurement initiative, cost savings, operating cost improvements, expense reductions and any other expense and/or cost reductions (without further verification or diligence) included in (or which are otherwise consistent with (or implicit in) those identified in or which were taken into account when calculating or determining) (A) the Base Case Model, (B) the Reports and/or any quality of earnings analysis or other reports delivered to the Mandated Lead Arrangers prior to the date of this Agreement (in each case, as amended, varied, supplemented and/or updated on or prior to the Closing Date, to the extent such amendment, variation, supplement and/or update is not materially prejudicial to the Financiers) (C) any reports or quality of earnings analysis or reports or any financial model or base case model (or similar) (including any update to the Base Case Model) delivered to the Global Agent in

connection with any acquisition (other than the Neptune Acquisition) or investment permitted by this Agreement and/ or (D) any presentation or materials provided to any rating agencies in connection with Facility B, in each case on a full and maximum run-rate basis (being at the highest level expected to be achieved at any time during the relevant Forward-Looking Period) and for the entirety of the relevant calculation period, but not exceeding the relevant realisation period as set out therein.

- (n) For the purpose of this Clause 22 and to the extent the Total Net Leverage Ratio or any financial definition contained in this Clause 22 is used as the basis (in whole or in part) for permitting any transaction or making any determination under this Agreement (including on a pro forma basis) no item shall be included or excluded more than once where to do so would result in double counting.
- (o) For the purposes of calculating, determining and/or testing any Applicable Metric:
  - (i) any Applicable Metric may be calculated, at the Company's sole discretion (i) in the case of Borrowings, net of cash and Cash Equivalent Investments held by any member of the Group (and there shall be no limits or caps on cash netting, other than as expressly contemplated with regard to all or any part of a Cure Amount) and (ii) in the case of any transaction, giving full pro forma effect to that transaction (and any related transactions, including, as applicable, the use of proceeds and any repayment, prepayment, refinancing or discharge (or similar) of any indebtedness in connection therewith) and any permitted add-backs or other adjustments (including any permitted pro forma adjustments and any related increases in Consolidated EBITDA) as if each had occurred or been realised on the first day of the relevant calculation or testing period;
  - (ii) any Ratio-Based Applicable Metric shall be calculated or determined excluding (i) (other than for the purposes of the Financial Covenant) any indebtedness to finance the working capital needs of the Group (including under any revolving facility, ancillary facility, letter of credit facility or bank guarantee facility) (ii), any undrawn commitments in respect of any Borrowings and (iii) any Cash Management Services, together (in each case) with any interest costs, premia and/or fees), unless, in each case, the Company elects otherwise (in its sole discretion));
  - (iii) in the event that (i) any Fixed Applicable Metric(s) and/or (ii) any indebtedness under any facility or other financial accommodation which is available to be re-drawn (including any indebtedness under a Revolving Facility and any Ancillary Outstandings) are intended to be utilised together with any Ratio-Based Applicable Metric(s) in a single transaction (or series of related transactions), then (A) compliance with or satisfaction of the relevant Ratio-Based Applicable Metric shall be calculated first and shall be calculated without giving effect to the relevant Fixed Applicable Metric (and amounts previously incurred under such Fixed Applicable Metric and not re-classified that are being repaid or otherwise discharged in connection with the relevant transaction) and/or (as the case may be) the relevant indebtedness under the relevant facility or other financial accommodation which is available to be re-drawn and (B) thereafter, compliance with or satisfaction of the relevant Fixed Applicable Metric shall be calculated and/or (as the case may be) the permissibility of the relevant indebtedness under the relevant facility or other financial accommodation which is available to be re-drawn tested, provided that in the case of any



Borrowings which is to be incurred under (or the permissibility or compliance of which is to be calculated or determined by reference to) any Ratio-Based Applicable Metric(s) (including any on a "no worse than" or "no deterioration" (or equivalent) basis), the Company shall be permitted to calculate or determine the relevant Ratio-Based Applicable Metric without including any Borrowings at that time incurred in reliance on any Fixed Applicable Metric (or any amounts previously incurred under such Fixed Applicable Metric and not re-classified that are being repaid or otherwise discharged in connection with the relevant transaction) whether or not any such Fixed Applicable Metric is intended to be utilised together with that Ratio-Based Applicable Metric;

- (iv) the Company may elect (at the Company's sole discretion and without any requirement to deliver any further financial information or certification to any party in connection therewith) that the measurement, calculation or testing period in respect of any Applicable Metric (other than the Financial Covenant), including any on a Relevant Transaction Test Date, be the relevant LTM period ending on (i) the then most recent Financial Quarter, Financial Half Year or Financial Year-end of the Company (by reference to internally available financial information, whether or not the relevant financial statements in respect of that Financial Quarter, Financial Half Year or Financial Year have, at that time, been delivered to the Global Agent) (ii) the then most recent month-end date (by reference to internally available financial information) or (iii) the Closing Date (if no financial statements have been delivered to the Global Agent since the Closing Date), in each case, adjusted (at the election of the Company) for any changes since such date to (and including) the date on which the relevant calculation or determination is being undertaken (including such Relevant Transaction Test Date) (each, an "**Applicable Measurement Period**"); and/or
- (v) (subject to the paragraph below in the case of the incurrence or issuance of any Borrowings) the Company may elect (but may, from time to time, revoke and change and re-calculate any such election) to definitively test, calculate or determine (and will not at any time be required to subsequently re-test, re-calculate or re-determine, including when actually consummated) the permissibility of any Relevant Transaction (and any Applicable Metric in connection therewith, including the presence or absence of any Default or Event of Default) as at (i) the date that any commitment, offer, announcement, communication or declaration (in each case, whether unilateral, conditional or otherwise) is made or received with respect to such Relevant Transaction, (ii) the date that any letter, definitive agreement (including any purchase agreement), instrument, put option, scheme of arrangement or similar arrangement in relation to such Relevant Transaction (in each case, unilateral, conditional or otherwise) is entered into, countersigned or sanctioned (iii) the date that any notice (which may be revocable or conditional) of any repayment, prepayment, repurchase, defeasance or refinancing of any indebtedness is given in relation to such Relevant Transaction, (iv) the date of completion, consummation, incurrence (or the date of any availability of any commitments), designation or payment (or similar) in respect of such Relevant Transaction or (v) any other date by the Company in good faith (each, a "**Relevant Transaction Test Date**"), in each case, by reference to (and based upon) the Applicable Measurement Period immediately preceding such Relevant Transaction Test Date on a pro forma basis as if such Relevant Transaction (and

any related transactions) had occurred at the beginning of the Applicable Measurement Period, provided that (A) when making such determination, the Company gives pro forma effect to any other Relevant Transactions that have occurred as at such Relevant Transaction Test Date and (B) in testing, calculating or determining the permissibility of any subsequent unrelated Relevant Transaction (and any Applicable Metric in connection therewith), the Company gives pro forma effect to that (original) Relevant Transaction. For the avoidance of any doubt, the Company will not be required to give pro forma effect to any Relevant Transaction if the Company determines (acting reasonably and in good faith) that such Relevant Transaction will not be consummated.

## 23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 shall unless otherwise indicated in this Agreement remain in force from the date of this Agreement for so long as any amount is outstanding under the Global Finance Documents or any Commitment is in force.

### 23.1 General Undertakings

- (a) Subject to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) and Clause 24.15 (*Excluded Matters*), each Obligor shall comply with the covenants set out in this Clause 23 (*General Undertakings*).
- (b) For the avoidance of any doubt, (i) no positive or negative undertaking shall apply at any time on or prior to the Closing Date in respect of any member of the Neptune Group or the Moon Completion Date in respect of any member of the Moon Group (and subject always to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*)) and (ii) no positive or negative undertakings shall apply to at any time to any joint venture entities or any entity in which any member of the Group holds a minority interest (in each case, as determined by the Company).

### 23.2 Authorisations

Subject to the Legal Reservations and Perfection Requirements, each Obligor, the Parent and the Company will obtain and promptly renew from time to time and maintain in full force and effect all material Authorisations (i) to execute and perform its obligations under the Global Finance Documents, (ii) subject to Legal Reservations and Perfection Requirements, to ensure the Global Finance Documents are legal, valid, binding and enforceable and (iii) to own property and carry on the business of the Group, in each case, where failure to do so would have a Material Adverse Effect.

### 23.3 Compliance with laws

Each Obligor shall (and the Company shall ensure that each member of the Group shall) comply in all respects with all laws binding upon it, if failure so to comply would have a Material Adverse Effect.

### 23.4 Taxes

Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring material penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;

- (b) adequate reserves are being maintained for those Taxes, any penalties likely to be incurred thereon and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Global Agent under Clause 21.1 (*Information Undertakings*) if required to be disclosed under the Accounting Principles; or
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have and would not reasonably be expected to have a Material Adverse Effect.

### 23.5 **Mergers**

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Acquisition, Permitted Disposal, Permitted Reorganisation or Permitted Transaction.

### 23.6 **Change of business**

The Company shall procure that no substantial change is made to the general nature of the business of the Group taken as a whole.

### 23.7 **Acquisitions**

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

### 23.8 **Joint Ventures**

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

Indebtedness, a Permitted Guarantee, a Permitted Transaction, a Permitted Loan or a Permitted Joint Venture.

### 23.9 **Pari passu**

- (a) Subject to the Legal Reservations and Perfection Requirements, each Obligor will ensure that (except pursuant to a Notifiable Debt Purchase Transaction) at all times any unsecured and unsubordinated claims of a Global Finance Party against it under each of the Global Finance Documents rank at least *pari passu* in right and priority of payment with the claims of all its other unsecured and unsubordinated creditors except creditors whose claims are mandatorily preferred by laws of general application (or applying to companies generally).
- (b) The Company may not provide a “New Debt Financing Designation Certificate” in respect of, or any other form of written notice to the Security Agent designating liabilities as, “Super Senior Financier Liabilities”, “Senior Secured Financier Liabilities” or “Senior Secured Notes Liabilities” (in each case, as defined in the Intercreditor Agreement) without the prior written consent of the Global Agent (acting on the instruction of the Majority Financiers), unless such New Debt Financing Designation Certificate or other form of written certificate is in respect of Incremental Facilities, Refinancing Indebtedness or “Hedging Liabilities” (as defined in the Intercreditor Agreement).

### 23.10 **Negative pledge**

In this Clause 23.10, “**Quasi Security**” means an arrangement or transaction described in paragraph (a) below.

Except as permitted under paragraph (c) below:

- (a) the Parent (in respect of its shares in and shareholder loans to the Company only) and no Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets;
- (b) the Parent (in respect of its shares in and shareholder loans to the Company only) and no Obligor shall (and the Company shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose to any person who is not a member of the Group of any of its assets on terms whereby they are or may be leased to or re acquired by an Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset; and
- (c) paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi Security, which is:
  - (i) Permitted Security; or

- (ii) a Permitted Transaction.

### 23.11 Disposals

- (a) Except as permitted under paragraph (b) below, the Parent (in respect of its shares in and shareholder loans to the Company only) and no Obligor shall (and the Company shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to (i) sell, lease, transfer or otherwise dispose of any asset or (ii) issue any shares.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal or issue of shares which is:
  - (i) a Permitted Disposal;
  - (ii) a Permitted Transaction;
  - (iii) made pursuant to a Permitted Reorganisation; or
  - (iv) permitted by the Intercreditor Agreement.

### 23.12 Arm's length basis

- (a) Except as permitted by paragraph (b) below, no Obligor shall enter into any material transaction with the Sponsors and/or any Sponsor Affiliate and/or any direct or indirect Holding Company of the Parent (including any "Investor" (as defined in the Intercreditor Agreement) (in each case in their capacity as shareholders in the Group), or any member of management of any of the foregoing, involving a material cash payment (an "Affiliate Transaction") except on arm's length (or better) terms (from the perspective of the Group).
- (b) The following transactions shall not be a breach of this Clause 23.12:
  - (i) the Moon Acquisition;
  - (ii) a Debt Purchase Transaction permitted under this Agreement;
  - (iii) intra-Group Permitted Financial Indebtedness, any Subordinated Indebtedness and any transaction with any employee or member of management of the Group pursuant to any employee or management participation or incentive scheme;
  - (iv) fees, costs and expenses payable under the Global Finance Documents in the amounts set out in the Global Finance Documents delivered to the Global Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Global Agent;
  - (v) any Permitted Reorganisation or Permitted Transaction;
  - (vi) any Permitted Distribution;
  - (vii) any transaction as permitted by the Intercreditor Agreement;
  - (viii) (other than any transaction or arrangement with the Sponsor or any Sponsor Affiliate) any transaction or arrangement which, in the reasonable opinion of management of the relevant member of the Group, is advantageous to the Obligors as a whole, provided that such transaction or arrangement does not breach any specific restriction or prohibition set out in this Agreement, and provided further that such transaction is approved by a majority

of the disinterested directors of the relevant members of the Group who do not have a conflict of interest in that transaction.

**23.13 Loans, credit or guarantees**

- (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) above does not apply to:
  - (i) a Permitted Loan;
  - (ii) a Permitted Distribution;
  - (iii) a Permitted Guarantee; or
  - (iv) a Permitted Transaction.

**23.14 Dividends and other restricted payments**

- (a) Except as permitted under paragraph (b) below, no member of the Group and (with respect to its share capital in the Company only) the Parent shall not make any "payment" (as that term is understood in the definition of "Permitted Distribution").
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Distribution; or
  - (ii) a Permitted Transaction.

**23.15 Financial indebtedness**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
  - (i) Permitted Financial Indebtedness; or
  - (ii) a Permitted Transaction.

**23.16 Further Assurance**

- (a) Subject to the Agreed Security Principles and the terms of the Transaction Security Documents, the Parent, each Obligor shall (and the Company shall ensure that each member of the Group will) promptly do all such acts or execute all such documents as the Security Agent may reasonably specify:
  - (i) to complete the Perfection Requirements in relation to the Security created under or evidenced by the Transaction Security Documents or for the exercise of any rights, powers and remedies of the Security Agent or the Global Finance Parties provided by or pursuant to the Global Finance Documents or by law; and
  - (ii) if a Declared Default is continuing, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the Agreed Security Principles and the terms of the Transaction Security Documents, at the reasonable request of the Security Agent, each Obligor shall (and the Company shall ensure

that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the perfection, maintenance or enforcement of any Security conferred or intended to be conferred on the Security Agent or the Global Finance Parties by or pursuant to the Global Finance Documents.

- (c) In relation to any provision of this Agreement which requires the Obligors or any member of the Group to deliver any document for the purposes of granting any guarantee or Security for the benefit of all or any of the Global Finance Parties, each Agent and the Security Agent each agree to execute as soon as reasonably practicable any such agreed form document which is presented to it for execution.

#### **23.17 Holding Companies**

The Parent and the Company shall not trade, carry on any business, own any assets or incur any liabilities except for any Permitted Holding Company Activity.

#### **23.18 Treasury Transactions**

No Obligor shall (and the Company shall ensure that no member of the Group) enter into a Treasury Transaction other than a Permitted Treasury Transaction.

#### **23.19 Sanctions and Anti-Corruption Laws**

- (a) No Obligor shall, directly or indirectly, knowingly use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Loan under this Agreement to fund or facilitate any activities or business of, with, in or related to any Sanctioned Person or any Sanctioned Country.
- (b) Each Obligor shall conduct its business in compliance in all material respects with applicable Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions Laws.
- (c) After the Neptune Completion Date, the Group will institute and maintain policies and procedures designed to ensure compliance with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions Laws applicable to each Obligor in all material respects.
- (d) This undertaking shall not, and nothing in the Global Finance Documents shall, (i) apply to the extent that this undertaking and/or any obligations of any person under or in relation to this undertaking would violate or expose any such person or any Investor, any member of the Group (or any subsidiary of any member of the Group) or Global Finance Party (or any their respective Affiliates and/or Related Funds or their or such Affiliates' or Related Funds' directors, officers, employees, agents, management or advisers) to any liability under any Blocking Law that is in force from time to time in any jurisdiction or (ii) create or establish an obligation or right for any person to the extent that, by agreeing to it, complying with it, exercising it, having such obligation or right, or otherwise, such person or any Investor, any member of the Group (or any subsidiary of any member of the Group) or Global Finance Party (or any their respective Affiliates and/or Related Funds or their or such Affiliates' or Related Funds' directors, officers, employees, agents, management or advisers) would be in violation of any foreign trade law or anti-boycott law or Blocking Law (or similar), and any undertaking referred to above shall be so limited in relation to such person and to that extent shall not be made by nor apply to any such person.

### 23.20 Constitutional documents

The Company shall ensure that no member of the Group whose shares are subject to Transaction Security shall amend its constitutional documents in a manner that would have a Material Adverse Effect in relation to the enforcement of Transaction Security.

### 23.21 Share capital

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

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

### 23.22 Scheme or Offer undertakings

- (a) The Company may only issue a final (or replacement) Announcement (or amend, waive or supplement any Announcement previously made), if:
  - (i) it is in substantially the form of the final draft delivered pursuant to Clause 4.1 (*Initial conditions precedent*); or
  - (ii) such changes, waivers, amendments or other variations or modifications to the form of the final draft delivered pursuant to Clause 4.1 (*Initial conditions precedent*) (or, as the case may be, any final (or replacement) Announcement (or any Announcement previously made as amended, waived or supplemented) which (in each case) complied with the requirements of this Clause) (including of any conditions, other than, in the case of any Offer, the Acceptance Condition (but only if, as a result of the relevant change, waiver, amendment or other modification, the Acceptance Condition would be lower than the Minimum Acceptance Condition)) (i) which (when taken as a whole and having regard to the Transaction as a whole) do not materially and adversely affect the interests of the Original Financiers (taken as a whole) under the Global Finance Documents (provided that it is acknowledged and agreed that, if the Neptune Acquisition is to be consummated by way of an Offer, any extension to the last date on which that Offer is or could be closed to further acceptances to a date that falls after the Longstop Date would be so materially adverse to the interests of the Original Financiers (taken as a whole) under the Global Finance Documents), (ii) contemplated or otherwise permitted by the terms of the Global Finance Documents, (iii) required by the Takeover Code, the Panel, the Court or any other applicable law, regulation or regulatory body, (iv) constituting a switch or other change from a Scheme to an Offer or from an Offer to a Scheme (provided that, in the case of any switch or other change from a Scheme to an Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition), or (v) which have been approved by the Global Agent, each of the Financiers or the Mandated Lead Arrangers (each acting reasonably and in good faith).
- (b) Subject, in the case of an Offer (only), to paragraph (c) below, the Company will not amend or waive a material term or condition of the Scheme Circular or, as applicable, any Offer Documents falling under paragraph (iii) of that definition (including as any such documents are amended, replaced, revised, restated, supplemented or modified from time to time) (in each case) relating to the Neptune Acquisition and contained in the corresponding Announcement, in a way which (when



taken as a whole and having regard to the Transaction as a whole) is materially adverse to the interests of the Original Financiers (taken as a whole) under the Global Finance Documents (provided that it is acknowledged and agreed that, if the Neptune Acquisition is to be consummated by way of an Offer, any extension to the last date on which that Offer is or could be closed to further acceptances to a date that falls after the Longstop Date would be so materially adverse to the interests of the Original Financiers (taken as a whole) under the Global Finance Documents) other than any change, modification, amendment or waiver (including any waiver of any condition):

- (i) contemplated by or otherwise permitted under the terms of the Global Finance Documents;
- (ii) required by the Takeover Code, the Panel, the Court or any other applicable law, regulation or regulatory body;
- (iii) to the extent that it relates to a term or condition to the Neptune Acquisition which the Company reasonably believes that it would not be entitled, in accordance with Rule 13.5(a) of the Takeover Code, to invoke so as to cause the acquisition not to proceed, to lapse or withdrawn provided that the other conditions to the Neptune Acquisition have been, or will contemporaneously be, satisfied or waived;
- (iv) constituting a switch or other change from a Scheme to an Offer or from an Offer to a Scheme (provided that, in the case of any switch or other change from a Scheme to an Offer, the relevant Offer Document includes an Acceptance Condition that is not lower than the Minimum Acceptance Condition);
- (v) which has been approved by the Global Agent, each of the Financiers or the Mandated Lead Arrangers (each acting reasonably and in good faith).

And, subject (as applicable) to the proviso in this paragraph (b), for the avoidance of doubt, it is acknowledged and agreed that any change in the structure or form of the Neptune Acquisition, (without prejudice to the length of the Certain Funds Period) any change in the timing of the Neptune Acquisition (including any reduction or extension to the actual or anticipated Scheme Effective Date, Offer period, closing date or completion date (howsoever described) of the Neptune Acquisition (including by reason of any adjournment of any meeting or court hearing)) and/or any increase (provided that such increase is funded by Equity Contributions or such other proceeds other than proceeds of the Facilities, and without prejudice to the Minimum Equity Condition) to the purchase price (or other consideration) shall not (in any such case) be regarded as being a change, amendment or other modification or otherwise materially adverse to the interests of the Original Financiers (or to any other Global Finance Party).

- (c) In the case of an Offer (only), the Company will not amend or waive the Acceptance Condition contained in the relevant Offer Document falling under paragraph (ii) of that definition relating to the Neptune Acquisition and contained in the corresponding Announcement such that it is lower than the Minimum Acceptance Condition, unless approved by each Financier (each acting reasonably and in good faith).
- (d) The Company shall use its commercially reasonable efforts (to the extent it is legally able to do so, in accordance with applicable law and regulation, including having regard to compliance with any orders of the Court or rulings of the Panel) to:

- (i) (if the Neptune Acquisition is to be effected by way of a Scheme):
  - (A) de-list Neptune from the premium listing segment of the Official List of the FCA and cancel the admission to trading of the shares of Neptune on the London Stock Exchange's main market for listed securities as soon as reasonably practicable after the Scheme Effective Date, and as soon as reasonably practicable after the completion of such de-listing re-register Neptune as a private limited company;
  - (B) as soon as reasonably practicable and in any event within 28 days (or such later date as approved by the Panel) of the issue of the Announcement in respect of the Scheme, dispatch the Scheme Circular;
  - (C) promptly following its issuance, provide copies to the Global Agent of any Scheme Document; and
  - (D) promptly following their occurrence, provide the Financiers with reasonable updates as to material developments in relation to the Scheme; and
- (ii) (if the Neptune Acquisition is to be effected by way of an Offer):
  - (A) de-list Neptune from the premium listing segment of the Official List of the FCA and cancel the admission to trading of the shares of Neptune on the London Stock Exchange's main market for listed securities as soon as reasonably practicable after the later of the Offer Unconditional Date and the date falling 20 Business Days after the date on which the Company (by virtue of its shareholdings and the acceptances of its Offer), has acquired or agreed to acquire issued share capital of Neptune carrying at least (in aggregate) 75 per cent. of the voting rights attributable to the capital of Neptune which are then exercisable at a general meeting of Neptune;
  - (B) as soon as reasonably practicable and in any event within 28 days (or such later date as approved by the Panel) of the issue of the Announcement in respect of the Offer, issue the Offer Document;
  - (C) promptly following its issuance, provide copies to the Global Agent of any Offer Document; and
  - (D) promptly following their occurrence, provide the Financiers with reasonable updates as to material developments in relation to the Offer.
- (iii) (if the Neptune Acquisition is to be effected by way of an Offer) give notice to all other remaining shareholders of Neptune under section 979 of the Companies Act 2006 as soon as reasonably practicable after the later of the Offer Unconditional Date and the date on which the Company (by virtue of the acceptances of its Offer), has acquired or unconditionally contracted to acquire: (i) at least 90 per cent. in value of the Neptune Shares to which the Offer relates; and (ii) issued share capital of Neptune carrying at least (in aggregate) 90 per cent. of the voting rights of the Neptune Shares to which the Offer relates (and, in any event, within the maximum time period, at such time, prescribed for such actions).

- (e) The Company shall not take any action as a result of which any member of the Group is required to make a mandatory offer under Rule 9 of the Takeover Code.

### 23.23 Guarantees and Security

- (a) The Company shall ensure that, subject to the other provisions of this Clause 23.23 and the Agreed Security Principles:

- (i) within the applicable period set out in Part III (*Conditions Subsequent – Initial Neptune Group Obligors*) of Schedule 2 (*Conditions Precedent*) each entity listed therein (each an “**Initial Neptune Group Obligor**”) has acceded to this Agreement as an Additional Guarantor and granted Transaction Security over the assets described therein; and
- (ii) thereafter, the Guarantor Coverage Test is satisfied on each Half Year Date of a Financial Half Year of the Company (commencing in respect of the first complete Financial Half Year of the Company to commence (and to be completed) after the Neptune Completion Date), by reference to the relevant Annual Financial Statements or Semi-Annual Financial Statements (as applicable) in respect of that Financial Year or financial half year, provided that if (when so determined) the Guarantor Coverage Test is not met, there shall be a period of:
- (A) for Group members which are incorporated in the United Kingdom, 20 Business Days;
- (B) for guarantees provided by Group members which are incorporated in the United Arab Emirates, 20 Business Days;
- (C) for any security governed by the laws of the United Arab Emirates or provided by Group members incorporated in the United Arab Emirates, 60 Business Days; and
- (D) for any guarantees or security provided by Group members not specified in paragraphs (A) to (C) above, 60 Business Days,

in each case, commencing on the date of delivery of those Annual Financial Statements or Semi-Annual Financial Statements (as applicable) in order for the Company to procure that other members of the Group (as determined by the Company, acting in its sole and absolute discretion) become Additional Guarantors so that the Guarantor Coverage Test is met by not later than 11:59 p.m. (London time) on the next Business Day to occur after the expiry of the applicable period (and, for the avoidance of any doubt, no breach, default, misrepresentation or Event of Default (or similar) shall occur as a result of the Guarantor Coverage Test not being met when initially so determined).

- (b) The Company will determine the Material Subsidiaries as at the last day of each Financial Year of the Company (commencing in respect of the first complete Financial Year of 12 months of the Company to commence (and to be completed) after the Neptune Completion Date, by reference to the relevant Annual Financial Statements in respect of that Financial Year, provided that if (when so determined) any such Material Subsidiary is not a Guarantor, there shall be a period as set out in paragraphs (a)(ii)(A) to (a)(ii)(D) above commencing on the date of delivery of such Annual Financial Statements to procure that that Material Subsidiary becomes an Additional Guarantor by not later than 11:59 p.m. (London time) on the next Business Day to occur after the expiry of

that period (and, for the avoidance of any doubt, no breach, default, misrepresentation or Event of Default (or similar) shall occur as a result of any Material Subsidiary not being an Additional Guarantor when initially so determined). Without prejudice to its election rights under paragraph (n) of the definition of "EBITDA" in Clause 22.1, the Company will (when determining and reporting its Material Subsidiaries by reference to Annual Financial Statements in accordance with this paragraph (b)) also determine and report any Material Joint Venture Interests in respect of which the Company has made an election under (n) of the definition of "EBITDA" in Clause 22.1 (in any relevant period to which those Annual Financial Statements relate).

- (c) No person shall constitute (or be deemed to constitute) a Material Subsidiary until that person is (as determined by the Company acting reasonably and in good faith) determined to be a Material Subsidiary by the Company by reference to the relevant Annual Financial Statements required pursuant to paragraph (a)(ii) above. If a person was a Material Subsidiary but in accordance with any subsequent determination by reference to any Annual Financial Statements is no longer a Material Subsidiary, that person shall, as of (and from) the date of those Annual Financial Statements, be deemed not to be a Material Subsidiary (without prejudice to any future determination).
- (d) Any determination by the Company (in good faith) that, at any time, a member of the Group is or is not a Material Subsidiary, the Group's interest in a Non-Group Entity is a Material Joint Venture Interest or (as applicable) that the Guarantor Coverage Test is or is not met shall, in the absence of any manifest error, be conclusive and binding on all Parties.
- (e) Following any determination by the Company (in good faith) that a member of the Group is to accede to this Agreement as an Additional Guarantor, that member of the Group shall be treated as an Obligor for the purpose of all permissions and flexibilities under the Global Finance Documents on and from the date of such determination notwithstanding the fact that it may not accede (or have acceded) at the date of any such determination (and may, as the context requires, not accede until the applicable time frame set out in paragraph (a)(ii)(A) to (a)(ii)(D) above after the date of any such determination).
- (f) If the Company elects that a member of the Group, which is incorporated in an Excluded Security Jurisdiction, becomes a Borrower, the Purchaser and/or Guarantor, then the jurisdiction of incorporation of that Borrower, Purchaser and/or Guarantor shall, but solely in relation to (and only for the purposes of) that specific Borrower, Purchaser and/or Guarantor, not be regarded as an Excluded Security Jurisdiction, provided that (i) for the purposes of the Guarantor Coverage Test, the Consolidated EBITDA of that Borrower, Purchaser and/or Guarantor (as applicable) shall only be taken into account when calculating the numerator of the Guarantor Coverage Test but not the denominator and (ii) that Borrower, Purchaser and/or Guarantor will not be deemed to be a Material Subsidiary. Subject to the Agreed Security Principles, the Guarantors shall be limited to the borrowers, the Purchaser, the Material Subsidiaries, such other members of the Group as the Company determines are required in order to meet the Guarantor Coverage Test or as otherwise voluntarily elected by the Company to become Guarantors from time to time. No person shall be required to be a Guarantor or to provide any guarantee, any security or any other assurance in favour of the Global Finance Parties unless (or at any time prior to the relevant date(s)) expressly contemplated by this Agreement, provided however that the Company may elect at any time that

any member of the Group (or Neptune Group or Moon Group) accede as a Guarantor in respect of any Facility. No consent from any Global Finance Party shall be required in connection with any person becoming a Guarantor.

- (g) No guarantee, security or other assurance shall be required to be provided by any person which is unable or is not required to become a Guarantor in accordance with this Agreement and the Agreed Security Principles and the requirement for, the provision of and/or the terms of any guarantee, security and/or any other assurance to be granted pursuant to any Global Finance Document (including all Transaction Security) shall be subject to (and shall be subject to the limitations, restrictions, exceptions, conditions and other terms of (and may not be granted at all, subject to compliance with the terms of)) the Agreed Security Principles. For the avoidance of any doubt, the Agreed Security Principles shall not be construed or interpreted as increasing the scope of or class of any assets required to be subject to security from that expressly contemplated in paragraph (k) below.
- (h) The Security to be granted in connection with any Person becoming an Additional Obligor, shall, subject to the Agreed Security Principles, be limited to the following (and paragraph 10 of Part II of Schedule 2 (*Conditions Precedent*) and Part III of Schedule 2 (*Conditions Precedent*) shall be construed and interpreted accordingly):
- (i) Security granted, substantially contemporaneously with (but no earlier than) the relevant Security to be granted by the relevant Additional Obligor, by the immediate Holding Company of the relevant Additional Obligor (provided that such Additional Obligor is that Holding Company's directly wholly-owned Subsidiary) over (i) the shares it then holds directly in that Additional Obligor, provided that such Security may (at the option of the Company) be granted by that Holding Company on a limited-recourse third-party basis if, at that time, that Holding Company is not an Obligor (ii) where such Holding Company is itself an Obligor, any rights of that Obligor (as a creditor) under any material intercompany loans made to the relevant Additional Obligor;
  - (ii) Security granted by that Additional Obligor over (i) the shares such Additional Obligor then holds directly in any Material Subsidiary, (ii) its rights (as a creditor) under any material intercompany loans and (iii) (if such Additional Obligor meets the relevant criteria in paragraph (i) below) its relevant assets by way of a floating charge (or equivalent, UCC (as applicable)) to the extent contemplated in paragraph (i) below; and
  - (iii) Security granted by that Additional Obligor over (i) (if such Additional Obligor meets the relevant criteria in paragraph (i) below) its relevant assets by way of a floating charge (or equivalent, UCC (as applicable)) to the extent contemplated in paragraph (i) below or (ii) (if such Additional Obligor does not meet the relevant criteria in paragraph (i) below) (x) the shares such Additional Obligor then holds directly in any Material Subsidiary and (y) its rights (as a creditor) under any material intercompany loans.
- (i) No member of the Group shall be required to grant a floating charge (or any floating or similar "all (or substantially all) asset" security interest, however described) over its assets located in any jurisdiction, with the exception that (subject to the Agreed Security Principles) an Additional Obligor that is incorporated in the United Kingdom or the Abu Dhabi Global Market shall grant floating

security over substantially all of its assets located in its jurisdiction of incorporation (subject to customary "excluded assets", including real estate, permitted security and (as applicable) any regulated assets) pursuant to a security agreement governed by English or Abu Dhabi Global Market law (as applicable).

- (j) No member of the Group shall be required to grant "moveables security" other than an Additional Obligor that is incorporated in the Abu Dhabi Global Market, which Additional Obligor shall grant moveables security (subject to the Agreed Security Principles) pursuant to a security agreement governed by UAE law over its onshore movable assets.
- (k) Subject to paragraph (l) below, the Company shall procure that the relevant member of the Group that directly owns any Material Joint Venture Interest will, subject to the Agreed Security Principles and in accordance with this Agreement, become an Additional Guarantor and use reasonable endeavours to grant Transaction Security over the Material Joint Venture Interest within 60 Business Days of the Group reporting such Material Joint Venture Interest in accordance with this Agreement.
- (l) If the Company has used reasonable obligations to grant Transaction Security in compliance with its obligations under paragraph (k) above but no Transaction Security over the Material Joint Venture Interest has been granted within the period prescribed, the Company's obligation to use reasonable endeavours obligation to grant such Transaction Security will cease from the expiry of such period, and the Company shall instead, subject to the Agreed Security Principles and in accordance with this Agreement, procure that Transaction Security be granted by the immediate Holding Company of the member of the Group referred to in paragraph (k) above over (i) the shares such Holding Company holds in such member of the Group and (ii) any rights (as a creditor) under any intercompany loans owed by such member of the Group to such Holding Company and (iii) ((if such member of the Group meets the relevant criteria in paragraph (i) above) over its relevant assets by way of a floating charge (or equivalent, UCC (as applicable)) to the extent contemplated in paragraph (i) below.

#### **23.24 Conditions Subsequent**

- (a) The Company shall (or shall procure that any other member of the Group does) prepay, repay or otherwise discharge and cancel the Neptune Refinancing Debt as soon as practicable after the Closing Date, subject to (i) the occurrence of the Scheme Effective Date or the Offer Unconditional Date, (ii) any minimum notice periods and any other procedural or administrative requirements under the terms of the Neptune Refinancing Debt and (iii) to the relevant creditors (or the relevant agent or trustee (or similar) on their behalf) providing the Company with pay-off letters, account details and any other matters or details reasonably required by the Company in order for the Company (or any other relevant member of the Group) to effect any such prepayment, repayment or other discharge in accordance with the terms of the relevant agreement(s) governing the Neptune Refinancing Debt.
- (b) The Company shall ensure that, no later than five Business Days after the Neptune Completion Date, Transaction Security is granted over the Neptune Shares.
- (c) The Company shall ensure that, no later than:

- (i) 20 Business Days after the Moon Completion Date, Moon accedes to this Agreement as an Additional Guarantor; and
  - (ii) 60 Business Days after the Moon Completion Date, Transaction Security is granted over the Moon Shares.
- (d) The Company shall provide a certificate to the Agent confirming prepayment of the following Financial Indebtedness (attaching reasonable evidence of such prepayment) at the following times:
- (i) within 15 Business Days of the Neptune Completion Date, the Neptune Refinancing Debt; and
  - (ii) within 15 Business Days of the Moon Completion Date, the third-party Financial Indebtedness of the Moon Group under the facilities established pursuant to a facilities agreement originally dated 2 August 2022 between Moon and First Abu Dhabi Bank PJSC as arranger, original lender, agent, account bank and security agent (as such agreement may be amended and/or restated from time to time).

## 24. EVENTS OF DEFAULT

### 24.1 Events of Default

Each of the events or circumstances set out in this Clause 24 (save for Clauses 24.13 (*Acceleration*), 24.14 (*Clean-up Period*) and 24.15 (*Excluded Matters*)).

### 24.2 Non-payment

An Obligor does not pay on the due date:

- (a) any amount of principal or interest payable pursuant to a Global Finance Document at the place at and in the currency in which it is expressed to be payable unless such payment is made:
  - (i) within five Business Days of its due date; or
  - (ii) if such non-payment is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; andpayment is made within five Business Days of its due date; or
- (b) any other amount payable pursuant to a Global Finance Document at the place at and in the currency in which it is expressed to be payable unless payment is made within seven Business Days of its due date.

### 24.3 Financial Covenant

- (a) The Company fails to comply with its obligations under Clause 22.2 (*Financial Condition*) (subject to the terms of that Clause) and the non-compliance (if capable of being cured) is not cured pursuant to the provisions of paragraph (b) below or deemed or otherwise cured pursuant to the provisions of paragraph (c) below.

- (b) No Event of Default (and no Default or breach of, or misrepresentation under, any Global Finance Document) will occur (or be deemed to have occurred) under paragraph (a) above, and an Event of Default (or Default or breach of, or misrepresentation under, any Global Finance Document) may be prevented, if, at any time prior to the date falling 20 Business Days after the last possible date that the relevant Compliance Certificate (for the Relevant Period in which such failure to comply was first evidenced, as applicable) could have been delivered had the relevant Financial Statements been delivered on the last applicable date permissible under paragraph (a) of Clause 21.1 (*Information Undertakings*) (the "**Applicable Period**"), the Group has received the proceeds of an Equity Contribution(s) (including as contemplated pursuant to this paragraph), and, as applicable, the full amount or any part of (at the election of the Company) such Equity Contribution(s) so provided in accordance with this Clause 24.3 (the "**Cure Amount**") shall be deemed to reduce Total Net Debt in an amount equal to such Cure Amount so elected by the Company on a pro forma basis as of the last day of the relevant Financial Half Year (a "**Net Debt Cure**"), and such Cure Amount shall be included in the Financial Covenant calculations regardless of whether or not it is on balance sheet but without double counting **provided that** (x) the deemed reduction in Total Net Debt is at least sufficient to ensure that the Financial Covenant would be complied with if tested or re-calculated again on the basis provided for in this paragraph (b) as at the last day of the same Relevant Period) and (y) in relation to any such Equity Contributions so provided in accordance with this Clause:
- (i) the Company shall not be entitled to exercise any Net Debt Cure rights that it may have to cure breaches of the Financial Covenant on more than five (5) occasions from the Closing Date in aggregate (provided that there shall be no limit on the number of preventative cures which may be made);
  - (ii) the Company shall not be entitled to exercise any Net Debt Cure rights it may have to cure breaches of the Financial Covenant in any consecutive Financial Half Years (provided that there shall be no limit on the number of preventative cures which may be made in any consecutive periods);
  - (iii) in addition to the testing period (and Test Date and Financial Covenant ("**Test Condition**")) in respect of which such Cure Amount was provided, the Company may take into account any portion of that Cure Amount which has not been applied (or is not required to be applied) in early payment of the Utilisations and which has not been applied by the Company as a Permitted Distribution (in each case as at the relevant Test Date) for (and in respect of) the three subsequent testing periods thereafter (and, in each case, the relevant Test Dates and Test Conditions in respect thereof;
  - (iv) to the extent that the Financial Covenant would be met on a subsequent Test Date without reliance on the relevant Cure Amount, such Cure Amount may be applied by the Company (in its sole discretion) as a Permitted Distribution or otherwise (to the extent it remains on balance sheet) be treated, at all times and for all purposes, as cash of the Group;
  - (v) there shall be no restriction or cap or condition or limit on any pre-cure and/or on the amount of any Cure Amount exceeding the amount necessary to prevent any, or cure the relevant, failure to comply with Clause 22.2 (*Financial Condition*);



- (vi) to the extent a Cure Amount is being relied upon as a Net Debt Cure, then such Cure Amount shall only adjust the Total Net Leverage Ratio figure for the purposes of the Financial Covenant (and not for the purposes of any other basket or ratio), provided, however, that any other cash proceeds of any Cure Amount (including any such proceeds that are not being relied upon as a Net Debt Cure or that are in excess of what is required for the purposes of the prevention or cure of the Financial Covenant) shall to the extent they remain on balance sheet, be treated, at all times and for all purposes, as cash of the Group (including for the purposes of netting cash against Borrowings in connection with any calculation or determination, including the Total Net Leverage Ratio for the purposes of any other basket or ratio). As soon as the Company is in compliance with the Financial Covenant without reliance on the relevant Cure Amount as a Net Debt Cure (including as may be evidenced by any re-calculation of the Financial Covenant at any time) then all of the proceeds of the relevant Cure Amount shall, to the extent they remain on balance sheet, be treated, at all times and for all purposes, as cash of the Group (including for the purposes of netting cash against Borrowings in connection with any calculation or determination, including the Total Net Leverage Ratio for the purposes of any other basket or ratio);
- (vii) there shall be no requirement to apply any Cure Amount in early payment (or cancellation) of the Facilities, provided that, if, on a subsequent Test Date, the Financial Covenant would not be met without taking into account the Cure Amount, the Company must apply such proportion of the Cure Amount in early payment of Utilisations (pro rata among the Utilisations outstanding under that Facility, provided that the Company may in its discretion select which Facility to pay early) which is required to ensure that the Financial Covenant would have been met on the relevant Test Date for that testing period after taking into account such early payment, such early payment to be made within 20 Business Days after the last possible date for the Company to deliver the Compliance Certificate for that Test Date (and to the extent there is any excess Cure Amount following such early payment, the Company may (in its sole discretion) apply such excess amount as a Permitted Distribution or otherwise (to the extent it remains on balance sheet) be treated, at all times and for all purposes, as cash of the Group);
- (viii) in relation to any Equity Contribution allocated or applied as a Net Debt Cure (for so long as the Equity Contribution is included as a Net Debt Cure), there shall be no double counting of that Equity Contribution as cash and/or Cash Equivalent Investments in the calculation of the Total Net Leverage Ratio to the extent those Equity Contribution proceeds are still held as cash and/or Cash Equivalent Investments on balance sheet by the Group;
- (ix) in relation to any Equity Contributions so provided on or prior to the date of delivery of the relevant Compliance Certificate for the Relevant Period:
  - (A) the Compliance Certificate for that Relevant Period shall set out the revised Financial Covenant calculations for the Relevant Period by giving effect to the adjustments to Total Net Debt under this paragraph (b); and

- (B) if such Equity Contributions are provided on or prior to the last date of that Relevant Period, the unspent amount of such Equity Contributions will not be double counted with the amount of such Equity Contributions deemed provided in accordance with paragraph (A) above;
  - (x) in relation to any such Equity Contributions so provided following the date of delivery of the relevant Compliance Certificate for the Relevant Period, immediately following the proceeds of those Equity Contributions being provided to it, the Company provides a revised Compliance Certificate to the Global Agent setting out the revised Financial Covenant calculations for the Relevant Period by giving effect to the adjustments to Total Net Debt under this paragraph (b); and
  - (xi) for the avoidance of doubt, no Default or Event of Default (nor any breach or misrepresentation under or other non-compliance with any Global Finance Document) shall occur under this Clause 24.3 until the Applicable Period has expired.
- (c) Notwithstanding anything to the contrary herein:
- (i) the Company may designate any other Equity Contribution received by it or any member of the Group (including any Closing Overfunding) at any time (including any part of an Equity Contribution made at the time of a Cure Amount being made available but not utilised as a Cure Amount at that time) as a Cure Amount to the extent that such Equity Contribution has not at such time been utilised for another purpose;
  - (ii) if the Cure Amount is in excess of what is necessary to prevent or cure a breach of Clause 22.2 (*Financial Condition*), the excess may count towards any basket, ratio, threshold or other Applicable Metric or permission or usage under or in respect of the Global Finance Documents; and
  - (iii) if the Financial Covenant has been breached and such breach has not been cured in accordance with paragraph (b) above, but is complied with when tested in the next relevant period (the "**Second Period**"), then the prior breach of such Financial Covenant or any Default or Event of Default arising therefrom shall no longer be outstanding or continuing unless the Global Agent has taken acceleration action on the instructions of the Majority Financiers (and the notice in respect of such acceleration action has not been rescinded) before delivery of the compliance certificate in respect of the Second Period.

For the avoidance of doubt, any recalculation pursuant to paragraph (ii) above may, at the Company's election, give pro forma effect to any or all Specified Transactions and any other adjustments (including any pro forma adjustments) permitted by this Agreement following the end of the Relevant Period in question or any subsequent Relevant Period or applicable LTM period (including, in respect of a Specified Transaction, as if the Specified Transaction had been completed on the first day of such or applicable Relevant Period or LTM period (as the case may be)).

#### 24.4 Other obligations

- (a) The Parent or an Obligor does not comply with any provision of the Global Finance Documents (other than those referred to in Clause 24.2 (*Non-payment*) and Clause 24.3 (*Financial covenant*)).

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the Global Agent giving notice to the Company or relevant Obligor.

#### 24.5 **Misrepresentation**

- (a) Any representation made by any Obligor or any Third Party Security Provider in any of the Global Finance Documents is or proves to have been materially incorrect or misleading when made or deemed to be made (or when repeated or deemed to be repeated) by reference to the facts and circumstances then existing.
- (b) No Event of Default will occur under paragraph (a) above if the circumstances giving rise to that misrepresentation are:
  - (i) not materially prejudicial to the interests of the Financiers (taken as a whole) under the Global Finance Documents; or
  - (ii) remedied within 20 Business Days of the giving of notice by the Global Agent to the Company in respect of such misrepresentation.

#### 24.6 **Cross-default**

- (a) Any Financial Indebtedness (other than, for the avoidance of doubt, indebtedness under any (I) Hedging Obligations, (II) any Equity Contribution (III) Ancillary Facilities (IV) Cash Management Services (V) intra-Group arrangement and (VI) to the extent such Financial Indebtedness is supported by a Letter of Credit or similar) of the Parent, any Obligor or a Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness (other than to the extent such Financial Indebtedness is supported by a Letter of Credit or similar) of the Parent, any Obligor or a Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specific maturity as a result of an event of default (however described).
- (c) Any creditor of the Parent, any Obligor or a Material Subsidiary becomes entitled to declare any Financial Indebtedness of the relevant Parent, Obligor or Material Subsidiary due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) No Event of Default will occur under this Clause 24.6 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a), (b) or (c) above is less than the greater of USD 50,000,000 (or its equivalent in any other currency or currencies) and 15 per cent. of Consolidated EBITDA.

#### 24.7 **Insolvency**

- (a) The Parent, any Obligor or a Material Subsidiary, by reason of actual or anticipated financial difficulties, (i) commences negotiations with one or more classes of its creditors (other than any Global Finance Party in its capacity as such) with a view to any general rescheduling of their Financial Indebtedness or (ii) is unable (other than solely by reason of its balance sheet liabilities exceeding balance sheet assets) or admits inability to pay its debts (other than debts owed between members of the Group) as they fall due, suspends or threatens to suspend making payments on any of its debts.

- (b) A moratorium is declared in respect of any Financial Indebtedness of any of the Parent, an Obligor or a Material Subsidiary. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

#### 24.8 **Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other formal legal procedure or formal step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration, liquidation or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Parent, an Obligor or a Material Subsidiary;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Parent, an Obligor or a Material Subsidiary;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, examiner, compulsory manager or other similar officer in respect of the Parent, an Obligor or a Material Subsidiary or any of their respective assets having an aggregate value in excess of the greater of USD 50,000,000 (or its equivalent in any other currency) and 15 per cent. of Consolidated EBITDA;
  - (iv) a composition or assignment with the creditors generally of the Parent, an Obligor or a Material Subsidiary (including, without limitation, any agreement, arrangement or compromise to obtain a release or stay of its current indebtedness) for reasons of financial difficulty in respect of Financial Indebtedness; or
  - (v) enforcement of Security over any material assets of the Parent, an Obligor or a Material Subsidiary having an aggregate value, in excess of the greater of USD 50,000,000 (or its equivalent in any other currency) and 15 per cent. of Consolidated EBITDA,

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

- (b) Paragraph (a) above shall not apply to:
- (i) any winding up petition or other proceedings or actions which are frivolous or vexatious and/or which are being contested in good faith and is discharged, withdrawn, stayed or dismissed within 20 Business Days of the Global Agent giving notice to the Company in connection with that petition or those proceedings or actions; or
  - (ii) any step or procedure contemplated in the definition of "Permitted Reorganisation" or in paragraph (a) of the definition of "Permitted Transaction".

#### 24.9 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Parent (to the extent such assets are the subject of the Transaction Security) or any Obligor or Material Subsidiary having an aggregate value in excess of the greater of USD 50,000,000 (or its equivalent in any other currency) and 15 per cent. of Consolidated EBITDA (or its equivalent in any other currency), that is not being contested in good faith or shown to be frivolous or vexatious and, in each case, is not discharged, struck out, stayed or dismissed within 20 Business Days of commencement.

#### 24.10 **Invalidity and Unlawfulness**

- (a) Subject to the Legal Reservations and Perfection Requirements, it is or becomes unlawful for the Parent or any Obligor to perform any of its obligations under the Global Finance Documents or any of its material obligations under the Global Finance Documents cease to be legal, valid and enforceable, in each case, this materially and adversely affects the interests of the Financiers (taken as a whole) under the Global Finance Documents and the circumstances giving rise to that event are not remedied within 30 Business Days of the giving of notice by the Global Agent to the Company in respect thereof.
- (b) The Parent or any Obligor rescinds or repudiates, or evidences an intention in writing to rescind or repudiate, a Global Finance Document and, in each case, this materially and adversely affects the interests of the Financiers (taken as a whole) under the Global Finance Documents and the circumstances giving rise to that event are not remedied within 30 Business Days of the giving of notice by the Global Agent to the Company in respect thereof.

#### 24.11 **Litigation**

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are commenced, or any judgment or order of a court, arbitral body or agency is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or Material Subsidiary or its assets which has a Material Adverse Effect.

#### 24.12 **Intercreditor Agreement**

- (a) Any party to the Intercreditor Agreement (other than a Global Finance Party, Obligor or the Parent) fails to comply in any material respect with the provisions of, or does not perform its material obligations under, the Intercreditor Agreement in its capacity as such to the extent applicable to it and to an extent which materially and adversely affects the interests of the Financiers (taken as a whole) under the Global Finance Documents.
- (b) No Event of Default will occur under paragraph (a) above if such failure is capable of remedy, and is remedied within 30 Business Days from the giving of notice by the Global Agent in respect of such failure.

#### 24.13 **Acceleration**

- (a) Subject to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) and Clause 24.14 (*Clean-up Period*), at any time after the occurrence of an Event of Default which is continuing, the Global Agent may, but only if so directed by the Super Majority Financiers, by written notice to the Company:
  - (i) terminate all or part of the availability of the Facilities whereupon the relevant part of the Facilities shall cease to be available for utilisation, the relevant part of the undrawn portion of the Commitments of each of the Financiers shall be cancelled and no Financier shall be under any further obligation to make Utilisations under this Agreement (and no further Letters of Credit may be requested under this Agreement) in respect of the part of the Commitments so cancelled;
  - (ii) declare all or part of the Loans or Deferred Payment Prices, together with accrued interest on such Loans (and any other commercially analogous sums payable under the Murabaha

Transaction Documents) and any other sum then payable under any of the Global Finance Documents to be immediately due and payable whereupon such amounts shall become so due and payable;

- (iii) declare all or part of the Loans or Deferred Payment Prices to be payable on demand whereupon the same shall become payable on demand;
  - (iv) require the provision of cash cover whereupon each Borrower shall immediately provide cash cover in an amount equal to the total contingent liability of the Financiers under all Letters of Credit issued under this Agreement for its account and/or;
  - (v) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Global Finance Documents.
- (b) In respect of a Murabaha Facility, upon payment in full of the amount specified in paragraph (a) above, the Murabaha Investment Agent may, in its sole discretion and after having consulted with the Islamic Participants, determine whether a rebate of any portion of the Profit Amount shall be made if it receives a written request for a rebate from the Company. If the Murabaha Investment Agent determines that it shall award a rebate, the Murabaha Investment Agent shall, within five Business Days of making the determination, pay such amount to the Company and provide full details as to the basis upon which such amount has been calculated.
- (c) Subject to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) and Clause 24.14 (*Clean-up Period*), at any time after the occurrence of an Event of Default which is continuing, an Ancillary Lender or a Fronting Ancillary Lender may, only if so directed by the Global Agent (acting on the instructions of the Super Majority Financiers), by written notice to the Obligors' Agent:
- (i) terminate all or part of the availability of the Ancillary Facilities or the Fronted Ancillary Facilities provided by it whereupon such Ancillary Facilities or Fronted Ancillary Facilities shall cease to be available and the relevant Ancillary Lender or, as the case may be, Fronting Ancillary Lender shall no longer be under any obligation to provide any credit provided for thereunder;
  - (ii) declare all or part of the Ancillary Outstandings in relation to the Ancillary Facilities and/or the Fronted Ancillary Facilities provided by it, together with accrued interest thereon and any other sum then payable under the relevant Ancillary Documents to be immediately due and payable whereupon such amounts shall become due and payable;
  - (iii) require the provision of cash cover whereupon each Borrower shall immediately provide cash cover in an amount equal to the contingent liability of the relevant Ancillary Lender or, as the case may be, Fronting Ancillary Lender under all instruments issued on its behalf which (under the terms thereof) give rise to a contingent liability on the part of the Ancillary Lender or, as the case may be, Fronting Ancillary Lender; and/or
  - (iv) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Global Finance Documents.

#### 24.14 Clean-up Period

(a) Notwithstanding any other term of the Global Finance Documents, for the period from the date of this Agreement until the date which falls 120 days after the Neptune Completion Date (the "**Clean-Up Period**"), any breach of a representation or warranty, breach of an undertaking, Default or Event of Default, will be deemed not to be a breach of representation or warranty, a breach of undertaking, a Default or an Event of Default (as the case may be) if it would have been (if it were not for this provision) a breach of representation or warranty, a breach of undertaking, a Default and/or an Event of Default by reason of any matter or circumstance relating to the Neptune Group or any member of the Neptune Group, if and for so long as the circumstances giving rise to the relevant breach of representation or warranty or breach of undertakings, Default or Event of Default:

- (i) would not have a Material Adverse Effect; and
- (ii) was not procured or approved by the Board of Directors (or equivalent body) of the Company (**provided that** it had actual knowledge thereof and that knowledge of the relevant breach does not equate to procurement or approval),

and **provided that** if the relevant circumstances are continuing at the end of the Clean-Up Period there shall be a breach of representation, breach of undertaking, Default and/or Event of Default, as the case may be.

(b) Notwithstanding any other term of the Global Finance Documents, for the period from the date of an acquisition or investment permitted under this Agreement (including, for the avoidance of doubt, the Moon Acquisition) (the "**Approved Acquisition**") until the date which falls 120 days after the date of completion of such Approved Acquisition (the "**Acquisition Clean-Up Period**"), any breach of a representation or warranty, breach of an undertaking, Default or Event of Default, will be deemed not to be a breach of representation or warranty, a breach of undertaking, a Default or an Event of Default (as the case may be) if it would have been (if it were not for this provision) a breach of representation or warranty, a breach of undertaking, a Default and/or an Event of Default by reason of any matter or circumstance relating to the entity (and its Subsidiaries) or business or other applicable asset the subject of the Approved Acquisition if and for so long as the circumstances giving rise to the relevant breach of representation or warranty or breach of undertaking, Default or Event of Default:

- (i) would not have a Material Adverse Effect; and
- (ii) was not procured or approved by the Board of Directors (or equivalent body) of any member of the Group effecting the relevant acquisition (**provided that** it had actual knowledge thereof and that knowledge of the relevant breach does not equate to procurement or approval),

and **provided that** if the relevant circumstances are continuing at the end of the Acquisition Clean-Up Period there shall be a breach of representation, breach of undertaking, Default and/or Event of Default, as the case may be.

#### 24.15 Excluded Matters

Notwithstanding any other term of the Global Finance Documents:

- (a) no Permitted Transaction;
- (b) other than in the case of a payment default under an Ancillary Document constituting an Event of Default under Clause 24.2 (*Non-payment*), no breach of any representation, warranty, undertaking or other term of (or default or event of default under) a Hedging Agreement or an Ancillary Document;
- (c) no breach of any representation, warranty, undertaking or other term of (or default or event of default under) the Existing Target Debt or any document relating to existing financing arrangements of any member of the Group, the Neptune Group or the Moon Group arising as a direct or indirect result of any member of the Group, the Neptune Group or the Moon Group entering into and/or performing its obligations under any Global Finance Document (or carrying out the Transaction or any other transactions contemplated by the Transaction Documents);
- (d) no matter or transaction referred to in or contemplated by the Transaction Documents or the Reports or other transaction or matters otherwise disclosed to the Mandated Lead Arrangers prior to the date of this Agreement (and no steps, transactions and arrangements entered into in connection with or to give effect any such matters or transactions);
- (e) prior to (in the case of the Neptune Group) the Neptune Completion Date and (in the case of the Moon Group) the Moon Completion Date, no act or omission on the part of any member of the Neptune Group or the Moon Group (including any procurement obligation in relation to any member of the Neptune Group or the Moon Group) or breach of any representation, warranty, undertaking or other term of (or Default or Event of Default under) any Global Finance Document by any member of the Neptune Group or Moon Group or any other circumstance relating to the Neptune Group or Moon Group in respect of any act or omission which originally occurred prior to the Neptune Completion Date or the Moon Completion Date (in each case, as applicable);
- (f) a Global Finance Party (or person who is not a member of the Group) at any time being or becoming at any time a Sanctioned Entity (or being treated as a Sanctioned Entity for the purposes of this Agreement); and/or
- (g) no Withdrawal Event,

shall (or shall be deemed to) constitute, or result in, a breach of any representation, warranty, undertaking or other term in the Global Finance Documents or a Default or an Event of Default and shall be expressly permitted under the terms of the Global Finance Documents.

#### 25. CHANGES TO THE FINANCIERS

##### 25.1 Successors

The Global Finance Documents shall be binding upon and ensure to the benefit of each party hereto and its or any subsequent successors, transferees, assigns and any New Financier and each such successor, transferee, assignee and any New Financier undertakes to carry out any



actions required including the actions contemplated in this Clause 25 or the other provisions of the Global Finance Documents.

## 25.2 **Assignments and Transfers by Financiers**

Subject to this Clause 25 and to Clause 26 (*Restriction on Debt Purchase Transactions*), any Financier (an "**Existing Financier**") may:

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

under any Global Finance Document to:

- (i) another bank or financial institution or to any fund or other entity which (in each case) is regularly engaged in or established for the purpose of making, purchasing or investing in or securitising loans, securities or other financial assets; or
- (ii) any other person approved in writing by the Company,

(each a "**New Financier**").

## 25.3 **Conditions of assignment or transfer**

- (a) At any time on or prior to the last day of the Certain Funds Period, the prior written consent of the Company (acting in its sole and absolute discretion and never deemed granted) is required for any Transfer Arrangement.
- (b) At any time after the last day of the Certain Funds Period the prior written consent of the Company (not to be unreasonably withheld, and deemed to be granted if not refused within 10 Business Days of receipt of a written request made in accordance with paragraph (c) below) is required for any Transfer Arrangement unless such Transfer Arrangement is:
  - (i) to its Affiliate or Related Fund or to another Financier in respect of that Facility or an Affiliate or Related Fund of another Financier in respect of that Facility; or
  - (ii) made at a time when an Event of Default under (i) Clause 24.2 (*Non-payment*), (ii) Clause 24.7 (*Insolvency*), (iii) Clause 24.8 (*Insolvency proceedings*), (iv) Clause 24.3 (*Financial covenant*), or (v) Clause 24.4 (*Other obligations*) insofar as it relates to a breach of Clause 23.10 (*Negative pledge*) or Clause 23.15 (*Financial indebtedness*), is continuing;

**provided that:**

- (c) notwithstanding anything to the contrary in this Agreement (and regardless of whether an Event of Default has occurred and is continuing), other than with the prior written consent of the Company (acting in its sole and absolute discretion and never deemed granted) no Transfer Arrangement relating to or in respect of any Facility may be made or entered into at any time with or involving:
  - I. an Industry Competitor;
  - II. any Person that is (or would, upon becoming a Financier, be) a Defaulting Financier;
  - III. any Person notified in writing by the Company or the Sponsor to the Mandated Lead Arrangers or the Global Agent prior to the date of this Agreement (together with each of such Person's Affiliates and Related Funds), provided that no Person who is a Mandated Lead Arranger or an Original Financier (or an Affiliate of a Mandated Lead Arranger or an

Original Financier) at the time of such designation may be designated under this paragraph III;

- IV. any Person that is (or would, upon becoming a Financier, be) a Non-Consenting Financier (with a Non-Consenting Financier being, for these purposes (only), a Non-Consenting Financier who has expressly rejected, voted 'no' to or conditioned (save for any conditions expressly permitted by the Company under the terms of the relevant request) (or, in each case, taken any similar or analogous action) any request that was approved, or otherwise agreed to, by the requisite Financiers) and provided that the Company has notified the Global Agent and the relevant Agent in advance of any such Non-Consenting Financier (and the Global Agent shall (and shall be permitted to) disclose the identity of any such Non-Consenting Financier to the Company as soon as practicable to allow the Company to the relevant notification for such purposes);
  - V. a Loan to Own/Distressed Investor, unless a Material Event of Default has been continuing for a period of more than six months;
  - VI. any Person that is (or would, upon becoming a Financier, be) incorporated in, having its place of effective management or acting through a Facility Office situated in, or which is a branch of an institution situated in, a Sanctioned Country (or which would otherwise be in breach of Sanctions Laws) or a Non-Cooperative Jurisdiction; and
  - VII. (in the case of any assignment or transfer (or equivalent)) any Person that does not meet all legal and regulatory requirements for lending to each Borrower or the Purchaser (as applicable) under the relevant Facility in respect of which such Transfer Arrangement relates.
- (d) Any assignment or transfer, and any sub-participation referred to in paragraphs (a) and (b) above, and the identity of the proposed New Financier (or, as the case may be, sub-participant or sub-contractor) (including is fund manager, general partner or other controlling entity) shall be notified separately to the Company by the Global Agent promptly (i) upon the Global Agent and each other relevant Agent becoming aware of the proposed assignment, transfer or sub-participation and (ii) upon completion of the relevant assignment, transfer or sub-participation.
- (e) An assignment or transfer under this Clause 25 will only be effective upon:
- (i) receipt by the Global Agent and the relevant Agent (in the Assignment Agreement or otherwise) of written confirmation from the New Financier (in form and substance satisfactory to the Global Agent and the relevant Agent) that it will assume the same obligations to each of the other Global Finance Parties and the other Secured Parties as it would have been under had it been an Original Financier;
  - (ii) the New Financier entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
  - (iii) performance by the Global Agent and the relevant Agent of all "*know your customer*" or other similar checks under all applicable laws and regulations relating to any person that the Global Agent and the relevant Agent is required to carry out in relation to such

assignment or transfer to a New Financier, the completion of which the Global Agent and the relevant Agent shall promptly notify to the Existing Financier and the New Financier.

- (f) A transfer will only be effective if the New Financier enters into the documentation required for it to accede as a party to the Intercreditor Agreement if the procedure set out in Clause 25.7 (*Procedure for transfers*) is complied with.
- (g) Any assignment, sub-participation or transfer under a Revolving Facility must result in an assignment, sub-participation or transfer of a rateable amount of a Financier's participation in Utilisations and Available Commitments thereunder (unless otherwise agreed by the Company, the Global Agent and the Conventional Facility Agent).
- (h) The consent of the Issuing Bank is required for an assignment or transfer of any Financier's rights or obligations under the relevant Revolving Facility in respect of which it is the Issuing Bank unless the proposed New Financier:
  - (i) is an Existing Financier; or
  - (ii) is a deposit taking financial institution authorised by a financial services regulator or similar regulatory body which has a long term credit rating equal to or better than BBB- or Baa3 (as applicable) according to at least two of Moody's, S&P or Fitch.
- (i) Without prejudice to this Clause 25.3, the Company and each other Obligor hereby expressly consent to each assignment, transfer and/or novation of rights or obligations made in compliance with the terms of this Clause 25. The Company and each other Obligor also accepts and confirms that all guarantees, indemnities and Security granted by it under any Global Finance Document will, notwithstanding any such assignment, transfer or novation, continue and be preserved for the benefit of the New Financier and each of the other Global Finance Parties in accordance with the terms of the Global Finance Documents.
- (j) If:
  - (i) a Financier assigns, sub-participates, sub-contracts, transfers, novates, creates a trust over or otherwise disposes of any of its rights or obligations under the Global Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, sub-participation, sub-contract, transfer, novation, trust or other change occurs, the Company or an Obligor would be obliged to make a payment to the New Financier or Financier acting through its new Facility Office under Clause 14 (*Taxes*) or Clause 15 (*Increased Costs*),

then the New Financier, sub-participant, sub-contractor, beneficiary and/or Financier acting through its new Facility Office or as grantor pursuant to a sub-participation or sub-contract is only entitled to receive payment under those Clauses to the same extent as the Existing Financier, Financier entering into that sub-participation or sub-contract or Financier acting through its previous Facility Office would have been if the assignment, sub-participation, sub-contract, transfer, novation, trust or other change had not occurred, **provided that** no Financier may assign, transfer, novate, sub-participate, sub-contract, create a trust over or otherwise dispose of its rights or obligations under the Global Finance Documents or change its Facility Office if the assignment, transfer, novation, sub-participation, sub-contract, trust or other change would give rise to a

requirement to prepay on illegality under Clause 8 (*Illegality, Early Payment and Cancellation*) in relation to the New Financier or Existing Financier acting through its new Facility Office. No member of the Group shall be liable for any registration tax, stamp tax or similar tax in connection with any Transfer Arrangement (or any other voluntary filing or registration by a Global Finance Party).

- (k) Each New Financier, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Global Agent and the relevant Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Financier or Financiers 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 Financier would have been had it remained a Financier.
- (l) If any assignment, transfer or sub-participation occurs in breach of the provisions of this Clause 25, that assignment, transfer or sub-participation (as applicable) shall be null and void and will not be effective (and of no effect) and each Person (including the relevant Financier) expressed to be a party to the relevant Transfer Arrangement (and each of their Affiliates and Related Funds) shall (i) be deemed to be (and treated as) a Defaulting Financier (for all purposes under this Agreement) and (ii) not be entitled to receive (and the Global Agent and the relevant Agent shall ensure that no such Person receives) any information under the Global Finance Document, in each case, unless the Company expressly elects otherwise in writing (acting in its sole and absolute discretion).
- (m) Notwithstanding the terms of this Agreement, if an Original Financier enters into any Transfer Arrangement at any time on or prior to the end of the Certain Funds Period (including any to which the Company has given its consent) (any Commitments the subject of any such Transfer Arrangement being, the "**Pre-Closing Transferred Commitments**"):
  - (i) the Original Financier shall (and shall ensure that it does) remain liable for all its obligations under the Global Finance Documents (including with respect to its Commitments in respect of the Facilities) and, provided the Financiers are obliged to comply with clause 5.4 (*Lenders' participation*) of the Conventional Facilities Agreement pursuant to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) in relation to a Utilisation requested by the Company in a Request, that Original Financier shall remain obligated to fund and, subject to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*), in the event that any Person with whom any Transfer Arrangement is made or entered into (including any with the Company's prior consent) is or becomes a Defaulting Financier or defaults on or otherwise does not fulfil its obligation to fund (or has indicated that it will not be able to fund or does not intend to fund) in full (and in the relevant currency requested by the Company) by 9:30 a.m. (London time) on the relevant Utilisation Date the Pre-Closing Transferred Commitments, such Original Financier agrees to (and shall as a separate and independent obligation) fund and provide as soon as possible on that Utilisation Date the amount (and in the relevant currency) of the Pre-Closing Transferred Commitments that such defaulting Person was required or otherwise expected to provide; and

- (ii) the Original Financier shall (and shall ensure that it does) retain (notwithstanding its entry into of such Transfer Arrangement) exclusive control over (including retaining sole and absolute discretion with respect to) all voting and other discretionary rights, and all obligations, under the Global Finance Documents, including all voting and similar rights (for the avoidance of doubt, free of any agreement or understanding (whether formal or informal) pursuant to which it is required to or will consult with, or take any instruction or direction from, any other person in relation to the exercise of any such rights and/or obligations).

#### 25.4 **Assignments by Financiers**

Subject to paragraph (m) of Clause 25.3 (*Conditions of assignment or transfer*), upon an assignment becoming effective, the Existing Financier will be released from its obligations under the Global Finance Documents to the extent they are assumed by the New Financier.

#### 25.5 **Assignment or transfer fee**

Unless the Global Agent agrees otherwise and excluding an assignment or transfer (a) to an Affiliate of a Financier, (b) to a Related Fund, (c) made in connection with primary syndication of the Facilities or (d) to a Sponsor Affiliate or a member of the Group (or any Holding Company of the Company), the New Financier shall, on or before the date upon which an assignment or transfer to it takes effect pursuant to this Clause 25, pay to the Global Agent (for its own account) a fee of £2,500 (plus VAT if applicable).

#### 25.6 **Limitation of responsibility of Existing Financiers**

- (a) Unless expressly agreed to the contrary, an Existing Financier makes no representation or warranty and assumes no responsibility to a New Financier for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of the Company or any Obligor or any other member of the Group;
  - (iii) the performance and observance by the Company or any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements or information (whether written or oral) made or supplied in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Financier confirms to the Existing Financier and the other Global Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and each other Obligor and its related entities and all other risks arising in connection with its participation in the Global Finance Documents and has not relied exclusively on any information provided to it by the Existing Financier or any other Global Finance Party in connection with any Transaction Document or the Transaction Security; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of the Company and each other Obligor and its related entities whilst any amount is or may be outstanding under the Global Finance Documents or any Commitment is in force.
- (c) Nothing in any Global Finance Document obliges an Existing Financier to:
  - (i) accept a re-transfer or re-assignment from a New Financier of any of the rights and obligations assigned or transferred by such Existing Financier under this Clause 25; or
  - (ii) support any losses directly or indirectly incurred by the New Financier by reason of the non-performance by the Company or any Obligor of its obligations under the Transaction Documents or otherwise.

#### 25.7 Procedure for transfers

- (a) Subject to the conditions set out in Clause 25.3 (*Conditions of assignment or transfer*) and Clause 37.5 (*Replacement of Financier*), a transfer by novation is effected in accordance with paragraph (e) below when the Global Agent and the relevant Agent executes an otherwise duly completed Transfer Certificate executed and delivered to it by the Existing Financier and the New Financier.
- (b) The Global Agent and the relevant Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt of a duly completed Transfer Certificate which appears on its face to comply with the terms of this Agreement and appears to be delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and record the transfer in the Register.
- (c) The Global Agent and the relevant Agent shall only be obliged to execute a Transfer Certificate delivered to it in accordance with the provisions of this Clause 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 Financier.
- (d) Each party to this Agreement (other than the Existing Financier and the New Financier) irrevocably authorises each relevant Agent to execute any duly completed Transfer Certificate on its behalf.
- (e) Subject to Clause 25.14 (*Pro rata settlement*), on the Transfer Date:
  - (i) to the extent that in such Transfer Certificate the Existing Financier seeks to transfer by novation its rights and obligations under the Global Finance Documents and in respect of the Transaction Security, each of the Company or the Obligors and such Existing Financier shall be released from further obligations towards one another (and the Existing Financier and any Issuing Bank shall be released from any further obligations toward each other) under the Global Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Global Finance Documents and in respect of the Transaction Security shall be cancelled (such rights and obligations being referred to in this Clause 25.7 as "**discharged rights and obligations**");
  - (ii) the Company and each of the Obligors and the New Financier shall assume obligations towards one another and/or acquire rights against one another which differ from the discharged rights and obligations only insofar as the Company or that Obligor or other member of the Group and that New Financier have assumed and/or acquired the same in place of the Company, that Obligor and such Existing Financier;

- (iii) each Agent, the Mandated Lead Arrangers, the New Financier and the other Global Finance Parties shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such New Financier been an original party hereto as a Financier with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent each Agent, the Mandated Lead Arrangers and the relevant Existing Financier and the other Global Finance Parties (other than the New Financier) shall each be released from further obligations to each other under the Global Finance Documents; and
- (iv) such New Financier shall become a party hereto as a **Financier**.

#### 25.8 Procedure for assignment

- (a) Subject to the conditions set out in Clause 25.3 (*Conditions of assignment or transfer*) and Clause 37.5 (*Replacement of Financier*), an assignment may be effected in accordance with paragraph (c) below when the Global Agent and the relevant Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Financier and the New Financier. The Global Agent and the relevant Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Global Agent and the relevant Agent shall only be obliged to execute an Assignment Agreement delivered to it in accordance with the provisions of this Clause 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 Financier.
- (c) Subject to Clause 25.14 (*Pro rata settlement*), on the Transfer Date:
  - (i) the Existing Financier will assign absolutely to the New Financier its rights under the Global Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Financier will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Financier shall become a party as a Financier and will be bound by obligations equivalent to the Relevant Obligations.

#### 25.9 Sub-participations

- (a) In addition to, and without in any way limiting, Clause 25.3 (*Conditions of assignment or transfer*), any Transfer Arrangement constituting a sub-participation or sub-contract (whether voting or non-voting or funded or risk participation) or any similar or analogous arrangement (including any having a similar commercial effect) (a "**Sub-Participation**") shall be subject to the following additional conditions and limitations:
  - (i) the relevant Financier party to such Transfer Arrangement remains a Financier under this Agreement with all rights and obligations pertaining thereto and remains liable under this Agreement and the other Global Finance Documents in relation to those obligations;

- (ii) if, as a result of laws or regulations in force (or formally announced and known to be coming into force at the time of such Transfer Arrangement), an Obligor would be obliged to make any payment to the relevant Financier party to such Transfer Arrangement pursuant to Clause 14 (*Taxes*) or Clause 15 (*Increased Costs*), that Financier shall not be entitled to receive or claim (and no Obligor will have any liability in respect of) any amount under those Clauses in excess of the amount that such Financier would have been entitled to receive or claim if that Transfer Arrangement had not made or entered into;
  - (iii) the relevant Financier party to such Transfer Arrangement retains exclusive control over (including retaining sole and absolute discretion with respect to) all voting and other discretionary rights, and all obligations, under the Global Finance Documents with respect to the relevant Commitments and/or participations the subject of such Transfer Arrangement, including all voting and similar rights (for the avoidance of doubt, free of any agreement or understanding (whether formal or informal) pursuant to which it is required to or will consult with, or take any instruction or direction from, any other person in relation to the exercise of any such rights and/or obligations) (a "**Non-Voting Sub-Participation**"), unless:
    - (A) the proposed sub-participant (or equivalent) is a Person to whom the relevant rights and obligations could have been assigned or transferred by the relevant Financier without the prior consent of the Company and otherwise in accordance with (and satisfying any other terms or conditions of) this Clause 25 and, without in any way limiting any other requirement of this Clause 25, if requested by the Company or the Sponsor, the relevant Financier shall promptly confirm that it has complied with the requirements of this Clause 25.9; and
    - (B) prior to entering into the relevant Transfer Arrangement, the relevant Financier provides, whether pursuant to the relevant notification required under paragraph (c) of Clause 25.3 (*Conditions of assignment or transfer*) or otherwise, the Company with full details of that proposed sub-participation agreement and any voting, consultation instruction direction or other rights (directly or indirectly) to be granted to the sub-participant (and, if requested by the Company, a copy of the relevant agreement or arrangement); and
  - (iv) the relationship between the relevant Financier party to such Transfer Arrangement and the proposed sub-participant (or equivalent) is that of a contractual debtor and creditor (including in the bankruptcy or similar event of the relevant Financier or any Obligor).
- (b) Upon the request of the Company, any Financier will confirm whether or not it is party to any Non-Voting Sub-Participation and, if it is so party, provide the Company and the Sponsor with the identity of the relevant sub-participant (or equivalent) (including, as applicable, its fund manager, general partner or other controlling entity) and other reasonable details relating to that Non-Voting Sub-Participation (including a confirmation that such Non-Voting Sub-Participation complies with the requirements, conditions, restrictions and other terms governing a Transfer Arrangement that constitutes a Non-Voting Sub-Participation in this Clause 25 and the Facility (and the principal amount of the Commitments and participations therein) subject to that Non-Voting Sub-Participation).



- (c) Each Financier which has made or entered into a Sub-Participation shall:
- (i) acting solely for this purpose as a non-fiduciary agent of the Borrowers and the Purchaser, maintain a register on which it enters the name and address of each sub-participant (or equivalent), the Facility and the principal amounts of (and related interest amounts on) each sub-participant's (or equivalent) interest in the Loans or other obligations hereunder (the "**Participant Register**");
  - (ii) provide, upon reasonable request by the Company at any time, a copy of the Participant Register and the identity of the sub-participant and any information in reasonable detail relating to such sub-participant (or equivalent) or such sub-participation agreement or other applicable arrangement (including evidencing compliance with paragraph (iii) below); and
  - (iii) ensure that the applicable sub-participation agreement states that the conditions set out in Clause 25.3 (*Conditions of assignment or transfer*) are applicable to further Sub-Participations by the relevant sub-participant (or equivalent) and along all or any further Sub-Participations thereof, or by reference thereto (and such provision must be capable of being relied upon and directly enforceable by the Company against the relevant sub-participant (or equivalent) and along all or any further Sub-Participations thereof, or by reference thereto).
- (d) Any Sub-Participation which occurs in breach of this Clause 25.9 shall not be effective.

#### 25.10 The Register

- (a) The Global Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers and the Purchaser, shall maintain at its address referred to in Clause 33.2 (*Addresses*):
- (i) each Transfer Certificate referred to in Clause 25.7 (*Procedure for transfers*) and each Assignment Agreement referred to in Clause 25.8 (*Procedure for assignment*) (together with any related trade confirmations) and each Increase Confirmation delivered to and accepted by it; and
  - (ii) with respect to each Facility, a register for the recording of the names and addresses (including administrative details) of the Financiers and the Commitment of, and principal and interest amounts owing to, each Financier (and any other information customarily held by loan facility agents in such registers) from time to time (the "**Register**") under such Facility, which may be kept in electronic form.
- (b) The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Obligors, the Company, the Agents and the Financiers shall treat each person whose name is recorded in the Register as a Financier hereunder for all purposes of this Agreement. The Global Agent shall provide the Sponsor, the Company, any Borrower and the Purchaser with a copy of the Register within one Business Day of request.
- (c) Each party to this Agreement irrevocably authorises and instructs the Global Agent to make the relevant entry in the Register (and which the Global Agent shall do promptly) on its behalf for the purposes of this Clause 25.10 without any further consent of, or consultation with, such Party.

- (d) The Global Agent shall, upon request by an Existing Financier (as defined in Clause 25.2 (*Assignments and Transfers by Financiers*)) or a New Financier, confirm to that Existing Financier or New Financier whether a transfer or assignment from that Existing Financier or (as the case may be) to that New Financier has been recorded on the Register (including details of the Commitment of that Existing Financier or New Financier in each Facility).

**25.11 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to the Company**

The Global 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. The Global Agent shall provide, upon the request of the Company, in relation to any specified Transfer Certificate, Assignment Agreement or Increase Confirmation, a copy of such document to the Company within five Business Days of receipt of such request. Further, if requested by the Company, the Global Agent shall provide a copy of the trade confirmation in respect of any assignment or transfer under this Agreement and, if the Global Agent does not have a copy, the Global Agent shall request a copy from the relevant Existing Financier (or assignor or transferor if it has ceased to be an Existing Financier) and the New Financier and such Existing Financier (or assignor or transferor, as applicable) and the New Financier shall provide an unredacted copy thereof to the Global Agent and the Global Agent shall be permitted to disclose such copy to the Company and the Sponsor.

**25.12 Security over Financiers' rights**

In addition to the other rights provided to Financiers under this Clause 25, each Financier may without consulting with or obtaining consent from the Company or 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 Global Finance Document to secure obligations of that Financier including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Financier 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 Financier as security for those obligations or securities,

except that no such charge, assignment or Security shall:

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

**25.13 Preservation of security**

In the event that a transfer by any of the Global Finance Parties of its rights and/or obligations under any relevant Global Finance Documents occurred or was deemed to occur by way of

novation, each Obligor explicitly agrees that all securities and guarantees created under any Global Finance Documents shall be preserved for the benefit of the New Financier and the other Global Finance Parties.

#### 25.14 Pro rata settlement

- (a) Only in relation to a Conventional Facility, if an Agent has notified the Financiers that it is able to distribute interest payments on a "pro rata basis" to Existing Financiers and New Financiers then (in respect of any transfer pursuant to Clause 25.7 (*Procedure for transfers*) or any assignment pursuant to Clause 25.8 (*Procedure for assignment*), the Transfer Date of which, in each case, is after the date of such notification and is not on a Payment Date):
- (i) any interest, late payment 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 Financier up to but excluding the Transfer Date (the "**Accrued Amounts**") and shall become due and payable to the Existing Financier (without further interest or profit accruing on them) on the next occurring Payment Date (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
  - (ii) the rights assigned or transferred by the Existing Financier will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Financier; and
    - (B) the amount payable to the New Financier on that date will be the amount which would, but for the application of this Clause 25.14, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 25.14 references to Interest Period shall be construed to include a reference to any other period for accrual of fees, calculation of late payment amounts or fees.

#### 25.15 Prevailing terms

To the extent of any inconsistency between the terms of this Clause 25 and the terms of the Murabaha Investment Agency Agreement with respect to a Murabaha Facility, the terms under the Murabaha Investment Agency Agreement shall prevail.

### 26. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

#### 26.1 Permitted Debt Purchase Transactions

- (a) The Company shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 26 or (ii) beneficially own all or any part of the share capital of a company that is a Financier or a party to a Debt Purchase Transaction of the type referred to in paragraph (b) or (c) of the definition of "Debt Purchase Transaction".
- (b) Any member of the Group (each a "**Debt Purchaser**") may enter into a Debt Purchase Transaction where such purchase is made using one of the processes set out at paragraph (c), (d) or (e) below, provided that the Company shall be entitled to unilaterally alter the dates, times, administrative and/or notification requirements or other procedures referred to in paragraph (c) or (d) below if, in

the reasonable and in good faith determination by the Company, such dates, times, administrative and/or notification requirements or other procedures (as applicable) do not reflect (whether in whole or part) generally accepted conventions and/or prevailing market practice for secondary or other debt trading or would be impracticable or otherwise undesirable in the circumstances and/or in light of the commercial rationale for which the Group intends to achieve in connection with any such Debt Purchase Transaction.

(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 relevant Debt Purchaser or a financial institution acting on its behalf (the "**Purchase Agent**") will approach at the same time each Financier which participates in a Term Facility to enable them to offer to sell to the relevant Debt Purchaser an amount of their participation in that Term Facility. Any Financier 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, and in the Term Facility, 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 relevant Debt Purchaser on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Financiers. The Purchase Agent (if someone other than the Debt Purchaser) will communicate to the relevant Financiers 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 Day, the Debt Purchaser shall notify the Global Agent of the amounts of the participations purchased through the relevant Solicitation Process and the average price paid for the purchase of participations in the Term Facility. The Global Agent shall promptly disclose such information to the Financiers.

(ii) Any purchase of participations in a Term Facility 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 Debt Purchaser shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in the relevant Term 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 the Term 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 relevant Debt Purchaser may by itself or through another Purchase Agent place an open order (an "**Open Order**") to purchase participations in a Term Facility up to a set aggregate amount at a set price by notifying at the same time all the Financiers

participating in the Term Facility of the same. Any Financier 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, and in the Term Facility, 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 Financier and shall be capable of acceptance by the Debt Purchaser on or before such time by it communicating such acceptance in writing to the relevant Financier.

- (ii) Any purchase of participations in the Term Facility pursuant to an Open Order Process shall be completed and settled by the relevant Debt Purchaser on or before the fourth Business Day after the date of the relevant offer by a Financier to sell under the relevant Open Order.
- (iii) If in respect of participations in the relevant Term Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of the Term Facility to which an Open Order relates would be exceeded, the Debt Purchaser shall only accept such offers on a pro rata basis.
- (iv) The Debt Purchaser shall, by 11:00 a.m. on the sixth Business Day following the date on which an Open Order is placed, notify the Global Agent of the amounts of the participations purchased through such Open Order Process. The Global Agent shall promptly disclose such information to the Financiers.
- (v) Following the completion of a Solicitation Process, a Debt Purchase Transaction referred to in paragraph (c) above may also be entered into pursuant to a bilateral process (a "**Bilateral Process**") which is carried out as follows.
  - (A) A Debt Purchaser may by itself or through the same or another Purchase Agent, at any time during the period commencing on the expiry of the relevant Solicitation Process and ending 60 days thereafter, purchase participations from Financiers pursuant to secondary market purchases and/or pursuant to such bilateral arrangements with any Financiers as the Debt Purchaser shall see fit.
  - (B) Any purchase of participations in a Term Facility pursuant to a Bilateral Process shall be completed and settled by the relevant Debt Purchaser on or before the second Business Day after the expiry of the Bilateral Process period referred to in paragraph (i) above.
  - (C) A Debt Purchaser shall promptly notify the Global Agent of the amounts of each participation purchased through such Bilateral Process. The Global Agent shall disclose such information to any Financier that requests the same.
- (e) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to any other process or arrangement specified by the Company, including any bi-lateral arrangement and/or any non-cash contribution of any Commitment or any other rights, benefits and/or obligations in respect of the Facilities to the Company by way of an Equity Contribution.

- (f) For the avoidance of doubt, there is no (i) limit on the number of occasions a Solicitation Process, Open Order Process, Bilateral Process or, as the case may be, other process or arrangement may be implemented and (ii) restriction or other limit or condition on the source of funding that any member of the Group may use to finance a Debt Purchase Transaction (and, for the avoidance of any doubt, a Debt Purchase Transaction may be financed using any Permitted Financial Indebtedness).
- (g) No member of the Group will be required (but may, acting in its sole and absolute discretion, elect) to cancel any Commitments and/or participations the subject of any Debt Purchase Transaction.
- (h) In relation to any Debt Purchase Transaction entered into pursuant to this Clause 26.1 where the relevant Commitments and/or participations the subject of that Debt Purchase Transaction are not cancelled by the Group, notwithstanding any other term of this Agreement or the other Global Finance Documents, unless otherwise agreed by the Global Agent (acting on the instructions of the Majority Financiers):
  - (i) no member of the Group shall exercise any voting rights in respect of the Commitments held by it;
  - (ii) no member of the Group shall be entitled to exercise any right it may have under this Agreement as a Financier to:
  - (iii) attend or participate in any meeting or conference call organised by the Global Finance Parties in relation to the Facilities; or
  - (iv) receive any communication or document prepared by, or on the instructions of, a Global Finance Party for the benefit of the Financiers (excluding, for the avoidance of doubt, interest rate notifications and other communications or documents of an administrative nature);
  - (v) no member of the Group shall be entitled to assign or transfer any of its rights, benefits or obligations in respect of the Facilities pursuant to Clause 25 (*Changes to the Financiers*) to any person other than another member of the Group; and
  - (vi) in the event of any insolvency of an Obligor constituting an Event of Default, any liquidation distribution or other return received by a member of the Group in its capacity as a "Financier" shall be paid to the Global Agent for application towards amounts due to the Financiers (other than any member of the Group) in accordance with Clause 31.6 (*Partial payments*).
- (i) No breach or misrepresentation, Default or Event of Default shall occur solely as a result of any Debt Purchase Transaction entered into pursuant to this Clause 26.1, and, notwithstanding any term of this Agreement to the contrary, each member of the Group will be a permitted New Financier for the purposes of any Transfer Arrangement.

**26.2 Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates or Investors**

- (a) Notwithstanding any term of this Agreement to the contrary, no Debt Purchase Transaction entered into (or to be entered into) by a Sponsor Affiliate or an Investor shall require the consent of the Company (or any member of the Group) and/or any action on the part of the Company (or any

member of the Group), including the execution by the Company (or any member of the Group) of any agreement or instrument, and this Agreement (and any Schedule to this Agreement) shall be construed and interpreted *mutatis mutandis* accordingly.

- (b) For so long as a Sponsor Affiliate or an Investor:
- (i) beneficially owns a Commitment; or
  - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining whether the Majority Financiers, Majority Incremental Facility Financiers or, as applicable, any given percentage of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Global Finance Documents (each such action being a "**vote**"), such Commitment shall be deemed to be zero and such Sponsor Affiliates or Investor or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Financier for the purposes of this paragraph (unless in the case of a person not being a Sponsor Affiliate by virtue otherwise than by beneficially owning the relevant Commitment) provided that this paragraph (b) shall not apply (and a Sponsor Affiliate shall be entitled to vote its Commitment) in respect of any Structural Adjustment, any amendment or waiver that requires the consent of the Super Majority Financiers or of all Financiers and/or in any other case which would otherwise result (or is intended to result) in any Commitment of a Sponsor Affiliate under a particular Facility being treated in any manner inconsistent with the treatment proposed to be applied to any other Commitment under such Facility.

- (c) Each Financier shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Global Agent and each other relevant Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 11 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (d) A Financier shall promptly notify the Global Agent if a Notifiable Debt Purchase Transaction to which it is a party is terminated or ceases to be with a Sponsor Affiliate, such notification to be substantially in the form set out in Part II of Schedule 11 (*Forms of Notifiable Debt Purchase Transaction Notice*), unless such notification would be impracticable or otherwise undesirable in the circumstances and/or in light of the commercial rationale for which the Sponsor Affiliate intends to achieve in connection with any such Debt Purchase Transaction.
- (e) Unless otherwise agreed by the Global Agent (acting on the instructions of the Majority Financiers), no Sponsor Affiliate or an Investor that is a Financier shall be entitled to exercise any right it may have under the Global Finance Documents as a Financier to:
- (i) attend or participate in any meeting or conference call organised by the Global Finance Parties in relation to the Facilities; or
  - (ii) receive any communication or document prepared by, or on the instructions of, a Global Finance Party for the benefit of the Financiers (excluding, for the avoidance of doubt,

interest rate notifications and other communications or documents of an administrative nature).

- (f) Unless otherwise agreed by the Global Agent (acting on the instructions of the Majority Financiers), each Sponsor Affiliate that is a Financier agrees that:
- (i) to the extent and for so long as its beneficial ownership of a Commitment, participation in any Utilisation or sub-participation or other agreement or arrangement relating to a Commitment and constituting or arising as a consequence of a Debt Purchase Transaction would result in the subordination of claims of any other Financier (not being a Sponsor Affiliate) under the Global Finance Documents pursuant to any law relating to the subordination of shareholder loans or prejudice or adversely affect the Transaction Security or guarantee and indemnity pursuant to Clause 19 (*Guarantees and Indemnity*) (or their enforceability) in any respect, it shall not be a secured or guaranteed party (however described) under and for the purposes of any Global Finance Document and no amount or other obligation owing to it under any Global Finance Document shall be secured by the Transaction Security or guaranteed pursuant to Clause 19 (*Guarantees and Indemnity*); and
  - (ii) any enforcement proceeds or other amount received by a Sponsor Affiliate in relation to Transaction Security governed by German law or the guarantee and indemnity pursuant to Clause 19 (*Guarantees and Indemnity*) provided by an Obligor incorporated in Germany (other than in accordance with clause 15 (*Application of Proceeds*) of the Intercreditor Agreement) shall be held on trust for distribution to the other Global Finance Parties and such Sponsor Affiliate shall promptly (and in any event within 10 Business Days) pay such enforcement proceeds or other amounts to the Security Agent for application in accordance with clause 15 (*Application of Proceeds*) of the Intercreditor Agreement. No breach or misrepresentation, Default or Event of Default shall occur solely as a result of any Debt Purchase Transaction entered into pursuant to this Clause 26.2, and, notwithstanding any term of this Agreement to the contrary, each Sponsor Affiliate will be a permitted New Financier for the purposes of any Transfer Arrangement.

## 27. CHANGES TO THE OBLIGORS

### 27.1 Assignment and transfers by Obligors

Neither the Company nor any Obligor may assign any of its rights or transfer any of its rights or obligations under the Global Finance Documents except as permitted by this Agreement or any other Global Finance Document.

### 27.2 Additional Borrowers

- (a) Subject to compliance with Clause 21.5 ("*Know your customer*" checks), the Company may request that any member of the Group becomes an Additional Borrower under a Facility (other than a Murabaha Facility). That member of the Group shall become a Borrower or the Purchaser (as applicable) under the relevant Facility (as the case may be) if:
- (i) it is:
    - (A) incorporated in the same jurisdiction as an existing Borrower under that Facility;



- (B) in the case of Facility B only, it is incorporated in:
- I. the United Kingdom;
  - II. the Dubai International Financial Centre, the Abu Dhabi Global Market, any other freezone in the United Arab Emirates or (if onshore) the United Arab Emirates;
  - III. in any other jurisdiction as may be agreed between the Company and each Financier (other than any Defaulting Financier) under Facility B (acting reasonably and in good faith) that is to participate in the relevant Utilisation to such proposed Borrower ; or
  - IV. any other jurisdiction which has been approved by the Global Agent (acting on the instructions of all the Financiers under Facility B (acting reasonably and in good faith));
- (C) in the case of the Original Revolving Facility only, it is incorporated in:
- I. incorporated in the same jurisdiction as an existing Borrower under Facility B;
  - II. the Dubai International Financial Centre, the Abu Dhabi Global Market, any other freezone in the United Arab Emirates or (if onshore) the United Arab Emirates; or
  - III. any other jurisdiction as may be agreed between the Company each Financier (other than any Defaulting Financier) under the Revolving Facility (acting reasonably and in good faith) that is to participate in the relevant Utilisation to such proposed Borrower ;
- (D) in the case of a member of the Group which will borrow under an Ancillary Facility only (and which is not permitted under paragraph (A) or (C) above), incorporated in a jurisdiction approved by the relevant Ancillary Lenders (acting reasonably and in good faith) that are to participate in the applicable Ancillary Facility; or
- (E) incorporated in a jurisdiction approved by all of the Financiers (each acting reasonably and in good faith) with a Commitment under the applicable Facility in respect of which it will become a Borrower, provided that (subject to compliance with paragraphs (ii) to (iv) below), Network International LLC may become an Additional Borrower,

provided that no consent of any Defaulting Financier shall be required under this paragraph (i), and this paragraph (i) shall be interpreted and construed accordingly;

- (ii) the Company or the relevant member of the Group deliver to the Global Agent and each other relevant Agent a duly completed and executed Accession Deed;
- (iii) the member of the Group is (or becomes), subject to the Agreed Security Principles, a Guarantor prior to or contemporaneously with becoming a Borrower; and

- (iv) the Global Agent has received all of the documents and other evidence set out in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Global Agent (acting reasonably and in good faith) or receipt of such documents and evidence has been waived by the Global Agent (acting on the instructions of the Majority Financiers acting reasonably) or unless such document or other evidence is not required to be in form and substance satisfactory to the Global Agent.
- (b) The Global Agent shall notify the Company, each other relevant Agent and the Financiers promptly upon being satisfied that it has received ((in form and substance satisfactory to it (acting reasonably and in good faith)) all of the documents and other evidence set out in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower.
- (c) Each Financier authorises, instructs and directs the Global Agent to give such notification, unless Majority Financiers have notified the Global Agent in writing to the contrary prior to the date on which the Global Agent gives such notification.
- (d) Upon the Global Agent's confirmation to the Company that it has received all documents referred to in paragraph (a) of Clause 27.2 (*Additional Borrowers*) in respect of an Additional Borrower, such Additional Borrower, the Obligors and the Global Finance Parties shall each assume such obligations towards one another and/or acquire such rights against each other party as they would have assumed or acquired had such Additional Borrower been an original Party to this Agreement and the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement) and such Additional Borrower shall become a Party to this Agreement and thereto as a Borrower and as a Guarantor and to the Intercreditor Agreement as a Debtor.

### 27.3 **Additional Guarantors**

- (a) Subject to compliance with Clause 21.5 ("*Know your customer*" checks), the Company may request that any member of the Group becomes a Guarantor. That member of the Group shall become a Guarantor if:
  - (i) the Company and the relevant member of the Group deliver to the Global Agent a duly completed and executed Accession Deed; and
  - (ii) the Global Agent has received all of the documents and other evidence set out in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Global Agent (acting reasonably and in good faith) or receipt of such documents and evidence has been waived by the Global Agent (acting on the instructions of the Majority Financiers acting reasonably) or unless such document or other evidence is not required to be in form and substance satisfactory to the Global Agent.
- (b) The Global Agent shall notify the Company and the Financiers promptly upon being satisfied that it has received (in form and substance satisfactory to it (acting reasonably and in good faith) all of the documents and other evidence set out in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor.
- (c) Each Financier authorises, instructs and directs the Global Agent to give such notification, unless Majority Financiers have notified the Global Agent in writing to the contrary prior to the date on which the Global Agent gives such notification.

- (d) Upon the Global Agent's confirmation to the Company that it has received all documents referred to in paragraph (a) above in respect of an Additional Guarantor, such Additional Guarantor, the other Obligors and the Global Finance Parties shall each assume such obligations towards one another and/or acquire such rights against each other party as they would have assumed or acquired had such member of the Group been an original Party to this Agreement as a Guarantor and the Intercreditor Agreement as a Debtor and such member of the Group shall become a Party to this Agreement as a Guarantor and to the Intercreditor Agreement as a Debtor.

#### 27.4 Resignation of an Obligor

- (a) In this Clause 27.4, "**Third Party Disposal**" means the direct or indirect disposal of an Obligor to a person which is not a member of the Group and which is not prohibited by the terms of this Agreement.
- (b) Subject to paragraph (c) below, the Company may request that an Obligor ceases to be a Borrower and/or a Guarantor (but not the Purchaser) by delivering a Resignation Letter (setting out therein a proposed release date (the "**Proposed Release Date**")) to the Global Agent and the Security Agent if:
- (i) that Obligor is directly or indirectly the subject of a Third Party Disposal; or that Obligor is only a Borrower (and not a Guarantor nor the Purchaser); or that Obligor or any member of the Group which is its Holding Company is the subject of a transaction (including any Permitted Transaction) not prohibited by this Agreement (a "**Permitted Activity**") pursuant to which that Obligor or its Holding Company will cease to be a member of the Group; or that Obligor is the subject of a Permitted Activity pursuant to which it is being liquidated, wound up, or dissolved (or pursuant to which it will otherwise cease to exist) or the resignation is required (as determined by the Company, acting reasonably and in good faith) to give effect to any Permitted Activity or pursuant to the provisions of Clause 24.15 (*Excluded Matters*); or
  - (ii) the Company confirms to the Global Agent that the Guarantor Coverage Test based on the most recent Annual Financial Statements (or, at the option of the Company, such other financial statements for the most recently completed Relevant Period prior to such date for which the Company has sufficient available information to be able to determine the Guarantor Coverage Test) calculated on a pro forma basis taking into account such resignations and any members of the Group which have or will become Additional Guarantors on or prior to the date on which the resignation will become effective, and any resignation or accession of any Obligor which has or will become effective on or prior to the date on which such resignation will become effective will continue to be satisfied; or
  - (iii) the Majority Financiers have consented to the resignation of that Obligor; or
  - (iv) the resignation of that Obligor is contemplated by the Tax Structure Memorandum or the Intercreditor Agreement.

- (c) Nothing in this Clause 27.4 shall allow the Company to cease being the Purchaser.
- (d) The Global Agent shall accept a Resignation Letter delivered pursuant to paragraph (b) above and notify the Company and the Financiers of its acceptance if:
  - (i) the Company has confirmed that no Event of Default (or, in respect of a Third Party Disposal, no Major Event of Default) is continuing on (as selected by the Company in its sole discretion):
    - (A) the date of any member of the Group's entry into a definitive agreement in respect of any Third Party Disposal, Permitted Activity or other relevant transaction; or
    - (B) the Proposed Release Date; or
    - (C) any other Relevant Transaction Test Date;
  - (ii) in the case of a Borrower, no amounts utilised by it remain outstanding under the Global Finance Documents (or will be outstanding at the time of resignation) and it is under no actual or contingent obligation as a Borrower under any Global Finance Document;
  - (iii) in the case of a Guarantor, no payment is due and payable from that Guarantor under Clause 19 (*Guarantees and Indemnity*); and
  - (iv) in the case of a Borrower or the Purchaser which is also a Guarantor (unless it is simultaneously resigning as a Guarantor in accordance with this Clause 27.4), 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 Perfection Requirements and the application of the Agreed Security Principles taking into account the cessation as a Borrower) or such release is contemplated under the Intercreditor Agreement whether or not requiring a consent thereunder,

then on the Proposed Release Date, that entity shall cease to be a Borrower or a Guarantor (as applicable) and shall have no further rights or obligations under the Global Finance Documents as a Borrower or a Guarantor (as applicable). For the avoidance of doubt (and subject to paragraph (c) above), if an Obligor ceases to be a member of the Group pursuant to a transaction not prohibited by this Agreement, that Obligor shall (unless such Obligor is the Purchaser) automatically cease to be an Obligor for all purposes and shall have no further rights or obligations under the Global Finance Documents as an Obligor, except that, where the Borrower or Guarantor is the subject of a Third Party Disposal, the resignation shall not take effect (and the Borrower and Guarantor will continue to have rights and obligations under the Global Finance Documents) until the date on which the Third Party Disposal or other Permitted Activity takes effect (unless elected to take effect on the Proposed Release Date by the Company).

#### **27.5 Repetition of Representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in all material respects to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

## 28. **ROLE OF THE GLOBAL AGENT, THE MANDATED LEAD ARRANGERS, THE ISSUING BANK AND OTHERS**

### 28.1 **Appointment of the Global Agent**

- (a) Each other Global Finance Party appoints the Global Agent to act as its agent under and in connection with the Global Finance Documents.
- (b) Each other Global Finance Party authorises the Global Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Global Agent under or in connection with the Global Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Each other Global Finance Party acknowledges and agrees that the Global Agent may enter in its name and on its behalf (and expressly authorises the Global Agent to enter) into contractual arrangements pursuant to or in connection with the Global Finance Documents to which the Global Agent is also a party (in its capacity as Global Agent or otherwise).
- (d) Each Global Finance Party hereby releases, to the extent legally possible, the Global Agent and the Security Agent from any restrictions of multiple representation or self-dealing under any applicable law. Any Global Finance Party that is prevented by applicable law or its constitutional documents to grant such release shall notify the Global Agent and the Security Agent in writing without undue delay.
- (e) In relation to the Global Finance Documents and without prejudice to any other rights of the Global Agent under this Agreement, each of the Global Finance Parties irrevocably appoints the Global Agent, which accepts, so that the Global Agent, acting through a duly appointed representative, may exercise, in the name and on behalf of the Global Finance Parties the rights, powers, authorities and discretions specifically given to the Global Agent under or in connection with this Agreement.

### 28.2 **Duties of the Global Agent**

- (a) Subject to paragraph (b) below, the Global Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Global Agent for that Party by any other Party.
- (b) Without prejudice to Clause 25.10 (*The Register*), paragraph (a) above shall not apply to any Transfer Certificate, Assignment Agreement or Increase Confirmation.
- (c) Except where a Global Finance Document specifically provides otherwise, the Global Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Global 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 Global Finance Parties.
- (e) If the Global Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Global Finance Party (other than the Global Agent, the Mandated Lead Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Global Finance Parties.

- (f) The Global Agent shall provide to the Company, within five 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 Financiers as at the date of that request, their respective Commitments, the address and electronic mail address (and the department or officer, if any, for whose attention any communication is to be made) of each Financier for any communication to be made or document to be delivered under or in connection with the Global 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 Financier to whom any communication under or in connection with the Global Finance Documents may be made by that means and the account details of each Financier for any payment to be distributed by the Global Agent to that Financier under the Global Finance Documents.
- (g) The Global Agent shall provide to the Company, within one (1) Business Day of a request by the Company, details of any responses received from Financiers to any amendment or other consent request made by the Company and each Financier hereby consents to the disclosure of such information by the Global Agent to the Company.
- (h) The Global Agent's duties under the Global Finance Documents are solely mechanical and administrative in nature.
- (i) Upon the Global Agent becoming an Impaired Agent, the Company shall provide a copy of the list of all the Financiers to each Global Finance Party.
- (j) The Global Agent shall have only those duties, obligations and responsibilities expressly specified in the Global Finance Documents to which it is expressed to be a party and no others shall be implied.
- (k) The Global Agent is authorised (without any further consent, instruction, direction or other confirmation from any Party) to and shall provide to the Company upon its request such information as may be required to assess the progress of any amendment, consent or waiver request from time to time pursuant to the terms of the Global Finance Documents (including the identity and votes of Financiers that have approved, rejected or not responded to any such request).

### 28.3 **Role of the Mandated Lead Arrangers**

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

### 28.4 **No fiduciary duties**

- (a) Nothing in any Global Finance Document constitutes the Global Agent, any Mandated Lead Arranger and/or Issuing Bank as a trustee or fiduciary of any other person.
- (b) None of the Global Agent, the Security Agent, the Mandated Lead Arrangers, the Issuing Bank or any Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender shall be bound to account to any Financier for any sum or the profit element of any sum received by it for its own account.

## 28.5 Business with the Group

The Global Agent, the Security Agent, the Mandated Lead Arrangers, the Issuing Bank and each Ancillary Lender, Fronted Ancillary Lender or Fronting 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 and its Holding Companies.

## 28.6 Rights and discretions

(a) The Global Agent, the Security Agent and the Issuing Bank may:

- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) rely on 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;
- (iii) assume that:
  - (A) any instructions received by it from the Majority Financiers, any Financiers or any group of Financiers are duly given in accordance with the terms of the Global Finance Documents; and
  - (B) unless it has received notice of revocation, that those instructions have not been revoked and no revocation of any such instructions shall affect any actions taken by the Global Agent or the Security Agent in reliance on such instructions prior to actual receipt of a written notice of revocation; and
- (iv) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

(b) The Global Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Financiers) that:

- (i) no Default has occurred (unless it has actual knowledge of a Default) arising under paragraph (a) of Clause 24.2 (*Non-payment*);
- (ii) any right, power, authority or discretion vested in any Party or the Majority Financiers (or any relevant group of Financiers) has not been exercised;
- (iii) any notice or request made by the Company is made on behalf of and with the consent and knowledge of all the Obligor; and
- (iv) no Notifiable Debt Purchase Transaction:
  - (A) has been entered into;

(B) has been terminated; or

(C) has ceased to be,

with an Investor or a member of the Group.

- (c) The Global Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Global Agent may act in relation to the Global Finance Documents through its personnel and agents **provided that** the Global Agent shall not be liable for any error of judgement made by such person or be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was caused by the Global Agent's gross negligence or wilful misconduct.
- (e) The Global 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 Global Agent may disclose the identity of a Defaulting Financier to the other Global Finance Parties and the Company and shall disclose the same upon the written request of the Company or the Majority Financiers.
- (g) Notwithstanding any other provision of any Global Finance Document to the contrary, none of the Global Agent, the Mandated Lead Arrangers or the Issuing Bank 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.
- (h) Without prejudice to the generality of paragraph (c) above or paragraph (j) below, the Global Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Global Agent (and so separate from any lawyers instructed by the Financier) if the Global Agent in its reasonable opinion deems this so desirable.
- (i) The Global Agent may rely on the advice or services of any lawyer, accountant, tax advisors or other professional advisers or expert (whether obtained by the Global Agent or by any other Party) and shall not be liable for any damage, costs or losses to any person, any diminution in value or any liability whatsoever as a result of it so relying.
- (j) Notwithstanding any provision of any Global Finance Document to the contrary, the Global Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **28.7 Majority Financiers' instructions**

- (a) Unless a contrary indication appears in a Global Finance Document, the Global Agent shall (i) exercise any right, power, authority or discretion vested in it as Global Agent in accordance with any instructions given to it by the Majority Financiers (or, if so instructed by the Majority Financiers, refrain from exercising any right, power, authority or discretion vested in it as Global 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 Financiers or those Financiers indicated by any such contrary indication.

- (b) Unless a contrary indication appears in a Global Finance Document, any instructions given by the Majority Financiers will be binding on all the Global Finance Parties other than the Security Agent.
- (c) The Global Agent may refrain from acting in accordance with the instructions of the Majority Financiers (or, if appropriate, the Financiers) until it has received such indemnity and/or security and/or prefunding as it may require to its satisfaction 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 Financiers, (or, if appropriate, the Financiers) the Global Agent may act (or refrain from taking action) as it considers to be in the best interest of the Financiers.
- (e) The Global Agent is not authorised to act on behalf of a Financier (without first obtaining that Financier's consent) in any legal or arbitration proceedings relating to any Global Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
- (f) The Global Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Financiers (or, if this Agreement stipulates the matter is a decision for any other Financier or group of Financiers, from that Financier or group of Financiers) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Global Agent and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (g) If the Global Agent or the Security Agent is requested to act by the Majority Financiers (or, if appropriate, the Majority Incremental Facility Financiers or Financiers) on instructions or directions delivered by email, the Global Agent and the Security Agent shall have:
  - (i) no duty or obligation to verify or confirm that the person who sent such instruction or directions is, in fact a person authorised to give instructions or directions on behalf of the Majority Financiers (or, if appropriate, the Majority Incremental Facility Financiers or Financiers); and
  - (ii) no liability for any losses, liabilities, costs or expenses incurred or sustained by the Majority Financiers (or, if appropriate, the Majority Incremental Facility Financiers or Financiers), as a result of such reliance upon compliance with such instructions or directions.

#### **28.8 Responsibility for documentation**

None of the Global Agent, the Murabaha Investment Agent, the Mandated Lead Arrangers, the Security Agent, the Issuing Bank or any Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Global Agent, the Murabaha Investment Agent, the Mandated Lead Arrangers, the Security Agent, the Issuing Bank, an Ancillary Lender, a Fronted Ancillary Lender, a Fronting Ancillary Lender, the Company, an Obligor or any

other person given in or in connection with any Global Finance Document or the Reports or the transactions contemplated in the Global Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Global Finance Document;

- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Global Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Global Finance Document or the Transaction Security; or
- (c) is responsible for any determination as to whether any information provided or to be provided to any Global 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.

#### 28.9 **No duty to monitor**

The Global Agent shall not be bound to enquire:

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

#### 28.10 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 31.11 (*Disruption to Payment Systems*) and any other provision of any Global Finance Document excluding or limiting the liability of the Global Agent, the Issuing Bank, any Ancillary Lender, any Fronted Ancillary Lender or Fronting Ancillary Lender), none of the Global Agent, the Issuing Bank, or any Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action taken by it under or in connection with any Global Finance Document or the Transaction Security, or exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Global Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Global Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct; or
- (ii) without prejudice to the generality of paragraph (i) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Global Agent, the Issuing Bank or an Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Global Agent, the Issuing Bank or any Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender, in respect of any claim it might have against the Global Agent, the Issuing Bank 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 Global Finance Document or any Transaction Document and any officer, employee or agent of the Global Agent, the Issuing Bank or any Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender may rely on this Clause subject to Clause 1.6 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) The Global Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Global Finance Documents to be paid by the Global Agent if the Global Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Global Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Global Agent, the Security Agent or the Mandated Lead Arrangers to carry out any "*know your customer*" or other checks in relation to any person on behalf of any Financier and each Financier confirms to the Global Agent, the Security Agent and the Mandated Lead Arrangers 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 Global Agent, the Security Agent or the Mandated Lead Arrangers.

#### 28.11 **Financiers' indemnity to the Global Agent**

- (a) Subject to paragraph (b) below, each Financier shall (in proportion to its Available Commitments, Available Ancillary Commitment and participations in the Utilisations and utilisations of the Ancillary Facilities and Fronted Ancillary Facilities then outstanding to the Available Facilities and all the Utilisations and utilisations of the Ancillary Facilities and Fronted Ancillary Facilities then outstanding) indemnify the Global Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Global Agent (otherwise than by reason of its gross negligence or wilful misconduct (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems*)) notwithstanding the Global Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) in acting as Global Agent under the Global Finance Documents (unless it has been reimbursed by the Company or an Obligor pursuant to a Global Finance Document).
- (b) If the Available Facilities are then zero, each Financier's indemnity under paragraph (a) above shall be in proportion to its Available Commitments to the Available Facilities immediately prior to their reduction to zero, unless there are then any Utilisations and utilisations of the Ancillary

Facilities or Fronted Ancillary Facilities outstanding, in which case it shall be in proportion to its participations in the Utilisations and utilisations of the Ancillary Facilities and Fronted Ancillary Facilities then outstanding to all the Utilisations and utilisations of the Ancillary Facilities and Fronted Ancillary Facilities then outstanding.

#### 28.12 Resignation of the Global Agent

- (a) The Global Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom or any other jurisdiction agreed by the Company as successor by giving notice to the Financiers and the Company.
- (b) Alternatively the Global Agent may resign by giving 30 days' notice to the Financiers and the Company, in which case the Majority Financiers (after consultation with the Company) may appoint a successor Global Agent (acting through an office in the United Kingdom or any other jurisdiction agreed by the Company).
- (c) If the Majority Financiers have not appointed a successor Global Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Global Agent (after consultation with the Company) may appoint a successor Global Agent (acting through an office in the United Kingdom or any other jurisdiction agreed by the Company).
- (d) If the Global Agent wishes to resign because it has concluded that it is no longer appropriate for it to remain as agent and the Global Agent is entitled to appoint a successor Global Agent under paragraph (c) above, the Global Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Global Agent to become a party to this Agreement as Global Agent) agree with the proposed successor Global Agent amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the Global Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Global Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Global Agent shall make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Global Finance Documents.
- (f) The Global Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Global Agent shall be discharged from any further obligation in respect of the Global Finance Documents but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Global Agent*) in respect of the period in which it was appointed Global Agent and this Clause 28 (and any agency fees for the account of the retiring Global Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations among themselves as they would have had if such successor had been an original Party.
- (h) The Global Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Global 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 Global Agent under the Global Finance Documents, either:

- (i) the Global Agent fails to respond to a request under Clause 14.8 (*FATCA Information*) and the Company or a Financier reasonably believes that the Global 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 Global Agent pursuant to Clause 14.8 (*FATCA Information*) indicates that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or the Global Agent notifies the Company and the Financiers that the Global 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) the Company or a Financier reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Global Agent were a FATCA Exempt Party, and the Company or that Financier, by notice to the Global Agent, requires it to resign.

#### **28.13 Replacement of the Global Agent**

- (a) After consultation with the Company, the Majority Financiers may by giving 30 days' notice to the Global Agent (or, at any time the Global Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Financiers) replace the Global Agent by appointing a successor Global Agent (acting through an office in the United Kingdom or any other jurisdiction agreed by the Company). The retiring Global Agent is not bound to supervise or be responsible for any loss incurred by any person as a result of the misconduct or default on the part of the successor Global Agent.
- (b) The retiring Global Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Financiers) make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Global Finance Documents.
- (c) The appointment of the successor Global Agent shall take effect on the date specified in the notice from the Majority Financiers (or as applicable the Company) to the retiring Global Agent. As from this date, the retiring Global Agent shall be discharged from any further obligation in respect of the Global Finance Documents but shall remain entitled to the benefit of (solely in respect of the period in which it was Global Agent) Clause 16.3 (*Indemnity to the Global Agent*) and this Clause 28 (and any agency fees for the account of the retiring Global Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Global Agent and each of the other Parties shall have the same rights and obligations among themselves as they would have had if such successor had been an original Party.

#### **28.14 Confidentiality**

- (a) In acting as agent for the Global Finance Parties, the Global 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 Global Agent, it may be treated as confidential to that division or department and the Global Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Global Finance Document to the contrary, neither the Global Agent nor the Mandated Lead Arrangers is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

#### 28.15 Relationship with the Financiers

- (a) Subject to Clause 25.14 (*Pro rata settlement*), the Global Agent may treat the person shown in its records as Financier at the opening of business (in the place of the Global Agent's principal office as notified to the Global Finance Parties from time to time) as the Financier acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Global 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 Global Finance Document made or delivered on that day,

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

- (b) Each Financier shall supply the Global Agent with any information that the Security Agent may reasonably specify (through the Global Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Financier shall deal with the Security Agent exclusively through the Global Agent and shall not deal directly with the Security Agent.
- (c) Any Financier may by notice to the Global Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Financier under the Global Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 33.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt 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, department and officer by that Financier for the purposes of Clause 33.2 (*Addresses*) and paragraph (a) of Clause 33.6 (*Electronic communication*) and the Global 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 Financier.

#### 28.16 Credit appraisal by the Financiers, Issuing Bank and Ancillary Lenders

Without affecting the responsibility of the Company or any Obligor for information supplied by it or on its behalf in connection with any Global Finance Document, each Financier, Issuing Bank and Ancillary Lender, Fronted Ancillary Lender and Fronting Ancillary Lender confirms to the Global Agent, the Mandated Lead Arrangers, the Issuing Bank and each Ancillary Lender, Fronted

Ancillary Lender and Fronting 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 Global Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group and its Holding Companies;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Global Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Global Finance Document or the Transaction Security;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Global Finance Document, the Transaction Security, the transactions contemplated by the Global Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Global Finance Document;
- (d) the adequacy, accuracy and/or completeness of the Reports and any other information provided by the Global Agent, any Party or by any other person under or in connection with any Global Finance Document, the transactions contemplated by the Global Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Global Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### **28.17 Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Financier, the Financier of which it is an Affiliate) ceases to be a Financier, the Global Agent shall (in consultation with the Company) appoint another Financier or an Affiliate of a Financier to replace that Reference Bank.

#### **28.18 Deduction from amounts payable by the Global Agent**

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

#### **28.19 Reliance, release and engagement letters**

Each Global Finance Party and Secured Party confirms that each of the Mandated Lead Arrangers and/or the Global Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters, certificates or reports already accepted by the Mandated Lead Arrangers or Global Agent) the terms of any reliance letter, release or hold harmless letter or engagement letters relating to the Reports or any reports, certificates or letters provided by accountants, auditors,

professional advisers or report or letter providers or other persons in connection with the Global Finance Documents or the transactions contemplated in the Global Finance Documents and to bind it in respect of those Reports, reports, certificates or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

#### 28.20 **Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Global Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Global 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 Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Global Finance Document, or to any Reference Bank Quotation and any officer, employee or agent of each Reference Bank may rely on this Clause 28.20 subject to Clause 1.6 (*Third Party Rights*) and the provisions of the Third Parties Act.

#### 28.21 **Third Party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 28.20 (*Role of Reference Banks*), paragraph (c) of Clause 37.4 (*Other exceptions*) and Clause 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.6 (*Third Party Rights*) and the provisions of the Third Parties Act.

#### 28.22 **Role of the Security Agent**

- (a) The Security Agent shall, at all times, act in accordance with the terms set forth in the Intercreditor Agreement.
- (b) The declaration of trust pursuant to which the Security Agent declares itself trustee of the Transaction Security (to the extent permitted by applicable law), for which it will hold on trust for the Secured Parties, is contained in the Intercreditor Agreement.
- (c) In acting or otherwise exercising its rights or performing its duties under any of the Global Finance Documents, the Security Agent shall act in accordance with the provisions of this Agreement and the Intercreditor Agreement and shall seek any necessary instruction or direction from the Global Agent. In so acting, the Security Agent shall have the rights, benefits, protections, indemnities and immunities set out in this Agreement and the Intercreditor Agreement.
- (d) If there is an inconsistency or conflict between the rights, duties, benefits, obligations, protections, immunities or indemnities of the Security Agent (the "**Security Agent Provisions**") as contained in this Agreement and/or the Intercreditor Agreement, on the one hand, and in any of the other Global Finance Documents, on the other hand, the Security Agent Provisions contained in the Intercreditor Agreement shall prevail and apply.
- (e) The Security Agent is hereby authorised by the Secured Parties to sign or countersign any Transfer Certificate, Assignment Agreement, Accession Deed, Increase Confirmation or similar document in connection with or related to any of the foregoing without investigation or inquiry, if,



on its face, it appears to conform to the form contemplated in this Agreement or, if applicable, the same is signed by the Global Agent.

#### 28.23 **Amounts paid in error**

- (a) If the Global Agent pays an amount to another Party and the Global Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Global Agent shall on demand refund the same to the Global Agent.
- (b) Neither:
  - (i) the obligations of any Party to the Global Agent; nor
  - (ii) the remedies of the Global Agent,  
(whether arising under this Clause or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Global Agent or any other Party).
- (c) All payments to be made by a Party to the Global Agent (whether made pursuant to this Clause or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Global Agent to another Party which the Global Agent determines (acting reasonably and in good faith) was made in error.

#### 29. **CONDUCT OF BUSINESS BY THE GLOBAL FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Global Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Global 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) (except as contemplated by Clause 14 (*Taxes*)) oblige any Global Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

#### 30. **SHARING AMONG THE GLOBAL FINANCE PARTIES**

##### 30.1 **Payments to the Global Finance Parties**

- (a) Subject to paragraph (b) below, if a Global Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Company or an Obligor other than in accordance with Clause 31 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Global Finance Documents, then:
  - (i) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Global Agent and each other relevant Agent;

- (ii) the relevant 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 relevant Agent and distributed in accordance with Clause 31 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the relevant Agent in relation to the receipt, recovery or distribution; and
  - (iii) the Recovering Finance Party shall, within three Business Days of demand by the relevant Agent, pay to the relevant Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the relevant Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (*Partial payments*), clause 23.3 (*Partial payments*) of the Conventional Facilities Agreement or clause 8.4 (*Partial payments*) of the Murabaha Investment Agency Agreement (as applicable).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender.

### 30.2 **Redistribution of payments**

Each Agent shall treat the Sharing Payment as if it had been paid by the Company or the relevant Obligor and distribute it between the Global Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 31.6 (*Partial payments*), clause 22.3 (*Partial payments*) of the Conventional Facilities Agreement or clause 8.4 (*Partial payments*) of the Murabaha Investment Agency Agreement (as applicable) towards the obligations of the Company or that Obligor to the Sharing Finance Parties.

### 30.3 **Recovering Finance Party's rights**

On a distribution by the relevant Agent under Clause 30.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

### 30.4 **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 relevant Agent, pay to the relevant 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.

### 30.5 **Exceptions**

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 30, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Global 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 Global Finance Party of the legal or arbitration proceedings; and
  - (ii) the other Global 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.

### 30.6 **Ancillary Lenders**

- (a) This Clause 30 shall not apply to any receipt or recovery by a Conventional Lender in its capacity as an Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender at any time prior to service of notice under Clause 24.13 (*Acceleration*).
- (b) Following service of notice under Clause 24.13 (*Acceleration*), this Clause 30 shall apply to all receipts or recoveries by Ancillary Lenders, Fronted Ancillary Lenders or Fronting Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Gross Outstandings for an Ancillary Facility or Fronted Ancillary Facility that is provided by way of a multi-account overdraft to or towards an amount equal to its Net Outstandings.

## 31. **PAYMENT MECHANICS**

### 31.1 **Payments to the Agents**

- (a) Subject to paragraph (c) below, on each date on which the Company or an Obligor or a Financier is required to make a payment under a Global Finance Document excluding a payment under the terms of an Ancillary Document, the Company or that Obligor or Financier shall make the same available to the relevant Agent (unless a contrary indication appears in a Global Finance Document) for value on the due date at the time and in such funds specified by the relevant Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in 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), as specified by the relevant Agent by written notice.
- (c) Notwithstanding paragraph (a) above, to the extent specified by the relevant Borrower (or the Company on its behalf) (in its sole discretion) in the relevant Request, any payment to be made by a Financier under a Facility (except for the Murabaha Facility) in connection with any Utilisation of that Facility (to the extent agreed between the Company and any relevant Financier and notified to the relevant Agent) shall not be made available to the relevant Agent but shall instead be made available directly to the relevant ultimate payees of such payments as specified in the relevant Request.

### 31.2 **Distributions by the Agents**

Each payment received by an Agent under the Global Finance Documents for another Party shall, subject to Clause 31.3 (*Distributions to the Company or an Obligor*) and Clause 31.4 (*Clawback*) be made available by that Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with the Global Finance Documents (in the case of a Financier, for the account of its Facility Office), to such account as that Party may notify to the relevant 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).

### 31.3 **Distributions to the Company or an Obligor**

An Agent may (with the consent of the Company or the applicable Obligor or in accordance with Clause 32 (*Set-Off*)) apply any amount received by it for the Company or that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company or that Obligor under the Global Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 31.4 **Clawback**

- (a) Where a sum is to be paid to an Agent under the Global Finance Documents for another Party, that 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 an Agent pays an amount to another Party and it proves to be the case that that 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 that Agent shall on demand refund the same to the relevant Agent, together with interest on that amount from the date of payment to the date of receipt by the relevant Agent, calculated by the relevant Agent to reflect its cost of funds.

### 31.5 **Impaired Agent**

- (a) If, at any time, an Agent becomes an Impaired Agent, the Company, an Obligor or a Financier which is required to make a payment under the Global Finance Documents to that Agent, as the case may be, in accordance with Clause 31.1 (*Payments to the Agents*) 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 Company or the Obligor or the Financier making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Global Finance Documents. In each case such payments must be made on the due date for payment under the Global Finance Documents.
- (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 31.5 shall be discharged of the relevant payment obligation under the Global 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 to the relevant Agent in accordance with Clause 28.13 (*Replacement of the Global Agent*), clause 7.11 (*Replacement of the Investment Agent*) of the Murabaha Investment Agency Agreement, clause 21.12 (*Replacement of the Agent*) of the Conventional Facilities Agreement, each Party which has made a payment to a trust account in accordance with this Clause 31.5 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 31.2 (*Distributions by the Agents*).

#### 31.6 **Partial payments**

- (a) If the Global Agent receives a payment for application against amounts due in respect of any Global Finance Documents that is insufficient to discharge all the amounts then due and payable by the Company or an Obligor under those Global Finance Documents, the Global Agent shall apply that payment towards the obligations of the Company or that Obligor under those Global Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of an Agent, the Security Agent and the Issuing Bank (other than any amount under clause 7.2 (*Claims under a Letter of Credit*) of the Conventional Facilities Agreement or, to the extent relating to the reimbursement of a claim (as defined in clause 7 (*Letters of Credit*) of the Conventional Facilities Agreement)), clause 7.3 (*Indemnities*) of the Conventional Facilities Agreement) under those Global Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission and the Profit Amount element of the Deferred Payment Price of any Murabaha Contract due but unpaid under those Global Finance Documents;
  - (iii) **thirdly**, in or towards payment pro rata of any principal and the Purchase Price element of the Deferred Payment Price of any Murabaha Contract due but unpaid under those Global Finance Documents and any amount due but unpaid under clause 7.2 (*Claims under a Letter of Credit*) of the Conventional Facilities Agreement and clause 7.3 (*Indemnities*) of the Conventional Facilities Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Global Finance Documents.
- (b) The Global Agent shall, if so directed by the Majority Financiers, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Company or an Obligor.

#### 31.7 **Set-off by the Obligors**

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

#### 31.8 **Business Days**

- (a) Any payment which is due to be made pursuant to a Global Finance Document on a day that is not a Business Day shall be made (and shall be deemed to only fall due) on the next Business Day.

- (b) Without prejudice to paragraph (a) above, any deadline applicable to an Obligor under a Global Finance Document that falls on a day that is not a Business Day shall be extended to the next Business Day.

### 31.9 **Currency of account**

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from the Company or an Obligor under any Global Finance Document.
- (b) A repayment of a Utilisation, a payment of a Deferred Payment Price or part of a Deferred Payment Price or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation, Deferred Payment Price 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.

### 31.10 **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 Global Finance Documents to, and any obligations arising under the Global 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 Global 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 Global Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Global 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.

### 31.11 **Disruption to Payment Systems**

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

- (a) each Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as that Agent may deem necessary in the circumstances;
- (b) no Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

- (c) each Agent may consult with the Global Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by each Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Global Finance Documents notwithstanding the provisions of Clause 37 (*Amendments and Waivers*);
- (e) no Agent shall not 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 an Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and
- (f) the Global Agent shall notify the Global Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### 31.12 Sanctioned Entity

(a) Notwithstanding anything to the contrary in any Global Finance Document:

- (i) unless otherwise agreed in writing by the Company:
  - (A) no member of the Group shall be required to take any action with respect to, or provide any information to, or otherwise deal with, a Sanctioned Entity to the extent to do so is, or might reasonably be expected to be, prohibited or contrary to applicable Sanctions Laws;
  - (B) no fees, interest or other amounts shall accrue or be payable in respect of (or be calculated by reference to) any loan, commitment or participation of a Financier which is a Sanctioned Entity; and
  - (C) a Borrower or the Purchaser (or the Company) may at its discretion specify in any applicable Request that the Commitments of a Sanctioned Entity shall be disregarded (and deemed to be zero) for the purposes of the Utilisation requested in such Request and that such Financier shall not (and shall not be required to) participate in the relevant Utilisation,

and the provisions of the Global Finance Documents shall be interpreted and construed, and deemed modified, accordingly.

- (ii) without prejudice to paragraph (i) above, if any Obligor is required to make a payment under the Global Finance Documents to a Global Finance Party which is, or which such Obligor reasonably believes is, a Sanctioned Entity, or in respect of any loan, commitment, participation or amount owing to any Global Finance Party which is, or which that Obligor reasonably believes is, a Sanctioned Entity, such Obligor may (provided that it notifies the Global Agent and the relevant Agent accordingly):

(A) elect not to make such payment until such time as it receives evidence reasonably satisfactory to it that such Global Finance Party is not or has ceased to be a Sanctioned Entity; or

(B) elect to pay such amount to the relevant Agent with the instruction that such amount should be retained by that Agent until such time as the Global Agent is satisfied that the Global Finance Party beneficially entitled to that payment is not or has ceased to be a Sanctioned Entity,

and any payment or election made in accordance with this paragraph shall be deemed to be full discharge of the relevant payment obligation under the Global Finance Documents (until, in the case of paragraph (a) above, the date falling five Business Days after the date on which the relevant Obligor has confirmed (acting reasonably and in good faith) that it has received the relevant evidence reasonably satisfactory to it that the relevant Global Finance Party is not or has ceased to be a Sanctioned Entity) and the provisions of the Global Finance Documents shall be interpreted and construed accordingly; and

(iii) no Default or Event of Default shall occur (or be deemed to occur or have arisen) as a direct or indirect consequence of compliance with this Clause or as a direct or indirect consequence of any Global Finance Party at any time being, or being regarded as, a Sanctioned Entity.

(b) Each Financier which becomes a Party to this Agreement after the date of this Agreement confirms that it is not a Sanctioned Entity on the date on which it becomes a Party to this Agreement. If any Global Finance Party becomes (or becomes aware that it is) a Sanctioned Entity, it shall promptly notify the Global Agent and the Company accordingly. Similarly the Global Agent shall promptly upon becoming aware that a Global Finance Party is a Sanctioned Entity notify the Company accordingly. The Global Agent and the Company may assume that the following are a Sanctioned Entity:

(i) any person which has notified the Global Agent or the Company that it is a Sanctioned Entity; and

(ii) any person in relation to which it is aware that any of the events or circumstances referred to in the definition of 'Sanctioned Entity' applies,

unless it has received satisfactory evidence to the contrary (such evidence to be reasonably satisfactory to the Company and the Global Agent) or the Company agrees that such Global Finance Party should not be treated as a Sanctioned Entity for the purposes of this Agreement.

## 32. SET-OFF

(a) Subject to Clause 4.4 (*Utilisations during the Certain Funds Period/Agreed Certain Funds Period*) and/or (as applicable) clause 6.5 (*Issue of Letters of Credit*) of the Conventional Facilities Agreement, a Global Finance Party may, at any time while a Declared Default is continuing, set-off any matured obligation due from the Company or an Obligor under the Global Finance Documents (to the extent beneficially owned by that Global Finance Party) against any matured obligation owed by that Global Finance Party to the Company or that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different



currencies, the Global 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 or Fronting Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility or Fronted Ancillary Facility shall on enforcement of the Global Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility or Fronted Ancillary Facility in accordance with its terms.

### 33. NOTICES

#### 33.1 Communications in writing

Any communication to be made under or in connection with the Global Finance Documents (including, for the avoidance of doubt, any instructions given to an Agent or the Security Agent) shall be made in writing and, unless otherwise stated, may be made by electronic mail or letter.

#### 33.2 Addresses

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

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Financier, the Issuing Bank, each Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender or any Obligor, that notified in writing to the relevant Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of each Agent and the Security Agent, that identified with its name below, or any substitute address, electronic mail address or department or officer as the Party may notify to the Global Agent (or the Global Agent may notify to the other Parties, if a change is made by the Global Agent) by not less than five Business Days' notice.

#### 33.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Global Finance Documents will only be effective:
- (i) if by way of electronic mail, when received in legible form; or
- (ii) 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 33.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to an Agent or the Security Agent will be effective only when actually received by the relevant Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the relevant Agent's or Security Agent's signature below (or any substitute department or officer as each Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to the Company or an Obligor shall be sent through the relevant Agent.

- (d) Any communication or document made or delivered to the Company in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

#### 33.4 **Notification of postal address and electronic mail address**

Promptly upon receipt of notification of an address or electronic mail address or change of address or electronic mail address pursuant to Clause 33.2 (*Addresses*) or changing its own address or electronic mail address, an Agent shall notify the other Parties.

#### 33.5 **Communication when an Agent is Impaired Agent**

If any Agent is an Impaired Agent the Parties may, instead of communicating with each other through the relevant Agent, communicate with each other directly and (while the relevant Agent is an Impaired Agent) all the provisions of the Global Finance Documents which require communications to be made or notices to be given to or by the relevant 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 of the relevant Agent has been appointed.

#### 33.6 **Electronic communication**

- (a) Any communication to be made under or in connection with the Global Finance Documents may be made by electronic mail or other electronic means (including by way of posting to a secured website) if the Parties:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication (with such agreement to be deemed to be given by each person which is a Party unless otherwise notified to the contrary by an Agent or the Security Agent and the Company);
- (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (iii) notify each other of any change to their address or any other such information supplied by them.

- (b) Any electronic communication made between 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 an Agent or the Security Agent only if it is addressed in such a manner as the relevant Agent or Security Agent shall specify for this purpose.

- (c) Any reference in a Global Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 33.6.

#### 33.7 **Use of websites**

- (a) The Company may satisfy its obligations under this Agreement to deliver any information in relation to those Financiers (the "**Website Financiers**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Global Agent (the "**Designated Website**") if:

- (i) the Global Agent expressly agrees (after consultation with each of the Financiers) that it will accept communication of the information by this method;

- (ii) both the Company and the Global 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 Global Agent.

If any Financier (a "**Paper Form Financier**") does not agree to the delivery of information electronically then the Global Agent shall notify the Company accordingly and the Company shall at its own cost supply the information to the Global Agent (in sufficient copies for each Paper Form Financier) in paper form. In any event the Company shall at its own cost supply each relevant Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Global Agent shall supply each Website Financier with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Global Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the Global 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 Global Agent under paragraph (c)(i) or paragraph (c)(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 Global Agent and each Website Financier is satisfied that the circumstances giving rise to the notification are no longer continuing.

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

### 33.8 **English language**

- (a) Any notice given under or in connection with any Global Finance Document must be in English.
- (b) All other documents provided under or in connection with any Global Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by an 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.

## **34. CALCULATIONS AND CERTIFICATES**

### **34.1 Accounts**

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

### **34.2 Certificates and determinations**

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

### **34.3 Day count convention**

- (a) Any interest, commission or fee accruing under a Global Finance Document will accrue from day to day and is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days (in the case of amounts denominated in Euro or an Optional Currency other than sterling) or 365 days (in the case of amounts denominated in sterling) or, in any case where the practice in the Relevant Market differs, in accordance with that market practice; and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of interest, commission or fee which is, or becomes, payable by an Obligor under the Global Finance Documents shall be rounded to two decimal places.

## **35. PARTIAL INVALIDITY**

If, at any time, any provision of the Global 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.

## **36. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Global Finance Party or Secured Party, any right or remedy under the Global 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.

## **37. AMENDMENTS AND WAIVERS**

### **37.1 Required consents**

- (a) This Clause 37 is subject to the terms of the Intercreditor Agreement.
- (b) Subject to the other provisions of this Clause 37, any term of the Global Finance Documents may (other than the Fee Letters which may be amended or waived in accordance with their terms) be amended or waived only with the consent of the Majority Financiers and the Company and any such amendment or waiver will be binding on all Parties.

- (c) The Global Agent and/or (as applicable) the Security Agent may (and shall immediately, without any further consent, sanction, authority, instruction, direction or further confirmation from any other Global Finance Party) effect, on behalf of any Global Finance Party, any amendment, waiver, consent or release permitted by this Clause 37 and any amendment, waiver, consent or release made or effected in accordance with the provisions of this Clause 37, or in accordance with any other term of this Agreement or any other Global Finance Documents shall, in each case, be binding on all Parties. In the event that any of the Global Finance Parties is not entitled to grant to the Global Agent and/or (as applicable) the Security Agent the authority referred to in this Agreement, it shall be obliged to appear with and execute at the same time as the Global Agent and/or (as applicable) the Security Agent, upon the request of the Global Agent and/or (as applicable) the Security Agent, to formalise any actions or measures that are required. By virtue of this Agreement, each of the Global Finance Parties shall be obliged to co-operate with the Global Agent and/or (as applicable) the Security Agent, including to participate in the negotiation and execution of the documents, either in public or private, that may be required for the execution and effectiveness of the provisions contained in this Agreement or any other Global Finance Document.
- (d) Each Global Finance Party irrevocably and unconditionally authorises and instructs each Agent and/or (as applicable) the Security Agent without any further consent, sanction, authority, instruction, direction or further confirmation from them (for the benefit of the Global Agent and/or (as applicable) the Security Agent and the Company) to immediately execute any documentation relating to, and to otherwise give effect to, a proposed amendment or waiver as soon as the requisite Financier consent is received in accordance with this Clause 37 (or on such later date as may be agreed by the Global Agent and Company) or, where no such Financier consent is required, upon the consent of the Company. Without prejudice to the foregoing, the Global Finance Parties shall immediately (without any further consent, sanction, authority, instruction, direction or further confirmation from any other Global Finance Party) enter into any documentation necessary to implement an amendment or waiver once that amendment or waiver has been approved by the requisite number of Financiers determined in accordance with this Clause 37 (or on such later date as may be agreed by the Global Agent and Company) or, where no such Financier consent is required, upon the consent of the Company.
- (e) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (e), require the consent of all or any of the Obligors.
- (f) In respect of any request for a consent, waiver, amendments or other vote under the Global Finance Documents, a Financier may not vote part (but may vote all) of its Commitments in favour of or against such request and a Financier may not abstain from voting part (but may abstain from voting all) of its Commitments in respect of such request, other than, in each case, with the prior written consent of the Obligors' Agent (in its sole discretion) and, in the event that any Financier purports to vote its Commitments in breach of this paragraph (f) in respect of any request made by a member of the Group, such Financier shall be deemed to have voted all of its Commitments in favour of such request.

### 37.2 All Financier Matters

Subject to Clause 37.4 (*Other exceptions*) and Clause 37.8 (*Implementation of Permitted Structural Adjustment*) and other than as expressly permitted by the provisions of this Agreement (including this Clause 37) or any other Global Finance Document, an amendment, waiver or (in the case of a Transaction Security Document) a consent in respect any term of any Global Finance Document that has the effect of changing:

- (a) the definitions of Majority Financiers, Majority Incremental Facility Financiers, Super Majority Financiers and/or Structural Adjustment in Clause 1.1 (*Definitions*);
- (b) any provision which expressly requires the consent of all the Financiers in accordance with its terms;
- (c) the specified waterfall setting out the order of priority and/or subordination and the order of the application of the proceeds of enforcement of Transaction Security, in each case, as set out in the Intercreditor Agreement to the extent such amendment or waiver (or any consent or release be agreed thereunder or in relation thereto) would adversely affect the interests of the Financiers (taken as a whole) under this Agreement (in their capacity as such) (**provided that** any Permitted Structural Adjustment or the introduction of any Permitted Financial Indebtedness shall not be deemed to adversely affect the interests of the Financiers);
- (d) Clause 2.8 (*Global Finance Parties' rights and obligations*);
- (e) Clause 25 (*Changes to the Financiers*) to the extent further restricting the rights of the Financiers to enter into, give effect and/or consummate any Transfer Arrangement;
- (f) Clause 30 (*Sharing Among the Global Finance Parties*);
- (g) any increase to any of the baskets in the definition of "Permitted Incremental Facility Cap" or re-tranching (resulting in higher ranking) of Facility B, the Original Revolving Facility, any Incremental Facility B or any Incremental Revolving Facility and Clause 2.7 (*Incremental Facility*);
- (h) this Clause 37; or
- (i) designating any Liabilities as Super Senior Liabilities (in each case, under and as defined in the Intercreditor Agreement) or the incurrence of "super senior" Financial Indebtedness that ranks on a "super senior" basis and in priority to the Facilities in respect of the proceeds of enforcement of the Transaction Security,

shall not be made without the prior consent of all the Financiers **provided that**:

- (i) any amendment to Clause 25 (*Changes to the Financiers*) in accordance with paragraph (e) above shall only require the consent of each Financier who will be subject to any such additional restrictions; and
- (ii) any amendment, waiver or consent which is required in respect of paragraph (c) above shall only require the consent of each Financier whose interests are adversely affected under this Agreement (in their capacity as such),

unless, in each case, any amendment, waiver, consent or release (i) is not adverse to the interests of the Financiers (taken as a whole) under the Global Finance Documents or (ii) is in connection with (or to the extent consequential on or required or desirable in order to implement or reflect) any Permitted Matter or to the extent such amendment or waiver constitutes (or is consequential on or required or desirable in order to implement or reflect) a Permitted Structural Adjustment or is permitted to be made pursuant to Clauses 37.3 (*Super Majority Financier Matters*) or 37.4 (*Other exceptions*) or is otherwise contemplated or permitted to be made without such prior consent of all the Financiers pursuant to any other term of any Global Finance Document.

### 37.3 **Super Majority Financier Matters**

Subject to Clause 37.4 (*Other exceptions*) and Clause 37.8 (*Implementation of Permitted Structural Adjustment*), and other than as expressly permitted by the provisions of this Agreement (including this Clause 37) or any other Global Finance Document, an amendment, waiver or (in the case of a Transaction Security Documents) a consent in respect of any term of any Global Finance Document that has the effect of changing or which relates to the release of all or substantially all of:

- (a) the guarantees and indemnities granted by the Guarantors (taken as a whole) under Clause 19 (*Guarantees and Indemnity*); or
- (b) the Transaction Security (taken as a whole),

shall not be made without the prior consent of the Super Majority Financiers and the Company unless:

- (i) in connection with (or to the extent consequential on or required or desirable in order to implement or reflect) any Permitted Matter or to the extent such amendment or waiver constitutes (or is consequential on or required or desirable in order to implement or reflect) a Permitted Structural Adjustment or is permitted to be made pursuant to Clauses 37.2 (*All Financier Matters*) or 37.4 (*Other exceptions*) or is otherwise contemplated or permitted to be made without such prior consent of the Super Majority Financiers pursuant to any other term of any Global Finance Document; or
- (ii) that amendment, waiver, consent, release or action is conditional upon or to become effective on or following repayment and cancellation in full of all amounts due and owing under the Facilities,

and the Security Agent is irrevocably authorised and instructed (without any further consent, sanction, authority, instruction, direction or further confirmation from any other Global Finance Party) to take (and shall immediately take) such action provided for in this Clause 37.3.

### 37.4 **Other exceptions**

- (a) A Structural Adjustment shall only require (and may be made with) the prior consent of the Company and each Financier that is expressly and directly participating in (or whose Commitment under the relevant Facility or, as the case may be, participation in the relevant Utilisation is expressly and directly subject to) that Structural Adjustment and shall not require the consent, authority, instruction or direction of any other Financier (or any other Global Finance Party or other Person) unless such Structural Adjustment is to increase the Total Commitments (where such

increase in the Total Commitments would not constitute (on a pro forma basis, having regard to the use of proceeds) any Permitted Financial Indebtedness (including by reference to any prior consent of the Majority Financiers)) or is to extend or reduce the original final stated maturity of any of the Facilities, in which case, such Structural Adjustment shall also require the consent of the Majority Financiers (with the Majority Financiers calculated and determined including those Financiers participating in (or whose Commitment under the relevant Facility or, as the case may be, participation in the relevant Utilisation is to be subject to) that Structural Adjustment).

- (b) No consent from any Global Finance Party shall be required in connection with (or to the extent consequential on or required or desirable in order to implement or reflect) any Permitted Matter (other than, as applicable, in the case of the establishment or incurrence of any Permitted Financial Indebtedness, the consent of the relevant person(s) providing such Permitted Financial Indebtedness).
- (c) No consent from any Financiers shall be required in connection with the implementation of (and any related amendment or waiver as part of the implementation of (and any related amendment or waiver as part of the implementation of) an Incremental Facility pursuant to Clause 2.7 (*Incremental Facility*) and any Incremental Facility Commitment Notice (other than the consent of the relevant Incremental Facility Financier).
- (d) Any amendment or waiver which relates adversely to the specific rights or obligations of an Administrative Party, any Issuing Bank, any Ancillary Lender, a Fronted Ancillary Lender or Fronting Ancillary Lender, a Reference Bank or the Security Agent (in each case in such capacity) respectively may not be effected without the consent of the relevant Administrative Party, the relevant Issuing Bank, the relevant Ancillary Lender, the relevant Fronted Ancillary Lender or Fronting Ancillary Lender, Reference Bank or the Security Agent (as the case may be). For the avoidance of doubt, this paragraph (d) shall not entitle any Party to refuse its consent to any release of a guarantee or Transaction Security which would otherwise be permitted under another provision of the Global Finance Documents.
- (e) Any amendment or waiver which relates to the terms of or rights or obligations applicable to a particular Utilisation, Facility, tranche or class of Financiers and which does not materially and adversely affect the rights or interests of Financiers in respect of other Utilisations, Facilities, tranches or another class of Financier shall only require the consent of the Majority Financiers, Super Majority Financiers or all Financiers (as applicable and determined in accordance with this Clause 37 with respect to the relevant amendment or waiver) as if references in this paragraph (e) to "*Majority Financiers*", "*Super Majority Financiers*" or "*Financiers*" were only to Financiers participating in that Utilisation, Facility, tranche or forming part of that affected class. For the avoidance of doubt, this paragraph (e) is without prejudice to the ability to effect, make or grant any amendment, waiver, consent or release pursuant to or in accordance with paragraph (c) above.
- (f) Each individual Financier may (with the prior written consent of the Company) waive its right to a prepayment (including, without any limitation, by way of amendment or waiver to any of the provisions) under Clause 9 (*Mandatory Early Payment*) or any other amounts which have become due and payable to it under this Agreement or any other Global Finance Documents.



- (g) An amendment relating to any Transfer Arrangement that affects only certain Financiers may (notwithstanding Clause 37.2 (*All Financier Matters*) above) be made with only the consent of the Company and those Financiers who will be subject to any resulting additional restrictions or conditions or more onerous terms (and no consent of any other Person shall be required where the relevant amendment does not give rise to any additional restrictions, conditions or more onerous terms).
- (h) A change in Borrower (other than in accordance with the terms of the Global Finance Documents or as a result of a merger, reorganisation or other combination (or similar) that is permitted under the terms of the Global Finance Documents) may only be made with the consent of the Company and those Financiers lending to that Borrower at that time (and without the requirement for the consent, authority, instruction or direction of any other Person);
- (i) Notwithstanding anything to the contrary in the Global Finance Documents, a Global Finance Party may unilaterally waive, relinquish or otherwise give up all or any of its rights under any Global Finance Document with the consent of the Company and the Company (or any other Obligor) may unilaterally waive, relinquish or give-up any of its rights by giving its written notice to the relevant Global Finance Party (or the Global Agent or the Security Agent) expressly referring to the relevant right (including, any requirement, restriction or condition with respect to any Transfer Arrangement (or class of Transfer Arrangement) or Debt Purchase Transaction).
- (j) Subject to compliance with clause 9.3 (*Terms of Ancillary Facilities and Fronted Ancillary Facilities*) of the Conventional Facilities Agreement and the provisions of the Intercreditor Agreement, no amendment or waiver of a term of any Ancillary Document shall require the consent of any Global Finance Party other than the relevant Ancillary Lender or Fronting Ancillary Lender unless such amendment or waiver would require an amendment or waiver of this Agreement (including, for the avoidance of doubt clause 9 (*Ancillary Facilities*) of the Conventional Facilities Agreement), in such case the other provisions of this Clause shall apply.
- (k) If the Company or any relevant Agent (at the request of the Company) has requested the Global Finance Parties (or any of them) to give a consent in relation to, or to agree a release, waiver or amendment of, any provision of the Global Finance Documents or other vote of Financiers under the terms of this Agreement, then in the case of:
  - (i) any Global Finance Party who has delivered a consent or agreement to such request, on and from the date of notification thereof to the relevant Agent;
  - (ii) any Replaced Financier, on and from the date of the replacement of such Replaced Financier;
  - (iii) any Defaulting Financier, on and from the date on which it became a Defaulting Financier; and
  - (iv) any other Non-Consenting Financier and its applicable participation, (without prejudice to paragraph (iii) above), on and from the date such Financier is replaced in accordance with the provisions of Clause 37.5 (*Replacement of Financier*),

a consent or agreement to such request shall be treated and deemed as having been made by such Global Finance Party, Replaced Financier, Defaulting Financier and Non-Consenting

Financier (as applicable) and received by the relevant Agent, and (unless otherwise agreed by the Company or stipulated by the relevant Financier), subject to paragraph (l) below, such consent or agreement shall from such time be irrevocable and binding on such Global Finance Party, Replaced Financier, Defaulting Financier and Non-Consenting Financier (as applicable) and any permitted assignee, transferee or counterparty to a sub-participation.

- (l) Any Global Finance Party (not being an Excluded Financier) or its permitted assignee or transferee that has expressly not consented or not agreed to a request for an amendment, waiver, consent or release shall always have the right to change or revoke their decision and subsequently deliver to the relevant Agent a consent or agreement to such request at any time during the period for which the vote and request process is open for consents and acceptances as notified by the relevant Agent to such Financier (and subject to any extension of such period as agreed between the Company, the Global Agent and the relevant Agent).
- (m) An amendment to or waiver of the terms of any Fee Letter may be made in accordance with its terms and/or the Company may make any amendment to any Global Finance Document in order to give effect to any flex rights that have been exercised (and any amendments required to be made to any Global Finance Document as a condition to the exercise of any flex rights).
- (n) Notwithstanding anything to the contrary, any amendment, waiver, consent or release of a Global Finance Document made in accordance with) Clause 2.6 (*Increase*), Clause 37.5 (*Replacement of Financier*), Clause 37.8 (*Implementation of Permitted Structural Adjustment*) or the Intercreditor Agreement shall be binding on all Parties without further consent of any Party.
- (o) An amendment or waiver to cure or correct errors, defects or omissions or misstatements; to resolve ambiguities or inconsistencies; to reflect or make changes of a minor, technical, clarificatory or administrative nature; to comply with any law or regulation; to make any changes requested by an (or any prospective) Agent or Security Agent; to amend, waive or add any term or provision for the benefit of all or any of the Global Finance Parties; or (**provided that** such waiver or amendment does not adversely affect the interests of the other Financiers whose consent is not required for the applicable amendment) is consequential on, incidental to, or required to implement an approved amendment, waiver, consent or release, shall require only the consent of the Company (and may be implemented by the Company, the Global Agent, the relevant Agent or, as applicable, the Security Agent). Whether any amendment, waiver or addition falls within this paragraph (o) shall be determined by the Company (acting reasonably and in good faith).
- (p) Any amendment, waiver, consent or release made or effected in accordance with any of the paragraphs of this Clause 37.4, or in accordance with any other term of any of the Global Finance Documents, shall be binding on all Parties. Each Secured Party irrevocably and unconditionally authorises and instructs the relevant Agent (for the benefit of that Agent and the Company) to execute any documentation relating to a proposed amendment or waiver as soon as the requisite Financier consent is received (or on such later date as may be agreed by the Global Agent, the relevant Agent and the Company). Without prejudice to the foregoing, the Global Finance Parties shall enter into any documentation necessary to implement an amendment or waiver once that amendment or waiver has been approved by the requisite number of Financiers determined in accordance with this Clause 37.

- (q) Any Declared Default, a Default or an Event of Default may be revoked or, as the case may be, waived with the consent of the Majority Financiers, provided that any drawstop to a Utilisation may be waived with only the consent of the Majority Financiers as if references in this paragraph (q) to "*Majority Financiers*" were only to Financiers participating in that Utilisation. Any notice, demand, declaration or other step or action taken under or pursuant to Clause 24.13 (*Acceleration*) may be revoked with the consent of the Majority Financiers.
- (r) Without prejudice to paragraph (f) above, an amendment to or waiver of any mandatory prepayment or cancellation provision may be made with only the consent of the Company and the Majority Financiers, provided that, if a Financier has become entitled to exercise its rights under Clause 9.1 (*Exit*) as a result of a Change of Control or under Clause 8.1 (*Illegality*), any waiver of that Financier's entitlement to so exercise such rights in respect of that Change of Control or that illegality shall require the consent of that individual Financier (except, for the avoidance of doubt, any waiver of that right pursuant to the operation of the final sub-paragraph of paragraph (a) of Clause 9.1 (*Exit*) as a result of that Financier not notifying the Global Agent within the timeframe in that paragraph (a)).
- (s) Notwithstanding anything to the contrary in the Global Finance Documents, any redesignation or transfer of all or any part of a Commitment and/or a participation in any Utilisation to a new tranche or facility established as an Incremental Facility or pursuant to a Structural Adjustment or any other term of any of the Global Finance Documents (or any other similar or equivalent transaction) may be approved with the consent of the Financier holding that Commitment and/or, as the case may be, participation (or part thereof) and the Obligors' Agent (without any requirement for any consent or approval from any other person).
- (t) To the extent disenfranchised in accordance Clause 26 (*Restriction on Debt Purchase Transactions*) the Commitment and/or participation of any member of the Group or any Sponsor Affiliate shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility or Facilities when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity, Majority Financiers and Super Majority Financiers) of Total Commitments and/or participations has been obtained to approve that request.
- (u) Any prepayment, termination or other discharge of any indebtedness by any member of the Group in whole or in part (to the extent not otherwise permitted) shall require only the consent of the Company and the Majority Financiers.
- (v) Each Global Finance Party authorises and instructs the Global Agent and each other relevant Agent to enter into any amendment or waiver of any term of any Global Finance Document requested by the Company relating to any rights and benefits to the Financiers, any group of Financiers and/or any Issuing Bank and which does not materially and adversely affect the rights or interests of other Financiers, group of Financiers and/or Issuing Bank (as applicable) (it being understood that the granting of additional rights and benefits to any group of Financiers but not all of the Financiers shall not, of itself, materially and adversely affect the rights of the other Financiers), in each case without the requirement for any consent of any other Global Finance Party.

- (w) The Global Agent, each other relevant Agent or, as applicable, the Security Agent and (in each case) the Company shall be authorised and instructed to agree any amendments to the terms of the Global Finance Documents that the Company (or, in the case of the first Additional Borrower (only) incorporated in Ireland, that each relevant Agent or, as applicable, the Security Agent) considers to be necessary or desirable (acting reasonably and in good faith) in connection with any Additional Borrower or Additional Guarantor becoming a party to the Global Finance Documents, including the tax provisions, any assignment, transfer or sub-participation provisions (or equivalent), any agency or trustee provisions, any guarantee and/or any indemnity provisions (including limitation wording thereto) and/or any operational, mechanical or administrative provisions, provided such changes are not materially adverse to the interests of the Financiers under the Global Finance Documents or are necessary to comply with applicable law or regulation (or for the relevant Global Finance Parties to obtain a legal opinion without qualification or reservation) or are otherwise customarily reflected in connection with applicable top tier acquisition financings (each as determined by the Company, acting reasonably and in good faith), provided that, in the case of the first Additional Borrower (only) incorporated in Ireland, it shall be a condition to the accession of that Additional Borrower that the Company, the Global Agent and each other relevant Agent first consult with each other with respect to whether any amendments contemplated by this paragraph (w) are necessary or desirable (each acting reasonably and in good faith) and no such accession may occur until such time as the relevant Agent (in each case, acting reasonably and in good faith) has determined either that no such amendments are required or, if the relevant Agent determines that any such amendments are required, that such amendments have taken effect (or will take effect upon the occurrence of such accession).
- (x) Notwithstanding the other provisions of this Clause 37, the Company acknowledges and agrees that it shall not request or agree (nor shall any Islamic Participant be bound to agree) to any amendment or waiver to be made or granted (as the case may be) in respect of any provision of the Transaction Documents which is common in substance to the Conventional Finance Documents and the Murabaha Transaction Documents where such amendment or waiver is contrary to Shari'a principles (as determined by the Internal Sharia Supervisory Committee of the Murabaha Investment Agent in accordance with AAOIFI Sharia Standards).

### 37.5 Replacement of Financier

- (a) If at any time:
- (i) any Global Finance Party becomes or is a Non-Consenting Financier or an Excluded Financier; or
  - (ii) an Obligor becomes obliged to pay any amount in accordance with (or any Global Finance Party otherwise seeks to rely on any of its rights under, or otherwise invokes or becomes subject to) clause 15.5 (*Market disruption*) of the Conventional Facilities Agreement, Clause 14.2 (*Tax Gross-Up*), Clause 14.3 (*Tax Indemnity*) or Clause 15.1 (*Increased Costs*) to any Global Finance Party;
  - (iii) any Global Finance Party provides notice that it requires early payment (or that it intends to cancel its Commitments and/or require repayment or early payment of all or any part of its Participation Amount) pursuant to, or in connection with, Clause 8.1 (*Illegality*) or Clause 9.1 (*Exit*);

- (iv) any Global Finance Party becomes or is a Non Acceptable L/C Lender or otherwise a Defaulting Financier; or
- (v) any Financier has not (or, in the case of any other person party to a Transfer Arrangement, including any purported transferee, assignee or sub-participant (or similar), whose transferor, assignor or sub-participator has not) complied with the requirements or other conditions in this Agreement in respect of a Transfer Arrangement (each, a **"Transfer Arrangement Financier"**),

then the Company may, on no less than five (5) Business Days' prior written notice (a **"Replacement Notice"**) to the Global Agent, each relevant Agent and such Global Finance Party (a **"Replaced Financier"**):

- (A) replace a participation of such Replaced Financier by requiring such Replaced Financier to (and such Replaced Financier shall) transfer pursuant to Clause 25 (*Changes to the Financiers*) on such dates as specified in the Replacement Notice all or part of its rights and obligations under this Agreement to a Financier constituting a New Financier under Clause 25.2 (*Assignments and Transfers by Financiers*) (a **"Replacement Financier"**) selected by the Company (provided that any such Replacement Financier so selected by the Company shall be deemed to satisfy and to meet any criteria or conditions to become a New Financier under Clause 25.2 (*Assignments and Transfers by Financiers*)) which confirms its (or their) willingness to assume and does assume all or part of the obligations of the Replaced Financier (including the assumption of the Replaced Financier's participations or unfunded or undrawn participations (as the case may be) on the same basis as the Replaced Financier) for a purchase price in cash payable at the time of transfer in an amount equal to the applicable outstanding Participation Amount of such Replaced Financier in respect of the outstanding utilisations plus the applicable outstanding principal amount of such Replaced Financier's participation in the outstanding Utilisations or Ancillary Outstandings and all related accrued interest and/or Letter of Credit fees (to the extent that each relevant Agent has not given a notification under Clause 25.14 (*Pro rata settlement*)), Break Costs and other amounts payable in relation thereto under the Global Finance Documents in respect of such transferred participation; and/or
- (B) prepay, purchase or otherwise discharge (or procure that another member of the Group prepays, purchases or otherwise discharges) (and using funds from any source, at the Company's sole discretion) on such dates as specified in the Replacement Notice, all or any part of such Financier's Participation Amount in respect of the outstanding Utilisations and participation in the Ancillary Outstandings and all related accrued interest and/or Letter of Credit fees (to the extent that each relevant Agent has not given a notification under Clause 25.14 (*Pro rata settlement*)), Break Costs and other amounts payable in relation thereto under the Global Finance Documents in respect of such participation; and/or

- (C) cancel all or part of the undrawn Commitments or Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments of that Replaced Financier on such dates as specified in the Replacement Notice.
- (b) Any notice delivered under paragraph (a) above (or any subsequent notice for this purpose, as applicable) may be accompanied by a Transfer Certificate complying with Clause 25.7 (*Procedure for transfers*), and/or an Assignment Agreement complying with Clause 25.8 (*Procedure for assignment*) and any other related documentation to effect the transfer or assignment, which Transfer Certificate, Assignment Agreement and any other related documentation to effect the transfer or assignment (if attached) shall be promptly (and by no later than three Business Days from receiving such Transfer Certificate, Assignment Agreement and any other related documentation) executed by the relevant Replaced Financier and returned to the Company. Notwithstanding the requirements of Clause 25 (*Changes to the Financiers*) or any other provisions of the Global Finance Documents, if a Replaced Financier does not execute and/or return a Transfer Certificate, an Assignment Agreement and any other related documentation to effect the transfer or assignment as required by this paragraph (b) within three Business Days of delivery by the Company, the relevant transfer or transfers or assignment and assignments shall automatically and immediately be effected for all purposes under the Global Finance Documents on payment of the replacement amount to the relevant Agent (for the account of the relevant Replaced Financier) (notwithstanding failure to execute such documentation by the relevant Replaced Financier), and the relevant Agent may (and is authorised and required by each Global Finance Party to) execute, without requiring any further consent or action from any other party, a Transfer Certificate, Assignment Agreement and any other related documentation to effect the transfer or assignment on behalf of the relevant Replaced Financier which is required to transfer its rights and obligations or assign its rights under this Agreement pursuant to paragraph (a) above which shall be effective for the purposes of Clause 25.7 (*Procedure for transfers*) and Clause 25.8 (*Procedure for assignment*). No Agent shall not be liable in any way for any action taken by it pursuant to this paragraph (b) and, for the avoidance of doubt, the provisions of Clause 28.10 (*Exclusion of liability*) shall apply in relation thereto.
- (c) Unless otherwise agreed by the Majority Financiers or provided pursuant to another provision of this Agreement, the replacement of a Financier pursuant to this Clause 37.5 shall be subject to the following conditions:
  - (i) the Company shall have no right to replace an Agent or Security Agent in its capacity as such;
  - (ii) no Agent nor the Financier shall have any obligation to the Company to find a Replacement Financier; and
  - (iii) in no event shall the Financier replaced under this Clause 37.5 be required to pay or surrender to such Replacement Financier any of the fees received by such Financier pursuant to the Global Finance Documents.

### 37.6 Excluded Commitments

If:

- (a) a Financier does not either accept or reject a request from a member of the Group (or the relevant Agent on behalf of that member of the Group) for any consent in relation to, or to agree to a release, waiver or amendment of, any provision of the Global Finance Documents or other vote of Financiers or Global Finance Parties under the terms of the Global Finance Documents within 10 Business Days (or if such Financier is a Defaulting Financier, five Business Days) or any other period of time specified by that member of the Group but if shorter than 10 Business Days, agreed by the relevant Agent) of the date of such request being made (an "**Excluded Financier**");
- (b) any Non-Consenting Financier fails to assist with any step required to implement the Company's right to prepay that Non-Consenting Financier or to replace that Non-Consenting Financier pursuant to and as contemplated by Clause 37.5 (*Replacement of Financier*) within three Business Days of a request to do so by the Company (a "**Non-Accepting Defaulting Financier**");
- (c) at any time the Company (or the Global Agent on behalf of that member of the Group) has delivered a Replacement Notice to a Financier; or
- (d) at any time a Financier is a Transfer Arrangement Financier,

then, in each case:

- (i) (A) that Financier shall be automatically excluded from participating in that vote, and its participations, Commitments and vote (as the case may be) shall not be included (or, as applicable, required) with the Total Commitments or otherwise when ascertaining whether the approval of Majority Financiers, the Super Majority Financiers, all Financiers, any individual Financier or any other class of Financiers (as applicable) has been obtained with respect to that request for a consent, amendment, waiver or agreement or (at the option of the Company) (B) any Excluded Financier shall be deemed to have accepted and granted its consent on the terms requested to the relevant request for consent, amendment, waiver or agreement; and
- (ii) for the purposes of paragraphs (b) and (c) above and/or this paragraph (d) only, its status as a Financier shall be disregarded for the purpose of ascertaining whether the agreement or any specified group of Financiers has been obtained to approve the relevant request for consent, amendment, waiver or agreement and/or to give any instructions to an Agent and/or Security (including giving any instructions pursuant to Clause 24.13 (*Acceleration*), any Transaction Security Document or the Intercreditor Agreement).

### 37.7 Disenfranchisement of Defaulting Financiers

- (a) In ascertaining the Majority Financiers, the Majority Incremental Facility Financiers, the Super Majority Financiers, all Financiers or any other class of Financiers (as applicable) or whether any given percentage (including, for the avoidance of doubt, unanimity) of any of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or

other vote under the Global Finance Documents, a Defaulting Financier's Commitments and participations will be deemed to be zero.

(b) For the purposes of this Clause 37.7, the Global Agent may assume that the following Financiers are Defaulting Financiers:

- (i) any Financier which has notified the Global Agent that it has become a Defaulting Financier; and
- (ii) any Financier in relation to which it is aware that any of the events or circumstances referred to in the definition of Defaulting Financier has occurred,

unless (but without prejudice to the definition of Defaulting Financier) it has received notice to the contrary from the Financier concerned (together with any supporting evidence reasonably requested by the Global Agent) or the Global Agent is otherwise aware that the Financier has ceased to be a Defaulting Financier.

### 37.8 Implementation of Permitted Structural Adjustment

(a) The Global Agent and/or the Security Agent, as the case may be, shall, on behalf of the Secured Parties (unless a Secured Party is required under applicable law to do so in its own name, in which case the relevant Secured Party shall) and is hereby irrevocably and unconditionally authorised and instructed, upon the request of the Company, to promptly take such action and/or enter into such agreement or agreements with the Obligors, the holders of the Liabilities pursuant to any New Debt Financing or Permitted Structural Adjustment (and/or their agents and trustees) and/or with (or on behalf of) any pension trustee (or similar) or pensions regulator (or similar) of any pension scheme (or other post-retirement benefit plan or similar) of the Neptune Group or Moon Group to enter into any new, confirmation, amendment, replacement of or supplement to the Global Finance Documents including any amendment, waiver or release in respect of any guarantee and/or indemnity pursuant to Clause 19 (*Guarantees and Indemnity*) and/or any Transaction Security Document or any grant of any new or supplemental guarantee and/or indemnity pursuant to Clause 19 (*Guarantees and Indemnity*) or any other Global Finance Document and/or Transaction Security pursuant to a new Transaction Security Document, **provided that** any such release is coupled with a substantially simultaneous re-granting on substantially the same terms or as otherwise contemplated or permitted by this Clause 37.8 or Clause 37.3 (*Super Majority Financier Matters*) or the Intercreditor Agreement (including clause 18 (New/Refinancing of Primary Creditor Liabilities) of the Intercreditor Agreement) and/or take any other action (subject to the Agreed Security Principles) as is necessary or appropriate in order to:

- (i) give effect to the terms of any New Debt Financing or Permitted Financial Indebtedness or Permitted Structural Adjustment;
- (ii) facilitate the establishment and/or incurrence of any New Debt Financing or Permitted Structural Adjustment entered into in compliance with this Agreement; and/or
- (iii) comply with the requirements or any lawful request of any pension trustee (or similar) or pensions regulator (or similar) of any pension scheme (or other post-retirement benefit plan or similar) of the Neptune Group and/or Moon Group,



in each case subject to the provisions of this Clause 37 and **provided that** such New Debt Financing or Permitted Structural Adjustment or confirmation, amendment, replacement or supplement to the Global Finance Documents (including any amendment, waiver or release in respect of any Transaction Security Document or any grant of Transaction Security pursuant to a new Transaction Security Document) is permitted by and entered into in compliance with this Agreement and the Intercreditor Agreement (and the Company confirms that is the case).

- (b) The Global Agent and the Security Agent are irrevocably authorised and instructed by each other Secured Party (without the requirement for any further authorisation or consent from any other Secured Party) to enter into such documentation and take any such action contemplated or permitted by this Clause 37.8 and provided it is permitted by Clause 37.3 (*Super Majority Financier Matters*) and shall do so promptly on request and at the expense of the Company. Except where otherwise required by applicable law, any such amendment shall not require the consent of any Secured Party and shall be effective and binding on all Parties upon the execution thereof by the Obligors, each of the Global Agent and the Security Agent.
- (c) Each Obligor confirms:
- (i) the authority of the Company to:
    - (A) give effect to the terms of any New Debt Financing or Permitted Structural Adjustment; and
    - (B) agree, implement and establish any New Debt Financing or Permitted Structural Adjustment in accordance with this Agreement; and
  - (ii) that its guarantee and indemnity set out in this Agreement (or any applicable Accession Deed or other Global Finance Document), and all Security granted by it will (to the extent provided pursuant to the terms of any New Debt Financing or Permitted Structural Adjustment) entitle the persons providing the New Debt Financing or Permitted Structural Adjustment to benefit from such guarantee and indemnity and such Security (subject only to any applicable limitations on such guarantee and indemnity set out in Clause 19 (*Guarantees and Indemnity*) and the Agreed Security Principles) or any Accession Deed or other document pursuant to which it became an Obligor) and extend to include all obligations arising under or in respect of any New Debt Financing or Permitted Structural Adjustment as applicable.
- (d) Notwithstanding the foregoing, nothing in this Clause 37.8 shall oblige the Security Agent, the Global Agent or any other Secured Party to execute any document if it would impose personal liabilities or obligations on, or adversely affect the rights, duties or immunities of the Security Agent, the Global Agent or such Secured Party (**provided that** the incurrence of such New Debt Financing or Permitted Structural Adjustment shall not be deemed to adversely affect the rights of any Secured Party) and nothing in this Clause 37.8 shall be construed as a commitment to advance or arrange any such New Debt Financing or Permitted Structural Adjustment. The Global Agent and the Security Agent are authorised and instructed by the Global Finance Parties and the Secured Parties to execute any document or take any other action set out in this Clause 37.8 on behalf of the Global Finance Parties and the Secured Parties.

## 38. CO-OPERATION

### 38.1 Co-operation with Conventional Facility Agent and Murabaha Investment Agent

- (a) Each of the Conventional Facility Agent and the Murabaha Investment Agent shall co-operate in good faith with the Global Agent and each other to organise any voting amongst the Financiers to determine whether the Financiers have given any consent required under the terms of the Global Finance Documents.
- (b) Each of the Conventional Facility Agent and the Murabaha Investment Agent shall (and the Company authorises them to) communicate with the Global Agent and each other and share information relating to:
- (i) the receipt of Requests and the setting of Utilisation Dates; and,
  - (ii) the making of any early payment in accordance with Clause 8 (*Illegality, Early Payment and Cancellation*) or Clause 9 (*Mandatory Early Payment*),
- to ensure that the requirements of Clause 5 (*Utilisation*) are complied with.
- (c) Each of the Conventional Facility Agent and the Murabaha Investment Agent must on request notify the Global Agent of the details of the amount of each Financier's Commitments and/or Participation Amount for the purpose of enabling the Global Agent to perform its role as such in accordance with this Agreement.

## 39. CONFIDENTIALITY

### 39.1 Confidential Information

Each Global Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 39.2 (*Disclosure of Confidential Information*) and Clause 39.3 (*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. Notwithstanding the other terms of this Clause 39, nothing in any Global Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Global Finance Documents or any transaction carried out in connection with any transaction contemplated by the Global Finance Documents to become an arrangement described in Part II A1 of Annex IV of Directive 2011/16/EU.

### 39.2 Disclosure of Confidential Information

- (a) Any Global Finance Party may disclose:
- (i) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Global Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (i) 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;

- (ii) to any person:
- (A) 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 Global Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (B) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Global Finance Documents and/or the Company or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (C) appointed by any Global Finance Party or by a person to whom paragraph (A) or (B) above applies to receive communications, notices, information or documents delivered pursuant to the Global Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 28.15 (*Relationship with the Financiers*));
  - (D) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (A) or (B) above provided that if the intended recipient is a person to whom the Global Finance Party would be required to obtain the consent of the Company in order to transfer, assign or sub-participate a Commitment to such person, that Global Finance Party must obtain the prior written consent of the Company prior to the making of such disclosure;
  - (E) 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;
  - (F) to whom or for whose benefit that Global Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.12 (*Security over Financiers' rights*);
  - (G) 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;
  - (H) who is a Party; or
  - (I) with the consent of the Company,

in each case, such Confidential Information as that Global Finance Party (acting reasonably) shall consider appropriate if:

- I. in relation to paragraph (ii)(A) or (B) 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;
- II. in relation to paragraph (ii)(D) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price sensitive information; or
- II. in relation to paragraphs (ii)(E), (ii)(F) and (ii)(G) 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 Global Finance Party (acting reasonably), it is not practicable so to do in the circumstances,

and a copy of any such confidentiality undertaking and any amendment thereto shall be provided to the Company within 10 Business Days of request by the Company;

- (iii) to any person appointed by that Global Finance Party or by a person to whom paragraph (ii)(A) or (ii)(B) above applies to provide administration or settlement services in respect of one or more of the Global Finance Documents including, in relation to the trading of participations in respect of the Global 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 (iii) 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 Global Finance Party, and a copy of any such confidentiality undertaking and any amendment thereto shall be provided to the Company within 10 Business Days of request by the Company (provided that to the extent (and only for so long as) the disclosure of such confidentiality undertaking or amendment thereto is prohibited by the bona fide internal policies of the relevant Global Finance Party (as confirmed in writing by the relevant Global Finance Party to the Company), such disclosure to the Company shall not be required to be made by the relevant Global Finance Party to the extent it would breach the prohibition in such policy); and
- (iv) 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 Global Finance Documents and/or the Company 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,

in each case subject to, and to the extent permitted by, the Takeover Code and any Fee Letter

- (b) The Company will consent to any reasonable request by Mandated Lead Arrangers to publicise the Facilities after the Closing Date.

### 39.3 **Disclosure to numbering service providers**

- (a) Any Global Finance Party may disclose to any national or international numbering service provider appointed by that Global Finance Party to provide identification numbering services in respect of this Agreement, the Facilities, the Company and/or one or more Obligors the following information:
  - (i) names of the Company and Obligors;
  - (ii) country of domicile of the Company and Obligors;
  - (iii) place of incorporation of the Company and Obligors;
  - (iv) date of this Agreement;
  - (v) the names of the Agents and the Mandated Lead Arrangers;
  - (vi) date of each amendment and restatement of this Agreement;
  - (vii) amount of Total Commitments;
  - (viii) currencies of the Facilities;
  - (ix) type of Facilities;
  - (x) ranking of Facilities;
  - (xi) Termination Date for the Facilities;
  - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
  - (xiii) such other information agreed between such Global 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, the Company and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in paragraphs (a)(i) to (a)(xiii) above is, nor will at any time be, unpublished price sensitive information.
- (d) Each Agent shall notify the Company and the other Global Finance Parties of:
  - (i) the name of any numbering service provider appointed by that Agent in respect of this Agreement, the Facilities, the Company and/or one or more Obligors; and

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

#### **39.4 Entire agreement**

This Clause 39 constitutes the entire agreement between the Parties in relation to the obligations of the Global Finance Parties under the Global Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **39.5 Inside information**

Each of the Global Finance Parties:

- (a) 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 Global Finance Parties;
- (b) undertakes not to use any Confidential Information for any unlawful purpose; and
- (c) agrees that, without prejudice to the obligations of any member of the Group to deliver or provide information to the Global Finance Parties as required by any Global Finance Document, there shall be no requirement, pursuant to this Agreement or otherwise, for any member of the Group or any of their Affiliates to publish or otherwise make public any unpublished price-sensitive or inside information or any other information which if known to the public would be likely to have an effect on the price of any securities issued by any member of the Group, in each case unless otherwise agreed by the Company (in its sole discretion).

#### **39.6 Notification of disclosure**

Each of the Global 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 (ii)(E) of Clause 39.2 (*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 39.

#### **39.7 Continuing obligations**

The obligations in this Clause 39 are continuing and, in particular, shall survive and remain binding on each Global Finance Party for a period of 12 Months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Global 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 Global Finance Party otherwise ceases to be a Global Finance Party.

#### 40. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

##### 40.1 Confidentiality and disclosure

- (a) Each Agent and each Obligor agree to keep each Funding Rate (and, in the case of each 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) Each Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower or the Purchaser; 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 Global 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 relevant Agent and the relevant Financier or Reference Bank, as the case may be.
- (c) Each 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 relevant 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 relevant 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 Financier or Reference Bank, as the case may be.
- (d) Each Agent's obligations in this Clause 40 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under clause 13.5 (*Notification of rates of interest*) of the Conventional Facilities Agreement) an Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### 40.2 **Related obligations**

- (a) Each Agent and each Obligor acknowledge that each Funding Rate (and, in the case of each 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 each Agent and each Obligor undertake not to use any Funding Rate or, in the case of each Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) Each Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Financier or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 40.1 (*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 40.

#### 40.3 **No Event of Default**

No Event of Default will occur by reason only of an Obligor's failure to comply with this Clause 40.3.

#### 41. **COUNTERPARTS**

Each Global 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 Global Finance Document. Delivery of a counterpart of this Agreement by email attachment or telecopy shall be an effective mode of delivery.

#### 42. **GOVERNING LAW**

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

#### 43. **ENFORCEMENT**

##### 43.1 **Arbitration**

Subject to Clause 43.5 (*Global Agent's option*), 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**") shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).



#### 43.2 **Formation of arbitral tribunal, seat (or legal place) and language of arbitration**

- (a) The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as presiding arbitrator) shall be nominated by the arbitrators nominated by or on behalf of the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, the third arbitrator shall be chosen by the LCIA Court (as defined in the Arbitration Rules of the LCIA).
- (b) The seat (or legal place) of arbitration shall be London, England.
- (c) The language of the arbitration shall be English.

#### 43.3 **Recourse to courts**

For the purposes of arbitration pursuant to this Clause 43, the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.

#### 43.4 **Consolidation of arbitrations**

- (a) The following shall apply to any disputes arising out of or in connection with this Agreement and out of or in connection with any other Global Finance Document in respect of which a request for Arbitration has been delivered (or, where impossible, effectively notified) to all other parties to the arbitration. In relation to any such disputes if, in the absolute discretion of the first arbitral tribunal to be appointed in any of the disputes, they are so closely connected that it is expedient for them to be resolved in the same proceedings, that arbitral tribunal shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes, provided that no date for the final hearing of the first arbitration has been fixed. If that arbitral tribunal so orders, the parties to each dispute which is a subject of its order shall be treated as having consented to that dispute being finally decided:
  - (i) by the arbitral tribunal that ordered the consolidation unless the LCIA decides that that arbitral tribunal would not be suitable or impartial; and
  - (ii) in accordance with the procedure, at the seat (or legal place) and in the language specified in the relevant Transaction Document under which the arbitral tribunal that ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of any such agreement, ordered by the arbitral tribunal in the consolidated proceedings.

Any dispute which is subject to a contractual option to litigate shall only be capable of consolidation pursuant to this paragraph (a) if:

- (i) exercise of the option to which the dispute is subject is no longer permitted pursuant to the terms upon which the option was granted; or
  - (iii) the right of the option-holder to exercise the option has otherwise been validly waived.
- (b) Paragraph (a) above shall apply even where powers to consolidate proceedings exist under any applicable arbitration rules (including those of an arbitral institution) and, in such circumstances, the provisions of paragraph (a) above shall apply in addition to those powers.

#### 43.5 **Global Agent's option**

Before the Global Finance Parties have delivered to the Registrar of the LCIA Court a Request for Arbitration or Response as defined in the Arbitration Rules of the LCIA (as the case may be), the Global Agent may (and shall, if so instructed by the Majority Financiers) by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law. If the Global Agent gives such notice, the Dispute to which such notice refers shall be determined in accordance with Clause 43.7 (*Jurisdiction of English Courts and the Abu Dhabi Global Markets Courts*).

#### 43.6 **English law**

This Clause 43 shall be governed by English law.

#### 43.7 **Jurisdiction of English Courts and the Abu Dhabi Global Market Courts**

If the Global Agent issues a notice pursuant to Clause 43.5 (*Global Agent's option*), the provisions of this Clause 43.7 shall apply.

- (a) The courts of England and the courts the Abu Dhabi Global Markets have jurisdiction to settle any Dispute.
- (b) The Parties agree that the courts of England and/ or the courts of the Abu Dhabi Global Markets are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Global Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Global Finance Parties may take concurrent proceedings in any number of jurisdictions.

#### 43.8 **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 BCP VI Neptune Bidco Holdings Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Global Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the Company or relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process under paragraph (a) above is unable for any reason to act as agent for service of process, the Obligors' Agent (on behalf of all the Obligors) must immediately (and in any event within 60 days of such event taking place) appoint another agent on terms acceptable to the Global Agent. Failing this, the Global Agent may appoint another agent for this purpose.

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

Notwithstanding any other term of any Global Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Global Finance

Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

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

(c) In this Clause, the following terms have the following meanings:

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

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

**"Bail-In Legislation"** means:

- (i) in relation to an "EEA Member Country" which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (ii) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

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

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

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

**"Write-down and Conversion Powers"** means:

- (i) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and

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

45. **ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCs**

To the extent that the Global Finance Documents provide support, through a guarantee or otherwise, for any derivative transaction or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**", and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support:

- (a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support

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

(b) As used in this Clause 45, the following terms have the following meanings:

**"BHC Act Affiliate"** of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**"Covered Entity"** means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, § 7.2 or 382.1, as applicable.

**"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

#### 46. **WAIVER OF INTEREST**

In respect of a Murabaha Facility, the Parties recognise that the receipt and payment of interest is not permitted under *Shari'a* and accordingly agree that no interest will be payable or receivable to and from the Murabaha Finance Parties and the Company under or in connection with this Agreement and if any claims for amounts due under any Murabaha Transaction Document are made in a court of law and that court, by applying the laws and regulations of its legal system, imposes an obligation to pay interest on the amounts being claimed, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover such interest.

#### 47. **WAIVER OF IMMUNITY**

(a) Each Obligor waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (i) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (ii) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

- (b) Each Obligor agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.

**THIS AGREEMENT has been entered into on the date stated at the beginning of this agreement.**

**SCHEDULE 1**  
**THE ORIGINAL FINANCIERS**  
**PART I**  
**THE ORIGINAL LENDERS**

<b>Name of Original Lender</b>	<b>Conventional Facility B1 Commitment (USD)</b>	<b>Conventional Facility B2 Commitment (USD)</b>	<b>Revolving Facility Commitment (USD)</b>
First Abu Dhabi Bank PJSC	221,463,415	58,536,585	25,000,000
Abu Dhabi Commercial Bank PJSC	221,463,415	58,536,585	25,000,000
Commercial Bank of Dubai PJSC	221,463,415	58,536,585	-
Gulf International Bank B.S.C.	90,958,188	24,041,812	-
Gulf International Bank B.S.C. - Abu Dhabi	27,682,927	7,317,073	-
National Bank of Bahrain B.S.C.	79,094,077	20,905,923	-
The National Bank of Ras Al Khaimah (P.S.C.)	39,547,038	10,452,962	-
Standard Chartered Bank, Dubai International Financial Centre Branch	11,864,111	3,135,889	
<b>TOTAL</b>	<b>913,536,585</b>	<b>241,463,415</b>	<b>50,000,000</b>

**PART II**

**THE ORIGINAL ISLAMIC PARTICIPANTS**

<b>Name of Original Islamic Participant</b>	<b>Murabaha Facility B1 Commitment (USD)</b>	<b>Murabaha Facility B2 Commitment (USD)</b>
Dubai Islamic Bank PJSC	221,463,415	58,536,585
<b>TOTAL</b>	221,463,415	58,536,585



**SCHEDULE 2**  
**CONDITIONS PRECEDENT**  
**PART I**  
**CONDITIONS PRECEDENT TO THE CLOSING DATE**

**1. The Company**

- (a) *Constitutional documents*: a copy of the constitutional documents of the Company and the Parent.
- (b) *Corporate approvals*: where required under local law, a copy of a resolution of the board of directors or equivalent corporate body of the Company and the Parent:
  - (i) approving the terms of, and the transactions contemplated by, the Global Finance Documents to which it is a party and resolving that it execute the Global Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Global Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Request) to be signed and/or dispatched by it under or in connection with the Global Finance Documents to which it is a party.
- (c) *Director's certificates*: A certificate from the Company and the Parent (or the Company on its behalf):
  - (i) attaching a copy of a specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above who signs this Agreement or a Transaction Security Document required by paragraph 2 below;
  - (ii) certifying that each copy document relating to it specified in paragraphs (a) and (b) above is correct, complete and (to the extent executed) in full force and effect as at a date no earlier than the date of this Agreement; and
  - (iii) confirming that, subject to the guarantee limitations set out in this Agreement, borrowing or guaranteeing or securing (as appropriate) the Total Commitments would not cause any borrowing, guarantee, security or other similar limit binding on it to be exceeded (to the extent applicable to it).

**2. Global Finance Documents**

A copy of the following documents executed by the Company and/or the Parent (to the extent party to such document):

- (a) the Conventional Facilities Agreement;
- (b) the Murabaha Facility Agreement and Murabaha Investment Agency Agreement;
- (c) the Intercreditor Agreement; and

- (d) (subject to, and consistent with, the Agreed Security Principles) the Transaction Security Document listed in the table below (and all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to such Transaction Security and other documents of title to be provided under such Transaction Security Documents):

<b>Name of Grantor</b>	<b>Transaction Security Document</b>	<b>Governing law of Transaction Security Document</b>
Parent	Limited recourse third-party security over (i) the shares held directly by the Parent in the Company and (ii) (if any) the Parent's rights as a creditor under any intercompany loans advanced by the Parent to the Company	Abu Dhabi Global Market
Company	A floating charge over substantially all of its assets located in its jurisdiction of incorporation (subject to customary "excluded assets", including real estate and (as applicable) any regulated assets)	Abu Dhabi Global Market
Company	Movables security over substantially all of its assets located onshore in the UAE (subject to customary "excluded assets", including real estate and (as applicable) any regulated assets) (" <b>UAE Movables Security</b> ")	UAE

### 3. Legal Opinions

A copy of each of the following legal opinions:

- (a) an English law enforceability legal opinion of Clifford Chance in their capacity as advisers to the Global Finance Parties;
- (b) an Abu Dhabi Global Market law enforceability legal opinion of Clifford Chance in their capacity as advisers to the Global Finance Parties;
- (c) a UAE law enforceability legal opinion of Clifford Chance on the UAE Movables Security in their capacity as advisers to the Global Finance Parties; and
- (d) an Abu Dhabi Global Market law capacity legal opinion of Linklaters LLP in their capacity as advisers to the Obligors (with respect to the Obligors only),

provided that (in each case) the identity of the relevant law firm will not itself be a condition precedent and the provision of a legal opinion by a different law firm in respect of the relevant matter(s) referred to above will not itself affect the satisfaction of this condition (provided that any

alternative law firm needs to have comparable or equivalent professional indemnity cover to the named law firm).

#### **4. Diligence**

A copy of each of the following (on a non-reliance basis and subject, in the case of paragraphs (b) and (c) below, to the applicable Global Finance Parties having signed (and returned to the relevant report provider) all applicable non-disclosure and/or release letters (or equivalent) in relation thereto):

- (a) the Base Case Model;
- (b) each of the following Reports:
  - (i) the final 'Project Neptune' legal due diligence report by Linklaters LLP dated 26 May 2023; and
  - (ii) the final 'Project Neptune FDD' financial due diligence report by KPMG dated 16 June 2023; and
- (c) the Tax Structure Memorandum,

provided that each shall be deemed to be in form and substance satisfactory to the Global Agent, the Majority Financiers and the Majority Arrangers if it is provided in substantially the form delivered to the Mandated Lead Arrangers on or prior to the date of this Agreement or with any changes, amendments or other modifications (including of any conditions) (i) which (when taken as a whole and having regard to the Transaction as a whole) do not materially and adversely affect the interests of the Original Financiers (taken as a whole) under the Global Finance Documents, (ii) contemplated or otherwise permitted by the terms of the Global Finance Documents or (iii) which have been approved by the Global Agent, the Majority Financiers or the Majority Arrangers (each acting reasonably and in good faith). For the avoidance of doubt, the Company and/or any Investor may update any of the foregoing from time to time and there shall be no requirement for any such updates to be provided to any Global Finance Party (and any failure to provide such updates shall not affect the satisfaction of this condition).

#### **5. Funds Flow Statement**

Any Funds Flow Statement.

#### **6. Fees**

Evidence that all fees required to be paid on the Closing Date pursuant to any Fee Letter to be paid on the Closing Date shall, upon the initial borrowing under the Facilities, have been paid (which amounts may be offset against the proceeds of the Facilities or as otherwise agreed between the Company (or its Affiliates) and the Global Finance Parties party to the relevant Fee Letter (as applicable)), provided that this condition shall be deemed to have been satisfied by the inclusion of such payments in the Funds Flow Statement, a Request or if the Tax Structure Memorandum refers to the payment of such fees.

## PART II

### CONDITIONS PRECEDENT TO BE DELIVERED BY AN ADDITIONAL OBLIGOR

1. A copy of the constitutional documents of the Additional Obligor.
2. If required by law, its articles of association or by-laws, or customary in the relevant jurisdiction, a copy of a resolution of the board of directors (or, as applicable, any other relevant corporate body, including supervisory and advisory boards) of any Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Global Finance Documents to which it is a party and resolving that it execute, deliver and perform the Accession Deed and any other Global Finance Document to which it is a party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Global Finance Documents to which it is a party on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Request) to be signed and/or despatched by it under or in connection with the Global Finance Documents to which it is a party; and
  - (d) authorising the Company to act as its agent in connection with the Global Finance Documents.
3. In respect of an Additional Obligor incorporated or established in Egypt only:
  - (a) a recent extract of the commercial register dated no earlier than thirty (30) days prior to the date of the accession evidencing that the Company is not represented on the board of directors of that Additional Obligor;
  - (b) a valid tax card;
  - (c) the resolution of the board of directors in paragraph 2 above (if required), must be ratified by the General Authority for Investment and Free Zones ("**GAFI**");
  - (d) a copy of the extraordinary general assembly resolution as ratified by GAFI:
    - (i) approving to guarantee the obligations of the Company arising out of the Global Finance Documents with an amount not exceeding the Secured Obligations in addition to the applicable interest, default interest, costs expenses, fees and entry into the relevant agreements thereto; and
    - (ii) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Request) to be signed and/or despatched by it under or in connection with the Global Finance Documents to which it is a party;
  - (e) a non-bankruptcy certificate issued by the Economic Court in respect of such Additional Obligor dated no earlier than thirty (30) days prior to the date of their accession deed; and

- (f) a certificate confirming no protesto issued by the competent partial court in respect of such Additional Obligor dated no earlier than thirty (30) days prior to the date of their accession deed.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 2 above (and only to the extent that such person(s) execute the documents listed in this Part II of Schedule 2).
  5. If required under applicable law, a copy of a resolution signed by the holders of the issued shares or partnership interests of the Additional Obligor approving the terms of, and the transactions contemplated by, the Transaction Documents to which that Additional Obligor is a party and resolving that it execute the Transaction Documents to which it is a party.
  6. If applicable, a certificate of the Additional Obligor (signed by an authorised signatory) confirming that, subject to the applicable guarantee and security limitations included in the Global Finance Documents, the borrowing, guaranteeing or security (as appropriate) of the Total Commitments would not cause any borrowing, guaranteeing, securing or similar limit binding on such Obligor to be exceeded.
  7. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document relating to it specified in paragraphs 1 to 6 above is correct, complete and (to the extent executed) in full force and effect as at a date no earlier than the date of the Accession Deed.
  8. Capacity and enforceability legal opinion(s) addressed to the Original Financiers from its legal advisers or, where customary in the relevant jurisdiction of the Additional Obligor, the Additional Obligor's legal counsel shall issue a legal opinion on capacity and legal counsel to the Mandated Lead Arrangers shall issue a legal opinion on enforceability of the Global Finance Documents to which it is a party (provided that the identity of the relevant law firm will not itself be a condition precedent and the provision of a legal opinion by a different law firm in respect of the relevant matter(s) referred to above will not itself affect the satisfaction of this condition).
  9. An accession deed to the Intercreditor Agreement executed by the Additional Obligor.
  10. Other than in respect of the accession of Moon in satisfaction of paragraph (c) of Clause 23.24 (*Conditions Subsequent*) or an Additional Guarantor in satisfaction of paragraph (B) of Clause 23.23 (*Guarantees and Security*), a copy of each Transaction Security Document executed (and, as applicable, delivered) by the relevant Additional Obligor that is required to be granted by it under this Agreement (taking into account and subject to the Agreed Security Principles). Any Additional Obligor acceding on or around the Closing Date may accede in such capacity without satisfying this condition, provided that this condition is satisfied by such Additional Obligor within five (5) Business Days of the Closing Date.
  11. "*Know your customer*" and any other anti-money laundering documentation required, to the extent notified by an Agent (or by a Global Finance Party to the Company) at least five Business Days prior to the date the Accession Deed is signed or, if later, within five Business Days of the proposed accession of that Additional Obligor being notified to the Financiers.

**PART III**

**CONDITIONS SUBSEQUENT – INITIAL NEPTUNE GROUP OBLIGORS**

<b>Additional Obligor</b>	<b>Deliverable</b>	<b>Timeframe after the Neptune Completion Date</b>
Network International LLC	Accession as an Additional Guarantor	20 Business Days
	Security granted by the immediate Holding Company of the Additional Obligor over the shares it holds in the Additional Obligor	60 Business Days
	Security over the Additional Obligor's rights (as a creditor) under any material intercompany loans made to the Additional Obligor	60 Business Days
	UAE law movables security agreement over all assets of the Additional Obligor	60 Business Days
Network International Egypt Company (S.A.E.)	Accession as an Additional Guarantor	60 Business Days
	Security granted by the immediate Holding Company of the Additional Obligor over the shares it holds in the Additional Obligor	60 Business Days
	Security over the Additional Obligor's rights (as a creditor) under any material intercompany loans made to the Additional Obligor	60 Business Days
Network International Services (Mauritius) Limited	Accession as an Additional Guarantor	60 Business Days
	Security granted by the immediate Holding Company of the Additional Obligor over the shares it holds in the Additional Obligor	60 Business Days
	Security over the Additional Obligor's rights (as a creditor) under any material intercompany loans made to the Additional Obligor	60 Business Days

### SCHEDULE 3

#### FORM OF TRANSFER CERTIFICATE

To: Abu Dhabi Commercial Bank PJSC as Global Agent, [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent] and Abu Dhabi Commercial Bank PJSC as Security Agent

From: [*The Existing Financier*] (the "**Existing Financier**") and [*The New Financier*] (the "**New Financier**") [and [*Affiliate or Branch*] (the "**Designated Affiliate**")]

Dated: [ ]

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [ ] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement and to the Intercreditor Agreement (as defined in the Common Terms Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Common Terms Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Common Terms Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.7 (*Procedure for transfers*) of the Common Terms Agreement:
  - (a) the Existing Financier and the New Financier agree to the Existing Financier transferring to the New Financier by novation all or part of the Existing Financier's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 25.7 (*Procedure for transfers*);
  - (b) the proposed Transfer Date is [ ]; and
  - (c) the Facility Office and address, electronic mail address and attention details for notices of the New Financier [and the Designated Affiliate] for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.
3. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in Clause 25.6 (*Limitation of responsibility of Existing Financiers*). Additionally, the New Financier expressly acknowledges and ratifies the appointment, powers and faculties granted in favour of the Agents under the Global Finance Documents (including but not limited to Clause 28 (*Role of the Global Agent, the Mandated Lead Arrangers, the Issuing Bank and others*)) of the Common Terms Agreement.
4. [The New Financier represents and warrants that:
  - (a) it [is/is not] a [member of the Group/Sponsor Affiliate/Investor]<sup>1</sup>;
  - (b) upon the transfer under this Agreement being effective, it will be in compliance with paragraph (b)(c) of Clause 25.3 (*Conditions of assignment or transfer*) of the Common Terms Agreement;

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<sup>1</sup> Delete as applicable.

- (c) a transfer to it under this Agreement is permitted under Clause 25 (*Changes to the Financiers*) of the Common Terms Agreement; and
  - (d) it meets all legal and regulatory requirements for lending to each Borrower or the Purchaser under the relevant Facility in respect of which this Agreement relates.
5. [The New Financier confirms that it [is]/[is not] a Non Acceptable L/C Lender.]
  6. [The New Financier confirms that it is aware of the contents of the Transaction Security Documents and hereby expressly consents to and approves the declarations of the Security Agent made on behalf of and in the name of the New Financier as Future Pledgee (as defined in the Transaction Security Documents) in the Transaction Security Documents or the Intercreditor Agreement.]
  7. [We refer to clause [21.2] (Change of Secured Creditors) of the Intercreditor Agreement.

In consideration of [each of the Designated Affiliate and] the New Financier being accepted as a Senior Financier for the purposes of the Intercreditor Agreement (and as defined therein), [each of the Designated Affiliate and] the New Financier confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Financier, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Financier and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

It is expressly agreed that the security created or evidenced by the Transaction Security Documents will be preserved for the benefit of the New Financier [, the Designated Affiliate] and each other Financier.

8. [Pursuant to and subject to Clause 2.9 (*Financier Affiliates*) of the Common Terms Agreement, the New Financier nominates the Designated Affiliate to discharge its obligations and participate in the following Revolving Facility Loans [\_\_\_\_\_].]
9. 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.
10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
11. This Agreement has been entered into on the date stated at the beginning of this Agreement.<sup>2</sup>

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

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<sup>2</sup> Note: to conform to ICA accession mechanic.



**THE SCHEDULE**

**COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED**

*[insert relevant details]*

*[Facility Office address, electronic mail address and attention details for notices and account details for payments]*

*[Existing Financier]*

*[New Financier]*

By: \_\_\_\_\_

By: \_\_\_\_\_

*[[Designated Affiliate]*

By: \_\_\_\_\_]

This Agreement is accepted as a Transfer Certificate for the purposes of the Common Terms Agreement by the Global Agent and the *[Conventional Facility Agent]/[Murabaha Investment Agent]*, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as *[\_\_\_\_\_]*.

*[Global Agent]*

By: \_\_\_\_\_

*[Conventional Facility Agent]/[Murabaha Investment Agent]*

By: \_\_\_\_\_

*[Security Agent]*

By: \_\_\_\_\_

## SCHEDULE 4

### FORM OF ASSIGNMENT AGREEMENT

To: Abu Dhabi Commercial Bank PJSC as Global Agent, [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent] and Abu Dhabi Commercial Bank PJSC as Security Agent, Neptune Project Holding 3 Limited as the Company, for and on behalf of each Obligor

From: [the *Existing Financier*] (the "**Existing Financier**") and [the *New Financier*] (the "**New Financier**")  
[and [the *Affiliate or Branch*] (the "**Designated Affiliate**")]

Dated: [ ]

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [ ] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement and to the Intercreditor Agreement (as defined in the Common Terms Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Common Terms Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Common Terms Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.8 (*Procedure for assignment*) of the Common Terms Agreement:
  - (a) the Existing Financier assigns absolutely to the New Financier all the rights of the Existing Financier under the Common Terms Agreement, the other Global Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Financier's Commitments and participations in Utilisations under the Common Terms Agreement as specified in the Schedule;
  - (b) the Existing Financier is released from all the obligations of the Existing Financier which correspond to that portion of the Existing Financier's Commitments and participations in Utilisations under the Common Terms Agreement specified in the Schedule; and
  - (c) the New Financier becomes a Party as a Financier and is bound by obligations equivalent to those from which the Existing Financier is released under paragraph (b) above.
3. The proposed Transfer Date is [ ].
4. On the Transfer Date [each of the Designated Affiliate and] the New Financier becomes:
  - (a) Party to the relevant Global Finance Documents (other than the Intercreditor Agreement) as a Financier; and
  - (b) Party to the Intercreditor Agreement as a Senior Financier.
5. The Facility Office and address, electronic mail address and attention details for notices of the New Financier [and the Designated Affiliate] for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.

6. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in Clause 25.6 (*Limitation of responsibility of Existing Financiers*). Additionally, the New Financier expressly acknowledges and ratifies the appointment, powers and faculties granted in favour of the Agents under the Global Finance Documents (including but not limited to [Agency Clause]) of the Common Terms Agreement.
7. [The New Financier represents and warrants that:
  - (a) it [is/is not] a [member of the Group/Sponsor Affiliate/Investor]<sup>3</sup>;
  - (b) upon the transfer under this Agreement being effective, it will be in compliance with paragraph (b)(c)[\_\_\_\_\_] of Clause 25.3 (*Conditions of assignment or transfer*) of the Common Terms Agreement;
  - (c) a transfer to it under this Agreement is permitted under Clause 25 (*Changes to the Financiers*) of the Common Terms Agreement; and
  - (d) it meets all legal and regulatory requirements for lending to each Borrower under the relevant Facility in respect of which this Agreement relates.
8. [The New Financier confirms that it [is]/[is not] a Non Acceptable L/C Lender.].
9. [The New Financier confirms that it is aware of the contents of the Transaction Security Documents and hereby expressly consents to and approves the declarations of the Security Agent made on behalf of and in the name of the New Financier as Future Pledgee (as defined in the Transaction Security Documents) in the Transaction Security Documents or the Intercreditor Agreement.]
10. [We refer to clause [21.2] (*Change of Secured Creditors*) of the Intercreditor Agreement:
  - (a) In consideration of [each of the Designated Affiliate and] the New Financier being accepted as a Senior Financier for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), [each of the Designated Affiliate and] the New Financier confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Financier, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Financier and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
  - (b) It is expressly agreed that the security created or evidenced by the Transaction Security Documents will be preserved for the benefit of the New Financier[, the Designated Affiliate] and each other Financier.]
11. [Pursuant to and subject to Clause 2.9 (*Financier Affiliates*) of the Common Terms Agreement, the New Financier nominates the Designated Affiliate to discharge its obligations and participate in the following Revolving Facility Loans [\_\_\_\_\_.]
12. This Agreement acts as notice to each Agent (on behalf of each Global Finance Party) and to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.

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<sup>3</sup> Delete as applicable.

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.<sup>4</sup>

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

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<sup>4</sup> Note: to conform to ICA accession mechanic.

**THE SCHEDULE**  
**COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED**  
**BY ASSIGNMENT, RELEASE AND ACCESSION**

*[insert relevant details]*

*[Facility Office address, electronic mail address and attention details for notices and account details for payments]*

*[Existing Financier]*

*[New Financier]*

By: \_\_\_\_\_

By: \_\_\_\_\_

*[[Designated Affiliate]*

By: \_\_\_\_\_]

This Agreement is accepted as an Assignment Agreement for the purposes of the Common Terms Agreement by the Global Agent and the *[Conventional Facility Agent]/[Murabaha Investment Agent]*, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as *[\_\_\_\_\_]*.

Signature of this Agreement by the Agent constitutes confirmation by the Global Agent and the *[Conventional Facility Agent]/[Murabaha Investment Agent]*, of receipt of notice of the assignment referred to in this Agreement, which notice the Global Agent receives on behalf of each Global Finance Party.

*[Global Agent]*

By: \_\_\_\_\_

*[Conventional Facility Agent]/[Murabaha Investment Agent]*

By: \_\_\_\_\_

*[Security Agent]*

By: \_\_\_\_\_

**SCHEDULE 5**  
**FORM OF ACCESSION DEED<sup>5</sup>**

To: Abu Dhabi Commercial Bank PJSC as Agent and Abu Dhabi Commercial Bank PJSC as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [*Subsidiary*] and [*the Company*]

Dated: [\_\_\_\_\_]

Dear Sirs, Madams

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [\_\_\_\_\_] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement and to the Intercreditor Agreement. This deed (the **Accession Deed**) shall take effect as an Accession Deed for the purposes of the Common Terms Agreement and as a Debtor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Common Terms Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Subsidiary*] agrees to become an Additional [*Borrower*]/[*Purchaser*]/[*Guarantor*] and to be bound by the terms of the Common Terms Agreement and the other Global Finance Documents (other than the Intercreditor Agreement) as an Additional [*Borrower*]/[*Purchaser*]/[*Guarantor*] pursuant to [Clause 27.2 (*Additional Borrowers*)]/[Clause 27.3 (*Additional Guarantors*)] of the Common Terms Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] with registered number [\_\_\_\_\_].
3. [*Subsidiary's*] administrative details for the purposes of the Common Terms Agreement and the Intercreditor Agreement are as follows:  
  
Address: [\_\_\_\_\_]
  
Electronic mail address: [\_\_\_\_\_]
  
Attention: [\_\_\_\_\_]
4. [*Subsidiary*] (for the purposes of this paragraph 4, the "**Additional Obligor**") 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. The Subsidiary makes the Repeating Representations to the Global Finance Parties on the date of this Accession Deed.

IT IS AGREED as follows:

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<sup>5</sup> [To be conformed to relevant clauses of Common Terms Agreement.]

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in paragraph 4 above.
- (b) The Additional Obligor and the Security Agent agree that the Security Agent shall hold:
- (i) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (ii) all proceeds of that Security; and]<sup>6</sup>
  - (iii) all obligations expressed to be undertaken by the Additional Obligor to pay amounts in respect of the Liabilities to the Security Agent as trustee (or agent) for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Additional Obligor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee (or agent) for the Secured Parties,
- on trust or, in any jurisdiction where the trust would not be recognised, as agent (or as otherwise provided for in the Intercreditor Agreement) for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
- (c) The Additional Obligor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
- (d) [In consideration of the Additional Obligor being accepted as an Intra Group Financier for the purposes of the Intercreditor Agreement, the Additional Obligor also confirms that it intends to be party to the Intercreditor Agreement as an Intra Group Financier, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra Group Financier and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].<sup>7</sup>

6. [Subsidiary] confirms it is a company incorporated in [\_\_\_\_\_] and requests that each Financier considers its Qualifying Financier status in respect of [Subsidiary].
7. [Add applicable guarantee limitation language to the extent such guarantee limitation language in Clause 19 (Guarantees and Indemnity) is insufficient for the relevant Additional Obligor].
8. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
9. Clauses 41 (Counterparts) and 43 (Enforcement) of the Common Terms Agreement are incorporated in this Accession Deed *mutatis mutandis*.

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<sup>6</sup> Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

<sup>7</sup> Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra Group Financier to the Intercreditor Agreement.



THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Company and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.<sup>8</sup>

**Subsidiary**

Signed as a deed for and on behalf of

[\_\_\_\_\_]

\_\_\_\_\_

Director/Secretary

OR

Signed as a deed for and on behalf of

[\_\_\_\_\_]

\_\_\_\_\_

By: [\_\_\_\_\_]

Director/Secretary

in the presence of

\_\_\_\_\_

Witness

**the Company**

\_\_\_\_\_

By: [\_\_\_\_\_]

**The Security Agent**

\_\_\_\_\_

By: [\_\_\_\_\_]

\_\_\_\_\_

<sup>8</sup> Note: to conform to ICA accession mechanic.

## SCHEDULE 6

### FORM OF RESIGNATION LETTER<sup>9</sup>

To: Abu Dhabi Commercial Bank PJSC as Global Agent and Abu Dhabi Commercial Bank PJSC as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [Subsidiary] and [the Company]

Dated: [\_\_\_\_\_]

Dear Sirs, Madams

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [\_\_\_\_\_] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement. This is a Resignation Letter. Terms defined in the Common Terms Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 27.4 (*Resignation of an Obligor*), we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Purchaser]/[Guarantor] under the Common Terms Agreement and the Global Finance Documents on [\_\_\_\_\_] being the "**Proposed Release Date**".
3. We confirm that:
  - (a) no [Event of Default][Major Event of Default] is continuing on [*insert applicable date in accordance with paragraph (c)(i) of Clause 27.4 (Resignation of an Obligor)*]; and
  - (b) \*[this request is given in relation to a [Third Party Disposal] [other transaction] of [resigning Obligor]];
  - (c) [\_\_\_\_\_]\*\*\*
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### The Company

\_\_\_\_\_  
By: [\_\_\_\_\_]

#### The Security Agent

\_\_\_\_\_  
\_\_\_\_\_  
<sup>9</sup> [To be conformed to relevant clauses of the Common Terms Agreement.]

By: [\_\_\_\_\_]

**NOTES:**

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

**SCHEDULE 7**  
**COMPLIANCE CERTIFICATES**

**PART I**

**FORM OF SEMI-ANNUAL COMPLIANCE CERTIFICATE**

To: Abu Dhabi Commercial Bank PJSC as Global Agent

From: [the Company]

Dated: [\_\_\_\_\_]

Dear Sirs, Madams

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [\_\_\_\_\_] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement. This is a Semi-Annual Compliance Certificate. Terms defined in the Common Terms Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that in respect of the Relevant Period ended on [\_\_\_\_\_] (the "**Test Date**") Total Net Debt on the Test Date was [\_\_\_\_\_] and Consolidated EBITDA for such Relevant Period was [\_\_\_\_\_]. Therefore the Total Net Leverage Ratio at such time was [\_\_\_\_\_] for the Test Date and the covenant contained in Clause 22.2 (*Financial Condition*) of the Common Terms Agreement [has/has not] been complied with.
3. [Other information required (if any) as per the Common Terms Agreement.]
4. [We confirm that no Material Event of Default (or Potential Material Event of Default) is continuing.]<sup>10</sup>

SIGNED

\_\_\_\_\_  
[authorised signatory]

\_\_\_\_\_  
[authorised signatory]

<sup>10</sup> If this statement cannot be made, the certificate should identify any Material Event of Default that is continuing and the steps, if any, being taken to remedy it.

## PART II

### FORM OF ANNUAL COMPLIANCE CERTIFICATE

To: Abu Dhabi Commercial Bank PJSC as Global Agent

From: [the Company]

Dated: [\_\_\_\_\_]

Dear Sirs, Madams

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated  
[\_\_\_\_\_] (as amended and/or restated, novated or otherwise varied from time to time) (the  
"Common Terms Agreement")**

1. We refer to the Common Terms Agreement. This is an Annual Compliance Certificate. Terms defined in the Common Terms Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that in respect of the Relevant Period ended on [\_\_\_\_\_] (the "**Test Date**"), Total Net Debt on the Test Date was [\_\_\_\_\_] and Consolidated EBITDA for such Relevant Period was [\_\_\_\_\_]. Therefore the Total Net Leverage Ratio at such time was [\_\_\_\_\_] and the covenant contained in paragraph [\_\_\_\_\_] of Clause 22.2 (*Financial Condition*) of the Common Terms Agreement [has/has not] been complied with.
3. We confirm that the Material Subsidiaries and Material Joint Venture Interests [have not changed since the [Closing Date] [date of the previous Annual Compliance Certificate]][are:
  - (a) [\_\_\_\_\_]; and
  - (b) [\_\_\_\_\_].]]
4. We confirm that as at the Relevant Period ended on [\_\_\_\_\_] the Guarantor Coverage Test [has/has not] been met.
5. [We confirm that in respect of the Relevant Period ended on [\_\_\_\_\_] 100 per cent. of the Excess Cashflow received by the Group is equal to [\_\_\_\_\_], therefore the amount of Excess Cashflow Proceeds to be applied in early payment pursuant to paragraph 9.2(b) of Clause 9.2 (*Disposal Proceeds, Listing Proceeds, Relevant Debt Incurrence Proceeds and Excess Cashflow Proceeds*) is [\_\_\_\_\_].]
6. [Other information required (if any) as per the Common Terms Agreement.]
- 6.1 [We confirm that no Material Event of Default (or Potential Material Event of Default) is continuing.]<sup>11</sup>

SIGNED

\_\_\_\_\_  
[authorised signatory]

\_\_\_\_\_  
[authorised signatory]

<sup>11</sup> If this statement cannot be made, the certificate should identify any Material Event of Default that is continuing and the steps, if any, being taken to remedy it.



## SCHEDULE 8

### AGREED SECURITY PRINCIPLES

- (a) For the purposes of these Agreed Security Principles, any reference to a "guarantee" shall also include any indemnity, surety or other assurance, and any reference to the "perfection" (or any similar or analogous term) of any security shall also include any steps, action, matter or thing that seek to ensure the priority of that security. These Agreed Security Principles shall apply *mutatis mutandis* with respect to the Parent and any other third-party security provider (including any who is not a member of the Group).
- (b) For the purposes of the Global Finance Documents, "**Excluded Security Jurisdiction**" means each of Ghana, Kenya, Tanzania, Botswana, Nigeria, Namibia, Rwanda, Uganda, the Ivory Coast, Malawi, the Democratic Republic of Congo, Burkina Faso, Togo, Senegal, South Africa, Zimbabwe, Zambia, Israel and Zanzibar and "**Excluded Entity**" means (i) any person which is not a member of the Group (including any joint venture or associate) (ii) any member of the Group that is not (directly or indirectly) wholly-owned by the Company, is incorporated in an Excluded Security Jurisdiction or otherwise is not required to become a Guarantor as expressly contemplated in these Agreed Security Principles or this Agreement and/or (iii) any member of the Neptune Group and/or the Moon Group that is a 'regulated entity' in connection with any of its (or the maintenance of its) regulated activities and/or status.

#### 1. Provision of guarantees and/or security

- (a) Each Global Finance Party agrees and acknowledges that there may be certain legal, regulatory, economic, practical and/or commercial difficulties in (or impediments to) members of the Group granting guarantees and/or security to all or any of the Global Finance Parties in connection with the Global Finance Documents and that, accordingly, guarantees and security shall only be required to the extent required by, and contemplated in respect of, (a) any member of the Group becoming an Additional Obligor and (b) the terms of the other Agreed Security Principles.
- (b) Where a guarantee and/or security is to be provided under or in connection with the Global Finance Documents, each Global Finance Party agrees and acknowledges that such guarantee and/or security (including the extent and terms thereof) shall be given on such terms (and shall be limited in a manner) that the Company and the Security Agent (each acting reasonably and in good faith) determines (in each case) complies with, and gives effect to, the principles set out in this Schedule and any obligation in (or requirement of) any Global Finance Document for any member of the Group to grant, offer or maintain any guarantee and/or security (or to procure any other person grants any guarantee and/or security) shall be construed and interpreted *mutatis mutandis* accordingly.
- (c) No guarantee shall be granted and no security shall be required in respect of any asset (or class of asset) (and no floating charge (or equivalent) shall be required to be granted over the assets of any person) other than as expressly contemplated and required by this Agreement (and subject always to the other Agreed Security Principles, including paragraph (d) below and as each such Agreed Security Principle applies to the relevant assets and/or security), and (in the case of the granting of any security) shall only be required to be granted where the relevant person is

otherwise required to grant security pursuant as expressly contemplated and required by this Agreement.

- (d) No security (including under any floating charge (or similar)) shall be granted (or be required to be granted) over any (or over any leases or other rights in respect of) real estate (or any buildings, fixtures or other fixed or tangible long-term assets, including any so-called 'property, plant and equipment'), rights (or receivables arising) under any agreements with any landlords, lessees, customers, clients, contractors, consultants, suppliers, distributors, service providers, franchisees, lessees, licensors or licensees or similar of any member of the Group or (other than as expressly contemplated above) any leases (including rights against landlords and/or lessors) or any other arrangements with any Person who is not a member of the Group. Security (including the giving thereof) to be subject to any applicable requirements of any applicable third-party (including of any applicable landlord or lessee and (even if the relevant Security is not directly over any arrangement with) any landlord, lessee, customer, client, contractor, consultant, supplier, distributor, service provider, franchisee, lessee, licensor or licensee or similar of any member of the Group). For the avoidance of any doubt, and without prejudice to any other Agreed Security Principle, Security shall not be required to be given where it would (or there is a material risk that it would) breach any agreements or arrangements with, or give rise to any termination (or similar) rights in favour of, any landlord, lessee, customer, client, contractor, consultant, supplier, distributor, service provider, franchisee, lessee, licensor or licensee, provided that the relevant restriction was not entered into for the purposes of circumventing the requirement to grant Security. The relevant member of the Group shall use commercially reasonable efforts to seek any consents or take any other action required in order to permit the grant of Security (having regard to the impact on its commercial relationships). For the avoidance of any doubt, a type of security or asset class being referred to in these Agreed Security Principles will not give rise to any obligation to give that security or to give any security over that asset class (or any asset falling within that asset class), unless expressly contemplated and required by this Agreement (and subject always to the other Agreed Security Principles).

## **2. General principles**

- (a) Guarantees and/or security may be limited (or not granted at all) to the extent necessary to comply with (or, as applicable, mitigate or minimise) any legal or regulatory requirements, financial assistance rules, anti-trust and other competition authority rules, requirements, conditions and/or restrictions, corporate benefit requirements, fraudulent preference rules, equitable subordination considerations, 'transfer pricing' rules, 'thin capitalisation' considerations, 'earnings stripping' rules, 'controlled foreign corporation' rules and/or other tax considerations (including the tax structuring advice given to any member of the Group or any Investor), 'exchange control' restrictions, 'capital maintenance' and 'liquidity impairment' rules, retention of title claims and/or considerations, pension rules and/or regulations (including the requirements of any pensions trustee or pensions regulator) and/or the requirements of any supervisory board, works council, employee consultation or similar body.
- (b) Guarantees and/or security (including the extent, scope, nature, perfection and/or registration of any such guarantees or security) may be limited (or not granted at all) so as to ensure that the



cost to the Group of providing such guarantees and/or security (or taking such perfection or registration steps) is not disproportionate to the benefit accruing to the Financiers (taken as a whole) as a direct result of such guarantees and/or security (or the taking of such perfection or registration steps), where the "cost to the Group" shall include any increase cost or adverse tax effects, loss of interest deductibility, any stamp duty, registration, value added or other tax or duty (whether ad valorem or otherwise), the costs and expense of any legal and/or regulatory compliance, any associated legal fees, the cost of any Perfection Requirements, registration and/or notarial fees (or any similar or analogous item to any of the foregoing) as a result of, or in connection with, providing such guarantees and/or security (or taking such perfection or registration steps). In addition, the effect of limitations applicable to a guarantee may mean that access to the assets of that guarantor are limited, in which case any security to be granted by that guarantor may be limited (or not granted at all) so as to ensure that such security is proportionate to the value of the relevant guarantee (or, as the case may be, having regard to the other Agreed Security Principles, such lower amount). No member of the Group shall be required to give any guarantee (or any security, including any which would otherwise support any such guarantee) where the value of that guarantee (in the reasonable opinion of the Company, having regard to customary guarantee limitation wording in respect of the relevant jurisdiction in which that member of the Group is incorporated, the other Agreed Security Principles and any applicable financial assistance, corporate benefit and other applicable laws and regulations) would be zero or would otherwise be de minimis, provided that this shall not apply to any Revolving Facility Borrower (but, in any such case, the relevant guarantee and security may be limited to its direct corporate benefit derived from, and obligations arising directly under (and in its capacity as a Borrower of), the Revolving Facility).

- (c) Notwithstanding the above, the maximum amount guaranteed or secured by any guarantee and/or security shall, in any case, be limited so as to minimise the cost to the Group of providing such guarantee and/or security (or perfecting or registering such guarantee and/or security) when compared with the benefit accruing to the Financiers (taken as a whole) as a consequence of providing such Security.
- (d) No guarantee or security shall be provided (i) if it would contravene any applicable legal or regulatory prohibition or restriction or could constitute unlawful financial assistance in any applicable jurisdiction, (ii) if it would conflict with the fiduciary or statutory duties of the directors, officers or other legal representatives of that person or if it would have the potential to result in a risk of personal or criminal liability on the part of any director, officer or legal representative of that person, (iii) if it is not within the legal capacity of the relevant person to do so (iv) if it is not possible (or is impractical) to do so, (v) if it would have a material adverse effect on the ability of the relevant provider to conduct its operations and/or its ordinary day-to-day business or as otherwise permitted by the Global Finance Documents (including dealing with the relevant secured assets and any contractual counterparties, and amending, waiving or terminating (or allowing to lapse) any asset, right or benefit), (vi) if it would be in breach of the Intercreditor Agreement, any Debt Document (under and as defined in the Intercreditor Agreement) or any other agreement, contract, lease, order, licence, permit or other instrument binding on the relevant provider (or any member of the Group) or in respect of which such provider (or a member of the Group) is required to comply and is not entered into to circumvent this restriction, (vii) if to do so might give rise to a right of any

other person to terminate, rescind or amend any rights, benefits and/or obligations under any other agreement, contract, lease, order, licence, permit or other instrument or require any member of the Group to take any action adverse to the interests of the Group (including any action which might place the relationship with that other person in jeopardy, (viii) by any person, or over any person or asset, that supports, or is required to support, acquired debt (to the extent such acquired debt is permitted by the terms of this Agreement (or the other Debt Documents) to remain outstanding (and, as applicable, secured) after the relevant acquisition) (and such assets will be excluded from any relevant Transaction Security Document to such extent, as applicable), (ix) (other than to the extent expressly contemplated in this Agreement in the case of any member of the Group that is a Borrower or the Purchaser) by or over (or in respect of any asset of or right against or receivable owing by or shares (or equivalent ownership interests) or other investments in or agreement governing) any Excluded Entity, provided that, in the case of paragraphs (v), (vi) and (vii) of this subparagraph (d) (only), the Company and relevant Obligor or Guarantor has first used reasonable endeavours (for a period of not more than 10 Business Days, but without any requirement to incur any material cost or take (or fail to take) any action that would have an adverse impact on relationship with third parties) to overcome any such obstacle.

- (e) No security shall be provided in respect of any asset (and such assets will be excluded from any relevant Transaction Security Document, as applicable) (i) which is not legally and beneficially owned by the relevant provider, (ii) which is located in an Excluded Security Jurisdiction, (iii) which are subject to a legal, regulatory or contractual (which term shall include any type of agreement, contract, lease, licence or other instrument) provision, restriction or constraint (including any agreement or understanding with any pensions trustee or regulator or any governmental, regulatory, competition, licensing or similar body) or other third party arrangement which may prevent, inhibit, limit or condition that asset from being subject to such security (or from being subject to such security with the ranking purported to be created) or which would first require the consent of another person to the granting of that security (including any pensions trustee or regulator, any governmental, regulatory, competition, licensing or similar body, any minority shareholder, any joint venture partner, any supervisory board, works council, employee consultation or similar body), or (iv) which is subject to any other security (or quasi-security) that constitutes a Permitted Security (provided that this paragraph (e)(iv) shall apply to the Transaction Security granted in respect of shares or equity interests (or any equivalent ownership interest) in the Company only to the extent that such Security permitted under or contemplated by this Agreement arises by operation of law or regulation and prevents Transaction Security being granted over such shares or equity interests (or any equivalent ownership interest)).
- (f) Where a class of assets to be secured includes material and immaterial assets, if the cost of granting Transaction Security over the immaterial assets is disproportionate to the benefit of such Transaction Security, there shall be no requirement or obligation to grant security over the immaterial assets.
- (g) Any obligation to grant Transaction Security over any asset will be satisfied and discharged in full as at the date on which the first security agreement is entered into in respect of that asset, or if no asset within the relevant asset class exists, as at the last date of the relevant period provided for the granting of such Transaction Security (or, in the case of an Obligor, the date on which all other

conditions to that Obligor becoming an Obligor are satisfied or waived) and notwithstanding no such Transaction Security has been (or is capable of being) granted.

- (h) No guarantee or security shall be required to be notarised (or entered into in a notarial form) unless required by law in order for the relevant guarantee or security to become effective, enforceable or admissible in evidence in the jurisdiction of incorporation of the relevant provider or in the jurisdiction of the law expressed to be governing the relevant guarantee or security.
- (i) Any perfection of any security, where required, and any other legal formalities, will be completed within the relevant time period specified in the relevant Transaction Security Document (or, if earlier or to the extent no such time period is specified in the relevant Transaction Security Document, within the time period specified by applicable law). The Group shall not be under any obligation (other than to the extent expressly required by the Security Agent (and notified to the Company or the relevant Obligor accordingly) in accordance with (and pursuant to) Clause 23.16 (*Further Assurance*) of this Agreement and/or the relevant Transaction Security Document (as applicable)) in respect of, or be responsible or liable for, any perfection or legal formalities carried out (or required to be carried out) by or on behalf of the Security Agent or any Global Finance Party or for any failure to carry out (or failure or default in the carrying out of) any perfection or legal formalities (including any registration, filing, recording or other steps) on the part of the Security Agent or any Global Finance Party (and the terms of the Global Finance Documents shall be construed and interpreted *mutatis mutandis* accordingly).
- (j) No perfection or legal formalities (including any registration, filing, recording or other steps) shall be required to be undertaken with respect to any guarantee or security outside of the jurisdiction of the governing law of the relevant guarantee or security.
- (k) No action shall be required to be taken by any provider of any guarantee or security in connection with any Transfer Arrangement entered into by a Global Finance Party in connection with any Facility, and no member of the Group shall bear or otherwise be liable for any taxes, fees, costs, expenses or other liabilities (howsoever arising and including any notarial and/or registration fees or costs) that relate to any such guarantee or security that result from or arise in connection with any such Transfer Arrangement.
- (l) Legal or regulatory restrictions may mean that Financiers in different Facilities (or creditors in different classes of debt) may not be able to benefit from the same guarantees and/or security (notwithstanding any requirement to do so or any representation or undertaking to the contrary).
- (m) No translation of any document relating to any guarantee or security (or any asset to be subject to any security) will be required to be prepared or provided to any Global Finance Party unless the Security Agent reasonably requires such a translation to fulfil Perfection Requirements, and no title investigation, title insurance or due diligence or assets will be required to be undertaken or provided in respect of any asset to be subject to any security.
- (n) To the extent possible, all Transaction Security will be granted in favour of the Security Agent and not the Global Finance Parties individually. "Parallel debt" provisions consistent with those in the Intercreditor Agreement will be used where a "trust" is not judicially recognised in the jurisdiction of the governing law of the relevant security.

- (o) The Security Agent will hold one set of security for all Secured Parties (as defined in the Intercreditor Agreement) (whether on the basis of a "trust" or "parallel debt" structure), unless otherwise provided for in the Debt Documents or where applicable local law requires separate security for different classes of debt in order for such security to be effective.
- (p) The Intercreditor Agreement (and not the individual Transaction Security Documents, unless required by applicable local law in relation to the relevant Transaction Security) will contain the applicable Security Agent Provisions, any "trust" and/or "parallel debt" wording and provisions regulating how and in what circumstances Transaction Security may be enforced (which shall be consistent with the other Agreed Security Principles).
- (q) Notwithstanding the above, where required by the Company or the relevant Obligor, security may be granted in favour of persons other than (and/or in addition to) the Security Agent and/or the Global Finance Parties (as applicable) (including, without limitation, pursuant to any Permitted Security and/or so as to comply with any applicable local law or regulatory requirements in any applicable jurisdiction (including any co- or additional Security Agent)).
- (r) No member of the Group shall be required to undertake any 'whitewash' or other similar or equivalent procedure to exempt or limit (or similar) all or any part of any guarantee and/or security from any applicable laws that restrict the giving of 'financial assistance' (howsoever described under such laws) in connection with the acquisition of shares in a private company.
- (s) The amount of costs for guarantees and Transaction Security in relation to agreed legal fees, disbursements, registration costs, taxes, notary fees and other costs and expenses (in each case) properly and reasonably incurred related to the guarantees and Transaction Security required to be granted pursuant to this Agreement incurred by legal counsel to the Company and by legal counsel to the Mandated Lead Arrangers will be paid by the Company.

### **3. Guarantees and security**

- (a) Subject to the other Agreed Security Principles, applicable law and regulation and to the Legal Reservations and the Perfection Requirements, each guarantee will purport to be an upstream, cross-stream and downstream guarantee of all of the liabilities of each Obligor under this Agreement.
- (b) Subject to the other Agreed Security Principles, applicable law and regulation and to the Legal Reservations and the Perfection Requirements, each Transaction Security Document will purport to secure the Secured Obligations (as defined in the Intercreditor Agreement) of the relevant Obligor.

### **4. Governing law**

- (a) Subject to paragraph 2(j) above, Transaction Security (other than in respect of shares) will be governed by the law of the jurisdiction of incorporation of the applicable Obligor.
- (b) Transaction Security in respect of shares will be governed by the law of incorporation of the relevant entity whose shares are the subject of that security, subject to the terms of the other Agreed Security Principles.

## **5. Scope of Security**

Security to be granted by any Additional Obligor shall be limited solely to that expressly contemplated in paragraph (h) of Clause 23.23 (*Guarantees and Security*), subject to the other Agreed Security Principles and (as applicable) to the other provisions of Clause 23.23 (*Guarantees and Security*).

## **6. Terms of each Transaction Security Document**

- (a) Each Transaction Security Document will, to the extent legally possible and subject to the other Agreed Security Principles, incorporate the terms used in the Intercreditor Agreement.
- (b) Each Transaction Security Document shall expressly provide that if there is a conflict between the terms of that Transaction Security Document and this Agreement (or other Debt Documents (as defined in the Intercreditor Agreement)) or the Intercreditor Agreement then (to the extent permitted by applicable law) the provisions of this Agreement (or, as the case may be such other Debt Document (as defined in the Intercreditor Agreement)) or (as applicable) the Intercreditor Agreement will take priority over (and be followed in lieu of) the provisions of the relevant Transaction Security Document (and no misrepresentation, breach, default or Event of Default shall occur as a result of the relevant Obligor complying with the applicable term of this Agreement (or, as the case may be such other Debt Document (as defined in the Intercreditor Agreement)) or (as applicable) the Intercreditor Agreement in lieu of the relevant term of the applicable Transaction Security Document).
- (c) No Transaction Security shall be enforceable or crystallise (or be capable of doing so) until the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing.
- (d) Only the beneficiaries of the security or the Security Agent will be capable of exercising any power of attorney and (in each case) only following the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing.
- (e) Transaction Security Documents shall only operate to create security interests and will not include any obligations or undertakings, any representations or warranties other than those which are strictly legally required (and which are not just market practice) for the creation or perfection of such security interests, repeat or extend or vary any provisions in any other Global Finance Document or contain any other terms or provisions that are inconsistent with the foregoing or any other Agreed Security Principle or are not required in order to create a security interest.
- (f) Notwithstanding the above, no term of any Transaction Security Document will be unduly burdensome on any Obligor (or any member of the Group) or interfere unduly with the operation of its (or any of their respective) business.
- (g) Nothing in any Transaction Security Document shall (or shall be construed to) prohibit, restrict or condition any Permitted Security, any Permitted Transaction or any other transaction not prohibited by the terms of this Agreement (or the other Debt Documents) (and each Transaction Security Document shall contain an express statement to this effect).
- (h) Nothing in any Transaction Security Document shall (or shall be construed to) prohibit, restrict or condition any Obligor (or any member of the Group) dealing in any manner whatsoever with any

asset (and any ancillary or related assets, including all rights, claims, benefits, proceeds, documentation and related contractual counterparties) the subject of (or expressed to be the subject of) that Transaction Security Document at any time prior to the occurrence of Declared Default (as defined in the Intercreditor Agreement) (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).

- (i) The Intercreditor Agreement (or, if not so included, each Transaction Security Document) shall require the Security Agent to promptly effect releases, confirmations, certificates of "non-crystallisation", consents to deal or similar or analogous transactions, actions, matters or steps as may be reasonably requested by the Company or the applicable Obligor in connection with any Permitted Security, any Permitted Transaction or any other transaction not prohibited by the terms of this Agreement (or the other Debt Documents) (including dealing in any asset the subject of (or expressed to be the subject of) that Transaction Security Document)).
- (j) Transaction Security will, where possible and practical, automatically create security over future assets of the same type as those already secured and no Transaction Security Document shall require information such as lists of assets, itinerates or maps or other delineations (and/or updates thereto), or supplemental lists, pledges or notices, unless required by the governing law of the relevant Transaction Security Document in order to create a security interest (and, in any such case, there will no requirement for any such information to be updated more regularly than annually except to the extent required to be provided by local law more frequently (with any such update being permitted to be provided with any Annual Financial Statements, and with the first such update not being earlier than the date falling 12 months after the date of the relevant Transaction Security Document) last day of the first full financial year of the Company to commence (and be completed) after the Completion Date)) following a request to do so by the Security Agent (acting on the instructions of the Majority Financiers) or, following an Declared Default which is continuing on the request of the Security Agent (acting reasonably).
- (k) No Transaction Security Document shall require the entry into of any control agreement, custodian agreement or bailee agreement (or any similar or analogous agreement or arrangement), including with respect to any bank, deposit, brokerage or securities account.
- (l) Each Transaction Security Document will expressly provide that assets (or classes of assets) which are not required to be secured as contemplated in the other Agreed Security Principles shall be automatically excluded from the scope of the security (and, accordingly, excluded from the scope of the charging or security clause and the definition of charged or secured assets (or the relevant equivalent provisions or terms)), including, for the avoidance of doubt, being excluded from any floating charge (or equivalent) and all further assurance and other requirements.

## **7. Bank accounts**

- (a) If (but without implying any obligation to do so) an Obligor grants security over any of its bank accounts it will be free to deal with, operate and transact business in relation to those accounts (including opening and closing accounts or allowing accounts to become dormant) without reference to, or any requirement for the consent or authority of or any requirement for any notice to, any other person, until notified by the Security Agent to the contrary, which notice may only be given by the Security Agent following the occurrence of an Declared Default (as defined in the

- Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (b) No bank account (other than a rectification account) will be "blocked" or "controlled" by reference to the Security Agent or any beneficiary of any security (or any other person) until the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document). In addition, other than as expressly contemplated by this Agreement, there shall be no requirement for any cash to be swept into or from a particular bank account or for any person to hold or pay any cash, or the proceeds of any receivables, claims or other rights, into any particular account, nor for any account waterfalls, income accounts, debt service reserve, cash trap, lock-up or any similar accounts.
  - (c) No notice of security over any bank account will be given (nor may be required to be given) until the relevant Obligor is requested in writing by the Security Agent to do so, which request may only be given by the Security Agent following the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
  - (d) Any security over bank accounts will be subject to any security interests or rights of netting or set-off (or other quasi-security) in favour of the account bank or its affiliates (which may have or take priority over the relevant Transaction Security) which are created either by law or as a result of the operation of the standard terms and conditions of the relevant account bank or its affiliates or which otherwise arise pursuant to account bank and banking arrangements in the ordinary course of business or as otherwise permitted by the terms of this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)).
  - (e) No Obligor will be required to open new or close any bank accounts or change its banking arrangements or seek to amend any of the terms and conditions applicable to any bank account or banking arrangement in connection with the granting of any Transaction Security. An Obligor may open new or close any bank account or change its banking arrangements or seek to amend any of the terms and conditions applicable to any bank account or banking arrangement as it sees fit from time to time (acting in its sole discretion), other than to the extent expressly restricted from doing so following the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
  - (f) No security will be required to be granted over any form of escrow, cash pooling, net balance, combined, tied or multi-accounts or other cash management arrangement, cash collateral, rental deposit (or other accounts relating to real estate rights or interests), brokerage, supplier, customer, deposit, securities, escrow and factoring accounts or any cash constituting regulatory capital (or which is otherwise subject to regulation) or third party, landlord, lessee, customer, supplier or client money (or similar or analogous accounts or amounts).
  - (g) For the avoidance of doubt, all security over bank accounts will be released to the extent necessary in order to facilitate an asset sale or any other transaction permitted by this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)).

- (h) Any requirement to provide security over bank accounts, and the extent of any notification, perfection or registration of any such security, shall, for the avoidance of any doubt, be subject to the other Agreed Security Principles.

## **8. Intercompany loan receivables**

- (a) If (but without implying any obligation to do so) an Obligor grants security over any of its or any intercompany loans or receivables it will, to the extent permitted under the Global Finance Documents, be free to deal with, operate and transact business in relation to, or amend, waive or terminate, those loans or receivables and/or any agreement or instrument that records such loans or receivables (including transferring or assigning those loans or receivables to another person, consenting to a transfer of the relevant payment (and/or other) obligations by the relevant payor, directing payment, releasing or discharging such loan or receivable, disposing of or equitising such loan or receivable (including by way of a capital contribution) (or agreeing to do any of the foregoing)) without reference to, or any requirement for the consent or authority of or any requirement for any notice to, any other person until notified by the Security Agent to the contrary, which notice may only be given by the Security Agent following the occurrence of an Declared Default which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (b) No intercompany loans or receivables will be "blocked" or "controlled" by reference to the Security Agent or any beneficiary of any security (or any other person) until after the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document). In addition, there shall be no requirement for any proceeds from any intercompany loans or receivables to be paid into any particular account.
- (c) Save to the extent provided for the Intercreditor Agreement, no notice of security over any intercompany loans or receivables will be given (nor may be required to be given) until the relevant Obligor is requested in writing by the Security Agent to do so, which request may only be given by the Security Agent following the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (d) Any security over intercompany loan or receivable will, prior to an Declared Default (as defined in the Intercreditor Agreement) be subject to any security interests or rights of netting or set-off (or other quasi-security) in favour of the payor or its affiliates (which may have or take priority over the relevant Transaction Security) which are created either by law or as a result of the operation of the terms and conditions of the relevant agreement or instrument governing the relevant intercompany loan or receivable or which otherwise arise pursuant to treasury and/or other intra-Group arrangements in the ordinary course of business or as otherwise permitted by the terms of this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)).
- (e) No Obligor (nor any payor of any intercompany loan or receivable) will be required to enter into any intercompany loans (or create any intercompany receivables) or change the terms and conditions of the relevant agreement or instrument governing the relevant intercompany loan or receivable in connection with the granting of any Transaction Security.



- (f) No security will be required to be granted over any intercompany loan or receivable constituting (or entered into in connection with) regulatory capital (or which is otherwise subject to regulation) or which is funded from the proceeds of any landlord, lessee, third party, customer, supplier or client money (or similar or analogous accounts or amounts).
- (g) For the avoidance of doubt, all security over intercompany loans and receivables will be released to the extent necessary in order to facilitate an asset sale or any other transaction permitted by this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement))
- (h) Any requirement to provide security over any intercompany loan or receivable, and the extent of any notification, perfection or registration of any such security, shall, for the avoidance of any doubt, be subject to the other Agreed Security Principles.

## **9. Shares**

- (a) If an Obligor grants security over any shares or equity interests (or any equivalent ownership interest) it will retain all rights and benefits in respect of such shares or equity interests (or any equivalent ownership interest) (including legal title to, and all beneficial rights in respect of, such shares or equity interests (or any equivalent ownership interest)), it will retain and may exercise all voting rights and other rights, entitlements and powers in respect of such shares or equity interests (or any equivalent ownership interest) and it will, to the extent permitted under the Global Finance Documents, be free to deal with, operate and transact business in relation to, or amend, waive or terminate any rights in respect of, those shares or equity interests (or any equivalent ownership interest) and/or any agreement or instrument (including applicable constitutional documents) that evidences, constitutes or governs (or otherwise regulates) such shares or equity interests (or any equivalent ownership interest) (including transferring or assigning those shares or equity interests (or any equivalent ownership interest) to another person, directing payment, waiving or allowing to remain outstanding any dividend or other return on or payment in respect of those shares or equity interests (or any equivalent ownership interest) and/or disposing of those shares or equity interests (or any equivalent ownership interest) (including by way of a capital contribution)) (or agreeing to do any of the foregoing) without reference to, or any requirement for the consent or authority of or any requirement for any notice to, any other person until notified by the Security Agent to the contrary, which notice may only be given by the Security Agent following the occurrence of an Declared Default which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (b) Where customary and applicable as a matter of law, as soon as reasonably practicable (taking into account any stamping or other transfer requirements) after signing of the relevant Transaction Security Document, the applicable share certificate(s) (or other documents evidencing title to the relevant shares) to the extent in physical form and (to the extent applicable to the relevant shares being so secured) a stock transfer form executed in blank (or applicable law equivalent) will be provided to the Security Agent.
- (c) No shares or equity interests (or any equivalent ownership interest) will be "blocked" or "controlled" by reference to the Security Agent or any beneficiary of any security (or any other person). In addition, there shall be no requirement for any proceeds, income or any other amount from any

shares or equity interests (or any equivalent ownership interest) to be paid into any particular account.

- (d) No notice of security over any shares or equity interests (or any equivalent ownership interest) will be given (nor may be required to be given) until the relevant Obligor is requested in writing by the Security Agent to do so, which request may only be given by the Security Agent following the occurrence of an Declared Default which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (e) No Obligor (nor any issuer of any shares or equity interests (or any equivalent ownership interest)) will be required to issue or to acquire any shares or equity interests (or any equivalent ownership interest) (or to receive or demand any dividend on or other return or payment in respect of any shares or equity interests (or any equivalent ownership interest)) or change the terms and conditions of the, or enter into any, relevant agreement or instrument (including applicable constitutional documents) that evidences, constitutes or governs (or otherwise regulates) such shares or equity interests (or any equivalent ownership interest) provided that an Obligor over whose shares or equity interests (or any equivalent ownership interest) Transaction Security is to be granted will (to the extent applicable) be required, as soon as practicable, following a request to do so by the Security Agent (acting on the instructions of the Majority Financiers) to amend its constitutional documents as is customary to make the relevant shares or equity interests (or any equivalent ownership interest) freely transferable upon an enforcement of that Transaction Security under the terms of such constitutional documents governing such shares or equity interests (or any equivalent ownership interest) (but subject always to any requirements of applicable law and regulation, including any governing or regulating the ownership of shares (and/or any minimum holding by any person) in the relevant jurisdiction).
- (f) No security will be required to be granted over any shares or equity interests (or any equivalent ownership interest) that constitute regulatory capital (or which is otherwise subject to regulation) or of any person that is a regulated entity or whose principal material assets constitute landlord, lessee, third party, customer, supplier or client money (or similar or analogous accounts or amounts).
- (g) For the avoidance of doubt, all security over shares or equity interests (or any equivalent ownership interest) will be released in order to facilitate an asset sale or any other transaction permitted by this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)).
- (h) Any requirement to provide security over any shares or equity interests (or any equivalent ownership interest), and the extent of any notification, perfection or registration of any such security, shall, for the avoidance of any doubt, be subject to the other Agreed Security Principles.

## **10. Floating charge (or similar)**

- (a) If (but without implying any obligation to do so) an Obligor grants a floating charge (or similar) it will be free to deal with, use, dispose, operate, granted any (other) Permitted Security, transact business and take all other action in relation to the assets subject to that floating charge (or similar) without reference to, or any requirement for the consent or authority of or any requirement for any

notice to, any other person, until notified by the Security Agent to the contrary, which notice may only be given by the Security Agent following the occurrence of an Declared Default which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document). For the avoidance of any doubt, any asset disposed of (or similar) or over which an Obligor grants any (other) Permitted Security over shall immediately and automatically fall outside of (and will not be within the scope of) the relevant floating charge (or similar) (and the relevant Transaction Security Document will expressly provide for this).

- (b) Any floating charge (or similar) will be subject to (including as to its scope) the other Agreed Security Principles, including paragraph 1(d) and 2(e) and no Obligor shall be required to seek the consent of any third-party in connection with that Obligor granting (or so as to permit such asset to be charged under) a floating charge (or similar) over its assets. Any floating charge will be subject to 'excluded assets' wording give effect to this paragraph (b) and, as applicable, the other Agreed Security Principles.
- (c) No notice of security over any assets subject to any floating charge (or similar) will be given (nor may be required to be given) until the relevant Obligor is requested in writing by the Security Agent to do so, which request may only be given by the Security Agent following the occurrence of an Declared Default (as defined in the Intercreditor Agreement) which is continuing (and only then to the extent contemplated and required in accordance with the terms of the relevant security document).
- (d) For the avoidance of doubt, any asset subject to any floating charge (or similar) will be released (and any certificate of non-crystallisation granted by the Security Agent), to the extent required, in order to facilitate an asset sale or any other transaction permitted by this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)). No floating charge will operate in a manner which is unduly burdensome on any Obligor (or any member of the Group) or interferes with the operation of its (or any of their respective) business.
- (e) Any requirement to provide any floating charge (or similar), and the extent of any notification, perfection or registration of any such security, shall, for the avoidance of any doubt, be subject to the other Agreed Security Principles.

## **11. Release of guarantees and security**

- (a) The Security Agent (and each Global Finance Party (as applicable)) will promptly discharge any guarantees and/or release any Transaction Security (as applicable) as contemplated in the resignation of a Guarantor and release of security provisions of this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)) or the Intercreditor Agreement or so as to ensure that any guarantee and/or security continues to be consistent with the other Agreed Security Principles (including where any asset subject to security is or has become subject to any relevant law or regulation, third-party arrangement, restriction or prohibition or other security (in each case) referred to in the other Agreed Security Principles), and (in each case) do all such things as may be reasonably required by the Company and/or the relevant Obligor in order to give effect to any such discharge and/or release.

- (b) Unless required by applicable local law, the circumstances in which security shall be released shall not be dealt with in individual Transaction Security Documents (although each Transaction Security Document shall expressly provide that the relevant security shall be released by the Security Agent as outlined in the paragraph (a) above and as may otherwise be permitted by or required by the terms of this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)) and/or the Intercreditor Agreement).
- (c) Where required under applicable law, an individual Transaction Security Document may only set out the circumstances in which that security may be released if it is consistent with (and no more onerous than) the circumstances in which such security may be released as permitted by or required by the terms of this Agreement (or the other Debt Documents) and/or the Intercreditor Agreement (and shall expressly provide that the relevant security shall be released by the Security Agent as outlined in the paragraph (a) above and as may otherwise be permitted by or required by the terms of this Agreement (or the other Debt Documents (as defined in the Intercreditor Agreement)) and/or the Intercreditor Agreement), subject only to such changes as are required in order to comply with such applicable law.
- (d) The Security Agent (and each Global Finance Party (as applicable)) may (and shall, if so required by the Company), and will be irrevocably authorised and instructed by each Global Finance Party to, do all such things (including any amendment, waiver, variation, consent, discharge, grant, re-grant, confirmation or extension of any guarantee and/or any Transaction Security Document (or Transaction Security)) as may be reasonably required by the Company in connection with, and/or in order to give effect to, any of these Agreed Security Principles (or so as to ensure that any guarantee and/or security continues to be consistent with the other Agreed Security Principles (including where any asset subject to security is or has become subject to any relevant law or regulation, third-party arrangement, restriction or prohibition or other security (in each case) referred to in the other Agreed Security Principles)), any discharge of any guarantees and/or release of any Transaction Security contemplated in these Agreed Security Principles and/or in connection with any Permitted Security, any Permitted Transaction and/or any other transaction not prohibited by the terms of this Agreement (or the other Debt Documents) or the Intercreditor Agreement.

## SCHEDULE 9

### FORM OF INCREASE CONFIRMATION

To: Abu Dhabi Commercial Bank PJSC as Global Agent, [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent] and Abu Dhabi Commercial Bank PJSC as Security Agent, [ ] as Issuing Bank]<sup>12</sup> and Neptune Project Holding 3 Limited as the Company, for and on behalf of each Obligor

From: [the *Increase Financier*] (the "**Increase Financier**")

Dated:

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [ ] (as amended and/or restated, novated or otherwise varied from time to time) (the "**Common Terms Agreement**")**

1. We refer to the Common Terms Agreement and to the Intercreditor Agreement (as defined in the Common Terms Agreement). This agreement (the *Agreement*) shall take effect as an Increase Confirmation for the purpose of the Common Terms Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Common Terms Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.6 (*Increase*) of the Common Terms Agreement.
3. The Increase Financier 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 Financier under the Common Terms Agreement.
4. The proposed date on which the increase in relation to the Increase Financier and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].
5. On the Increase Date, the Increase Financier becomes:
  - (a) party to the relevant Global Finance Documents (other than the Intercreditor Agreement) as a Financier; and
  - (b) party to the Intercreditor Agreement as a Senior Financier.
6. The Facility Office and address, electronic mail address and attention details for notices to the Increase Financier for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.
7. [The Increase Financier confirms that it [is]/[is not] a Non Acceptable L/C Financier.]
8. The Increase Financier expressly acknowledges the limitations on the Financiers' obligations referred to in paragraph (f) of Clause 2.6 (*Increase*).
9. The Increase Financier confirms that it is not a member of the Group/Sponsor Affiliate.
10. We refer to clause [21.2] (*Change of Secured Creditors*) of the Intercreditor Agreement:

In consideration of the Increase Financier being accepted as a Senior Financier for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase

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<sup>12</sup> Only if given in respect of Revolving Facility Commitments.

Financier confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Financier, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Financier and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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.<sup>13</sup>

**Note: The execution of this Increase Confirmation may not be sufficient for the Increase Financier to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Financier to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

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<sup>13</sup> To be conformed to ICA accession mechanic.

**SCHEDULE**  
**RELEVANT COMMITMENT/RIGHTS AND OBLIGATIONS**  
**TO BE ASSUMED BY THE INCREASE FINANCIER**

*[insert relevant details]*

*[Facility office address, electronic mail address and attention details for notices and account details for payments]*

*[Increase Financier]*

By: \_\_\_\_\_

This Agreement is accepted as an Increase Confirmation for the purposes of the Common Terms Agreement by the Global Agent, the [Conventional Facility Agent]/[Murabaha Investment Agent], [and the Issuing Bank]\*, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [\_\_\_\_\_].

**Global Agent**

By: \_\_\_\_\_

**[Conventional Facility Agent]/[Murabaha Investment Agent]**

By: \_\_\_\_\_

**[Issuing Bank**

By: \_\_\_\_\_]<sup>14</sup>

**Security Agent**

By: \_\_\_\_\_

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<sup>14</sup> Only if increase in the Total Revolving Facility Commitments.

## SCHEDULE 10

### FORM OF INCREMENTAL FACILITY COMMITMENT NOTICE

To: Abu Dhabi Commercial Bank PJSC as Global Agent and [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent]

From: [Company]

Dated: [ ]

Dear Sirs/Madams

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated**  
**[ ]**  
**(the "Common Terms Agreement")**

1. We refer to the Common Terms Agreement and in particular Clause 2.7 (*Incremental Facility*) thereof. Terms defined in the Common Terms Agreement have the same meaning when used in this Incremental Facility Commitment Notice.
2. We have agreed with the following institutions (the Financiers in respect of the Incremental Facility Commitments detailed in this Incremental Facility Commitment Notice) that they commit Incremental Facility Commitments as follows:

Name of Institution	Existing Financiers (yes/no)	Incremental Facility Commitment (USD)
Total		

3. The date on which the Incremental Facility Commitments referred to above are to become effective is [DATE].
4. The Availability Period is: [Availability Period].
5. The currency in which the Incremental Facility Commitments may be utilised is the Base Currency.
6. The [Borrower]/[Purchaser] and amounts are: [insert name of [Borrower]/[Purchaser]] and USD[ ].
7. The purpose is: [ ].
8. The applicable Margin shall be as follows (at the date of this Incremental Facility Commitment Notice): [ ] per cent. per annum.  
[insert ratchet provisions if applicable]
9. The final repayment date is: [insert date]
10. The commitment fees are: [ ].
11. [insert any other relevant matters referred to in Clause 2.7 (*Incremental Facility*)]



12. The aggregate of the Incremental Facility Commitments to date (including pursuant to this notice) is: USD[\_\_\_\_\_]
13. [insert confirmation that all of the conditions of paragraph (b) of Clause 2.7 (*Incremental Facility*) have been, or will be, satisfied by the date the Incremental Facility is established]
14. The Incremental Facility Commitments established by this notice are [Incremental Facility B Commitments]/[Incremental Revolving Facility Commitments].

[\_\_\_\_\_]

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Director  
For and on behalf of [Company]

[\_\_\_\_\_]

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Director (CFO)  
For and on behalf of [Company]

#### **Financier Confirmations**

We refer to the Common Terms Agreement and to the Intercreditor Agreement (as defined in the Common Terms Agreement). This agreement shall take effect as an Incremental Facility Commitment Notice for the purpose of the Common Terms Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Common Terms Agreement).

We refer to Clause 2.7 (*Incremental Facility*) of the Common Terms Agreement.

Each Financier agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Incremental Facility Commitment Notice as if it was an Original Financier under the Common Terms Agreement.

The proposed date on which the Incremental Facility Commitment is to take effect is the "**Incremental Effective Date**".

On the Incremental Effective Date, each Financier becomes:

- (a) party to the relevant Global Finance Documents (other than the Intercreditor Agreement) as a Financier; and
- (b) party to the Intercreditor Agreement as a Senior Financier.

The Facility Office and address, electronic mail address and attention details for notices to each Financier for the purposes of Clause 35 (*Notices*) are set out in the Schedule.

[ ] confirms, for the benefit of each Agent and without liability to the relevant Borrower or the Purchaser (as applicable), that it is not a Sanctioned Entity.

Each Financier confirms that it is not a Sponsor Affiliate.

[We refer to clause [ ] (*Changes to the Parties*) of the Intercreditor Agreement.

In consideration of being accepted as a Senior Financier for the purposes of the Intercreditor Agreement (and as defined therein), the Financier confirmed that, as from the Incremental Effective Date, it intends to be party to the Intercreditor Agreement as a Senior Financier, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Financier and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if we had been an original party to the Intercreditor Agreement as a Senior Financier.]

This Incremental Facility Commitment Notice 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 Incremental Facility Commitment Notice.

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

This Incremental Facility Commitment Notice has been entered into on the date stated at the beginning of this Incremental Facility Commitment Notice.

Executed as a deed by [Name of Financier]

acting by [a director and its secretary/two directors]:

\_\_\_\_\_  
[ ]

Executed as a deed by [Name of Financier]

acting by [a director and its secretary/two directors]:

\_\_\_\_\_  
[ ]

We acknowledge the accession of each of the parties (other than the Parent) to this letter to the Common Terms Agreement as a Financier and to the Intercreditor Agreement as a Senior Financier.

This Incremental Facility Commitment Notice is accepted as an Incremental Facility Commitment Notice for the purposes of this Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Incremental Effective Date is confirmed as [ ].

**The Global Agent**

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[Authorised Signatory]

**[The Conventional Facility Agent]/[The Murabaha Investment Agent]**

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[Authorised Signatory]

**The Security Agent**

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[Authorised Signatory]

**THE SCHEDULE**

**[FACILITY OFFICE ADDRESS, ELECTRONIC MAIL ADDRESS AND ATTENTION DETAILS FOR NOTICES AND ACCOUNT  
DETAILS FOR PAYMENTS]**

*[Insert relevant address]*

**SCHEDULE 11**

**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**PART I**

**FORM OF NOTICE ON ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION**

To: Abu Dhabi Commercial Bank PJSC as Global Agent and [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent]

From: [The Financier]

Dated: [ ]

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [ ] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to paragraph (d) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates or Investors*) of the Common Terms Agreement. Terms defined in the Common Terms Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</b>
[Facility B Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]
[Revolving Facility Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]

[Financier]

By: \_\_\_\_\_

**PART II**

**FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE TRANSACTION**

Notifiable Debt Purchase Transaction ceasing to be with a member of the Group/Investor

To: Abu Dhabi Commercial Bank PJSC as Global Agent and [ ] as [Conventional Facility Agent]/[Murabaha Investment Agent]

From: [The Financier]

Dated: [ ]

**Neptune Project Holding 3 Limited – US\$1,485,000,000 Common Terms Agreement dated [ ] (as amended and/or restated, novated or otherwise varied from time to time) (the "Common Terms Agreement")**

1. We refer to Clause 26 (*Restriction on Debt Purchase Transactions*) of the Common Terms Agreement. Terms defined in the Common Terms Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ] has [terminated]/[ceased to be with a member of the Group/Investor].
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</b>
[Facility B Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]
[Revolving Facility Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]

[Financier]

By: \_\_\_\_\_

**the Company**

By: \_\_\_\_\_

Name: [ ]

**SIGNATORIES**

**The Company**

Signed on behalf of

**Neptune Project Holding 3 Limited**

as the Company

\_\_\_\_\_

Name:

Title:

Notice details:

\_\_\_\_\_

**Process agent**

For the purposes of accepting the appointment in paragraph (a)(i) of Clause 43.8 (*Service of process*) only, signed on behalf of

**BCP VI Neptune Bidco Holdings Limited**



Name: Ed Brogan

Title: Director

Notice details: 



**The Mandated Lead Arrangers**

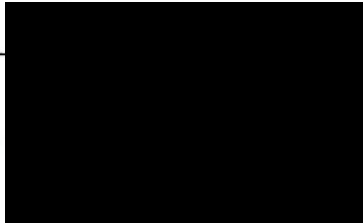
Signed on behalf of

**First Abu Dhabi Bank PJSC**

as a Mandated Lead Arranger and Bookrunner

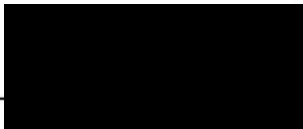
\_\_\_\_\_  
Name:

Title:



\_\_\_\_\_  
Name:

Title:



Signed on behalf of

**Abu Dhabi Commercial Bank PJSC**  
as a Mandated Lead Arranger and Bookrunner



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Name:

**Ashish Sharma**

Title:

Head - Corporate & Investment Banking - DNE

Signed on behalf of

Dubai Islamic Bank PJSC

and [Redacted] Manager

[Redacted Signature]

Name:

Muhammad Arif Sultan

Title:

Authorised Signatory

Name:

Abdul Sattar Qureshi

Title:

Authorised Signatory

Signed on behalf of

**COMMERCIAL BANK OF DUBAI PJSC**  
as a Mandated Leader Arranger



Name:

Asadullah Shaikh  
Unit Head - CREs &  
Large Corporates  
SJA14946

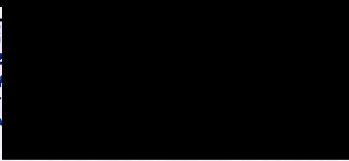
Title:



Name:

IBRAHIM ABDELMONE  
Head of Legal, Wholesale  
Investment and Treasury  
Legal & Corporate Govern  
Commercial Bank of Dub

Title:



Signed on behalf of

**GULF INTERNATIONAL BANK B.S.C.**

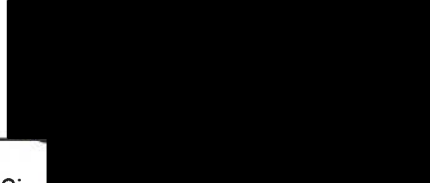
as a Mandated Lead Arranger



Name:

**Saloni Mandal**  
VP (A-565)  
Gulf International Bank B.S.C.

Title:



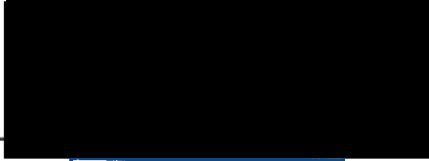
Name:

**Hisham Wishahy**  
Chief Representative Officer  
Gulf International Bank B.S.C.

Title:

Signed on behalf of

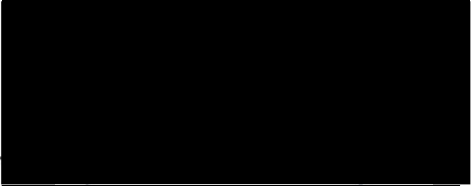
**GULF INTERNATIONAL BANK B.S.C. – Abu Dhabi**  
as a Mandated Lead Arranger



Name:

**Saloni Mandal**  
VP (A-565)  
Gulf International Bank B.S.C.

Title:



Name:

**Hisham Wishany**  
Chief Representative Officer  
Gulf International Bank B.S.C.

Title:

Signed on behalf of

**NATIONAL BANK OF BAHRAIN B.S.C.**

as a Mandated Lead Arranger



Name:

**Sandeep Sataalkar**

Title:

**Head Credit Admin-UAE**



Name:

**Parvez Ahmed**

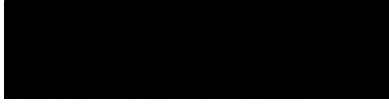
Title:

**Team Leader - Corporate Coverage**



Signed on behalf of

**THE NATIONAL BANK OF RAS AL KHAIMAH (P.S.C.)**  
as a Mandated Lead Arranger



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Name:

Prinivas Ramadurai  
(A 333)

Title:



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Name:

Harch Sharma  
(A 456)

Title:



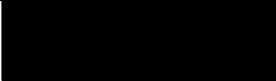
Signed on behalf of

**STANDARD CHARTERED BANK, DUBAI INTERNATIONAL FINANCIAL CENTRE BRANCH**  
as a Mandated Lead Arranger and Bookrunner



Kamran Shuja Chaudhry  
Executive Director

Name:



Title:

**The Original Lenders**

Signed on behalf of

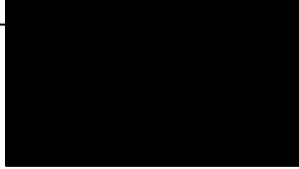
**FIRST ABU DHABI BANK PJSC**

as an Original Lender

Name:



Title:



Name:



Title:



Signed on behalf of

**Abu Dhabi Commercial Bank PJSC**  
as an Original Lender



Name:

**Ashish Sharma**  
Head - Corporate & Investment Banking - DNE

Title:

Signed on behalf of

**COMMERCIAL BANK OF DUBAI PJSC**

as an Original Lender



Name: **Asadullah Shaikh**  
Unit Head - GREs &  
Large Corporates  
SHA14946

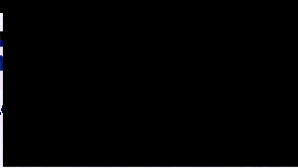
Title:



Name:

**IBRAHIM ABDELMONEIM E**  
Head of Legal, Wholesale Bank  
Investment and Treasury  
Legal & Corporate Governance  
Commercial Bank of Dubai

Title:



Signed on behalf of

**GULF INTERNATIONAL BANK B.S.C.**

as an Original Lender



Name:

**Saloni Mandal**  
VP (A-565)  
Gulf International Bank B.S.C.

Title:



Name:

**Hisham Wishahy**  
Chief Representative Officer  
Gulf International Bank B.S.C.

Title:

Signed on behalf of

**GULF INTERNATIONAL BANK B.S.C. – ABU DHABI**

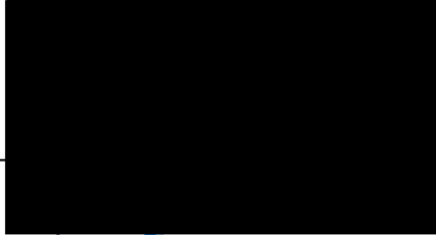
as an Original Lender



Name:

**Saloni Mandal**  
VP (A-565)  
Gulf International Bank B.S.C.

Title:



Name:

Title:

**Hisham Wishahy**  
Chief Representative Officer  
Gulf International Bank B.S.C.

Signed on behalf of

**NATIONAL BANK OF BAHRAIN B.S.C.**

as an Original Lender



Name:

**Sandeep Satakar**  
Head Credit Admin-UAE

Title:



Name:

**Parvez Ahmed**  
Team Leader - Corporate Coverage

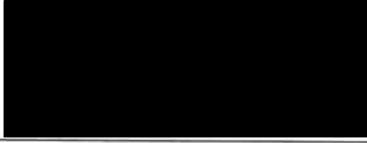
Title:



Signed on behalf of

**THE NATIONAL BANK OF RAS AL KHAIMAH (P.S.C.)**

as an Original Lender



Name:

**Srinivas Ramadurai**  
**(A 333)**

Title:



Name:

**Harsh Sharma**  
**(A 499)**

Title:



Signed on behalf of

**STANDARD CHARTERED BANK, DUBAI INTERNATIONAL FINANCIAL CENTRE BRANCH**  
as an Original Lender



Name:

Title:

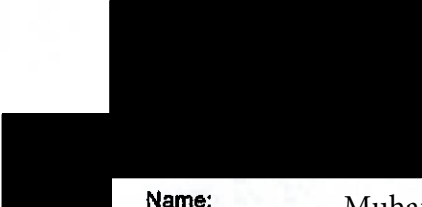
**Hind Chawki**  
**Head of FM MENAP**

**The Original Islamic Participant**


Signed on behalf of

**Dubai Islamic Bank PJSC**

as an Original Islamic Participant

  
Name: Muhammad Arif Sultan

Title: Authorised Signatory

  
Name: Abdul Sattar Qureshi

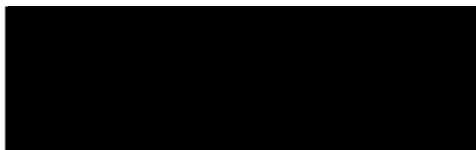
Title: Authorised Signatory

**The Global Agent**

Signed on behalf of

**Abu Dhabi Commercial Bank PJSC**

as Global Agent



Name:

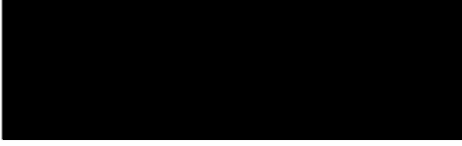
**Ashish Sharma**  
Head - Corporate & Investment Banking - DNE

Title:

**The Conventional Facility Agent**

Signed on behalf of

**Abu Dhabi Commercial Bank PJSC**  
as Conventional Facility Agent



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Name:

**Ashish Sharma**

Title:

Head - Corporate & Investment Banking - DNE

**The Murabaha Investment Agent**

Signed on behalf of

**Dubai Islamic Bank PJSC**

as Murabaha Investment Agent



**Name:** Muhammad Arif Sultan

**Title:** Authorised Signatory



**Name:**

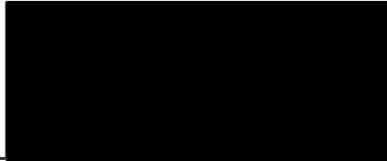
**Title:** Abdul Sattar Qureshi  
Authorised Signatory

**The Security Agent**

Signed on behalf of

**Abu Dhabi Commercial Bank PJSC**

as Security Agent



Name:

**Ashish Sharma**

Title:

Head - Corporate & Investment Banking - ONE