

EXECUTION VERSION

MEDICLINIC INTERNATIONAL LIMITED

ARRANGED BY

MORGAN STANLEY BANK INTERNATIONAL LIMITED
AND
FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
AS MANDATED LEAD ARRANGERS

WITH

FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
ACTING AS AGENT

AND

U.S. BANK TRUSTEES LIMITED
ACTING AS SECURITY AGENT

SENIOR FACILITY AGREEMENT

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THIS AGREEMENT is dated 14 October 2015 and made

BETWEEN:

- (1) **MEDICLINIC INTERNATIONAL LIMITED**, a public company incorporated under the laws of the Republic of South Africa with registration number 1983/010725/06 (the "**Target**");
- (2) **THE ENTITIES** listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with Target, the "**Original Guarantors**");
- (3) **MORGAN STANLEY BANK INTERNATIONAL LIMITED** and **FIRSTRAND BANK LIMITED (ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)** as mandated lead arrangers (whether acting individually or together, the "**Arrangers**");
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
- (5) **FIRSTRAND BANK LIMITED (ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)** as agent of the other Finance Parties (the "**Agent**"); and
- (6) **U.S. BANK TRUSTEES LIMITED** as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceptable Bank" means:

- (a) any Original Lender;
- (b) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (c) Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, The Standard Bank of South Africa Limited, Investec Bank Limited and any other bank or financial institution approved by the Agent.

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

"Accounting Principles" means, as applicable, (a) IFRS or (b) generally accepted accounting principles in the jurisdiction of incorporation of the relevant entity (which may include IFRS).

"Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with Clause 28 (*Changes to the Obligors*).

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

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

"Annual Financial Statements" has the meaning given to that term in Clause 22 (*Information Undertakings*).

"Approved Lender List" means the list of banks, financial institutions, trusts, funds or other entities in agreed form and held by the Agent.

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

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

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

- (a) the date which is six Months and 31 "business days" (as defined in the SA Companies Act) after the date of this Agreement;
- (b) the date falling fourteen days after the Closing Date; and
- (c) the date on which the Scheme lapses, terminates or is withdrawn.

"Available Commitment" means a Lender's Commitment under the Facility.

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

"Bid Conduct Agreement" means the Bid Conduct Agreement between the Company and Target dated on or about the date of this Agreement.

"Borrowings" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

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

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

exceeds:

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

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

"Cash" means, at any time, cash denominated in dollars, sterling, euro, Rand or Dirham in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for any Permitted Security; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facility.

"Cash Equivalent Investments" means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, the Republic of South Africa, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;

- (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, the Republic of South Africa, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (c) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (e) any other debt security approved by the Majority Lenders,

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

"Change of Control" means:

- (a) any person (other than Remgro Limited) or group of persons acting in concert gains direct or indirect control of, prior to the Closing Date, Target or thereafter, the Company;
- (b) prior to the Closing Date, Remgro Limited ceases directly or indirectly beneficially to hold at least 30 per cent. of the issued share capital of Target carrying the right to vote in general meetings of Target; or
- (c) on or after the Closing Date, Remgro Limited ceases directly or indirectly beneficially to hold at least 30 per cent. of the issued share capital of the Company carrying the right to vote in general meetings of Target.

For the purposes of this definition:

- (i) **"control"** of the Company means:
 - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the Company;

- (2) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company; or
 - (3) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company are obliged to comply; or
- (B) the holding beneficially of more than 30 per cent. of the issued share capital of the Company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).
- (ii) **"acting in concert"** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company.

"Clean Up Period" means the period of 45 days from and including the Closing Date.

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

"Closing Date" has the meaning given to the term "Effective Date" in the Bid Conduct Agreement.

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

"Combination Documents" means the Scheme Documents, the Tender Offer Circular, the Subscription Agreement and the Bid Conduct Agreement.

"Commitment" means:

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

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

"Company" means Al Noor Hospitals Group plc, a company incorporated in England and Wales with registration number 08338604.

"Company Shares" means ordinary shares in the share capital of the Company.

"Company's Auditors" means KPMG LLP or any other firm appointed by the Company to act as its statutory auditors.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

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

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

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 41 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by the Company or any of its Subsidiaries, Target Group or any of their advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Company or any of its Subsidiaries or the Target Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

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

"CTA" means the Corporation Tax Act 2009.

"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 voting sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

"Default" means an Event of Default or any event or circumstance specified in Clause 25 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender:

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

unless in the case of paragraph (a) above:

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

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

"Disposal" has the meaning given to that term in paragraph (b) of Clause 9.1 (*Disposal and Capital Markets Proceeds*).

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents;
or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"EBITDA" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

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

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

"Environmental Claim" means any investigation by any competent authority, or claim or proceeding by any person, in either case, in respect of any Environmental Law.

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

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

and including the right under the Constitution of the Republic of South Africa, 1996 to an environment that is not harmful to health or well being, the National Water Act, 1998 of South Africa, the Environment Conservation Act, 1989 of South Africa, the National Environmental Management Act, 1998 of South Africa, the National Environmental Management: Waste Act, 2008 of South Africa, the National Environmental Management: Air Quality Act, 2004 of South Africa, the National Environmental Management: Biodiversity Act, 2004 of South Africa, the National Environmental Management: Protected Areas Act, 200 of South Africa 3, the Environment Conservation Act, 1989 of South Africa, the National Heritage Resources Act, 1999 of South Africa, the World Heritage Convention Act, 1999 of South Africa and any legally binding national or provincial statutory instruments, municipal government by-Laws relating to the Environment, government notices,

regulations, orders, or judgments of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the Environment.

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

"Event of Default" means any event or circumstance specified as such in Clause 25 (*Events of Default*).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

"Facility Office" means:

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

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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 Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) or (b) above, 1 January 2017,

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

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

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

"Fee Letter" means:

- (a) any letter or letters dated on or about the date of this Agreement between the Arrangers and Mediclinic CHF Finco Limited (or the Agent and Mediclinic CHF Finco Limited or the Security Agent and Mediclinic CHF Finco Limited) setting out any of the fees referred to in Clause 14 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in this Agreement or under any other Finance Document.

"Final Maturity Date" means the Maturity Date as extended by any exercise of an Extension Notice, to the extent applicable. However, if the Final Maturity Date is not a Business Day, the Final Maturity Date shall be the immediately preceding Business Day.

"Finance Document" means this Agreement, any Accession Deed, any Compliance Certificate, any Fee Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Parent.

"Finance Lease" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

"Finance Party" means the Agent, the Arrangers, the Security Agent or a Lender.

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

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis;

- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (but not, in any case, Trade Instruments) in respect of any payment obligations;
- (h) any amount raised by the issue of shares which are redeemable or are otherwise classified as borrowings under the Accounting Principles);
- (i) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise);
- (j) any amount raised under a transaction of any other kind (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

"Financial Half Year" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

"Financial Year" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

"Financing Costs" means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Company or any other member of the Group in connection with entry into the Finance Documents.

"First Extension Maturity Date" has the meaning given to that term in Clause 6 (*Extension Option*).

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 13.4 (*Cost of funds*).

"Group" means:

- (a) prior to the Closing Date, the Target Group; and
- (b) on and from the Closing Date, the Company and each of its Subsidiaries for the time being.

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

"Guarantor" means an Original Guarantor or an Additional Guarantor.

"Hirslanden Bond Ratings Failure" means any event of default arising as a consequence of a failure to obtain a rating under the Hirslanden Swiss Bond.

"Hirslanden Swiss Bond" means the (i) CHF 145,000,000 listed Swiss Bond (ISIN CH0269698772) maturing 25 February 2021 and (ii) CHF 90,000,000 listed Swiss Bond (ISIN CH0269698798) maturing 25 February 2025 issued by Hirslanden AG, a Subsidiary of Mediclinic incorporated in Switzerland.

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

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

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

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

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

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 9 (*Form of Increase Confirmation*).

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

"Initial Maturity Date" means the date falling six Months after the date Target issues the Scheme Circular and if such date is not a Business Day, the Initial Maturity Date shall be the preceding Business Day.

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Intellectual Property" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions,

confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

- (b) the benefit of all applications and rights to use such assets of each member of the Group.

"Interest Period" means, in relation to the Loan, each period determined in accordance with Clause 12 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 11.3 (*Default interest*).

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

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

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

"ITA" means the Income Tax Act 2007.

"Jersey" means the Bailiwick of Jersey.

"Jersey Security Register" means the security interest register maintained under Part 8 of the SIJL.

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

"Law" means any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, directive, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the persons to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court and the common law, as amended, replaced, re-enacted, restated or reinterpreted from time to time.

"Legal Opinion" means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 28 (*Changes to the Obligors*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors and secured creditors;

- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of acquiescence, set-off or counterclaim;
- (c) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant; and
- (d) similar principles, rights and defences under the laws of any Relevant Jurisdiction.

"Lender" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*) or Clause 26 (*Changes to the Lenders*),

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

"LIBOR" means:

- (a) the applicable Screen Rate as of the Specified Time for sterling and for a period equal in length to the Interest Period of the Loan; or
- (b) as otherwise determined pursuant to Clause 13.1 (*Unavailability of Screen Rate*),

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

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

"LMA" means the Loan Market Association.

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

"Loan Notes" means the loan notes issued by Target to Scheme Participants pursuant to the Scheme.

"Major Default" means:

- (a) with respect to each Original Guarantor only (and not in relation to any person other than an Original Guarantor, or in relation to any procurement obligation of an Original Guarantor in relation to a person that is not an Original Guarantor), any circumstances constituting an Event of Default under any of Clause 25.1 (*Non-payment*); Clause 25.3 (*Other obligations*) insofar as it relates to a breach of paragraph (a) or (b) of Clause 24.6 (*Sanctions*),

Clause 24.7 (*Merger*), Clause 24.8 (*Change of business*), Clause 24.9 (*Acquisitions*), Clause 24.12 (*Negative pledge*), Clause 24.13 (*Disposals*), Clause 24.15 (*Dividends and share redemption*), Clause 24.16 (*Financial Indebtedness*) or paragraph (a), (b), (d)(i), (e)(i) or (f) of Clause 24.22 (*Transaction Undertakings*), Clause 25.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation; Clause 25.6 (*Insolvency*); Clause 25.7 (*Insolvency proceedings*); Clause 25.8 (*Creditors' process*); Clause 25.9 (*Unlawfulness and invalidity*) (to the extent relating to obligations which, if breached, would constitute a Major Default) or Clause 25.14 (*Repudiation and rescission of agreements*); and

- (b) with respect to the Company only, any circumstances constituting an Event of Default under Clause 25.3 (*Other obligations*) insofar as it relates to a breach of Clause 24.16 (*Financial Indebtedness*), Clause 25.6 (*Insolvency*), Clause 25.7 (*Insolvency proceedings*), Clause 25.8 (*Creditors' process*) or Clause 25.9 (*Unlawfulness and invalidity*) (to the extent relating to obligations which, if breached, would constitute a Major Default).

"Major Representation" means, with respect to each Original Guarantor and the Company only, a representation or warranty under any of Clause 21.2 (*Status*) to Clause 21.6 (*Validity and admissibility in evidence*) inclusive.

"Majority Lenders" means:

- (a) if the Original Lenders (or any of their Affiliates) are the only Lenders under this Agreement, all the Lenders; and
- (b) if the Original Lenders (or any of their Affiliates) are not the only Lenders under this Agreement, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}$ per cent. of the Total Commitments immediately prior to that reduction).

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

- (a) held in the United Kingdom by the Company or Target with the Agent;
- (b) identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent and Security Agent (acting reasonably); and
- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

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

"Margin" means:

- (a) from the date of this Agreement to and including the date falling six Months after the date of this Agreement, 3.50 per cent per annum;
- (b) from the Initial Maturity Date to the First Extension Maturity Date, 3.75 per cent. per annum; and
- (c) from the First Extension Maturity Date and thereafter, 5.00 per cent. per annum.

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

- (a) the business, operations, property, financial condition of the Group taken as a whole; or
- (b) the ability of the Obligors, taken as a whole, to perform the payment obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Transaction Security granted or purported to be granted pursuant to any of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

"Material Company" means, at any time:

- (a) an Obligor;
- (b) a wholly-owned member of the Group that holds shares in an Obligor; or
- (c) a Subsidiary of the Company which has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA, representing 10 per cent. or more of EBITDA or has gross assets (excluding intra-group items) representing 10 per cent., or more of the gross assets of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c) above shall be tested on a six monthly basis immediately prior to the delivery of a Compliance Certificate and determined by reference to the most recent Compliance Certificate supplied by the Company and/or the latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group.

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

"Mediclinic Europe Proprietary Limited" means the private company with limited liability incorporated in accordance with the Laws of South Africa with registration number 2006/003430/07.

"Mediclinic Jersey Limited" means Remgro Jersey Limited (to be renamed as Mediclinic Jersey Limited), a company incorporated in Jersey with company registration number 118590.

"Millennia Jersey Limited" means a company incorporated in Jersey with company registration number 119595.

"Mediclinic Middle East Investment Holdings Proprietary Limited" means the company incorporated in accordance with the Laws of South Africa with registration number 2005/037246/07.

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

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

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

"New Lender" has the meaning given to that term in Clause 26 (*Changes to the Lenders*).

"Non-Consenting Lender" has the meaning given to that term in Clause 40.6 (*Replacement of Lender*).

"Obligor" means the Company or a Guarantor.

"Obligors' Agent" means Target and/or, following the Closing Date, the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (*Obligors' Agent*).

"Original Company Shareholders" means the holders of the Company Shares, who are entitled to participate in the Special Dividend and the Tender Offer.

"Original Financial Statements" means:

- (a) in relation to Company, its consolidated audited financial statements for its Financial Year ended 31 December 2014;
- (b) in relation to Target, its consolidated audited financial statements for its Financial Year ended 31 March 2015;

- (c) in relation to each Original Guarantor other than Target, its audited financial statements for its Financial Year ended 31 March 2015; and
- (d) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 28 (*Changes to the Obligors*),

but in the case of any entity that has not yet had its first financial year end means instead the opening (unaudited) balance sheet of such entity.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of the Company or an Additional Guarantor, as at the date on which it becomes Party in its capacity as the "Company" and borrower of the Facility or an Additional Guarantor (as applicable).

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

"Parent" means Target and, following its accession to this Agreement, 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.

"Party" means a party to this Agreement.

"Perfection Requirements" means any and all registrations, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect security created by the Transaction Security Documents or in order to achieve the relevant priority for such Security.

"Permitted Acquisition" means:

- (a) the Transaction;
- (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;
- (c) an acquisition of securities which are Cash Equivalent Investments;
- (d) an acquisition of shares by a member of the Group from or issued by a Subsidiary or a Joint Venture in which that member of the Group holds an interest where (if the existing shares of the Subsidiary or Joint Venture are the subject of the Transaction Security) the newly issued shares also become subject to the Transaction Security on the same terms;
- (e) an acquisition of shares in Spire Healthcare Group plc **provided that** any such newly acquired shares also become subject to the Transaction Security on the same terms as the existing shares held in Spire Healthcare Group plc;

- (f) the incorporation of a company which on incorporation becomes a member of the Group, but only if:
 - (i) that company is incorporated with limited liability; and
 - (ii) if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent, is created in favour of the Security Agent within 30 days of the date of its incorporation;
- (g) any acquisition of any interest or any other investment in a Joint Venture not falling within paragraph (d) above to the extent permitted by the terms of this Agreement;
- (h) any acquisition by a member of the Group of shares or loan notes (in each case issued by a member of the Group) or similar from any director or employee whose appointment or service contract with the Group has been terminated or of any share the disposal of which would have constituted a Permitted Disposal under limb (d) of that definition; or
- (i) an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) if the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in the acquired company (or any such business) at the date of acquisition (when aggregated with the consideration (including associated costs and expenses) for any other acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition) does not exceed £50,000,000 (or its equivalent in any other currency or currencies) in total during the term of this Agreement.

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

- (a) in connection with the Transaction (including the Target Offshore Assets Transfer);
- (b) of assets made by any member of the Group in the ordinary course of its day-to-day business;
- (c) of any asset by a member of the Group (the **"Disposing Company"**) to another member of the Group (the **"Acquiring Company"**), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and
 - (iii) the Disposing Company is a Guarantor, the Acquiring Company (other than the Company) must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;

- (d) of the issued share capital (up to a maximum amount of 25 per cent. minus one share) held by Mediclinic Southern Africa Proprietary Limited, Mediclinic Holdings (Namibia) (Pty) Ltd or their subsidiaries in a hospital investment company (being any limited liability company incorporated in South Africa or Namibia linked to a hospital owned and operated by Mediclinic Southern Africa Proprietary Limited, Mediclinic Holdings (Namibia) (Pty) Ltd or their subsidiaries) to certain doctors selected by any member of the Group for fair value;
- (e) of assets (other than shares) in exchange for other assets comparable or superior as to type, value and quality;
- (f) of fixed assets which are obsolete or redundant;
- (g) of vehicles, plant, machinery or equipment on terms whereby the relevant asset is leased to a member of the Group where such transaction is in a manner and to an extent consistent with the previous conduct of the business of the Group;
- (h) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (i) constituted by a licence of intellectual property rights entered into in the ordinary course of day-to-day business;
- (j) arising as a result of any Permitted Security or as a consequence of a Permitted Transaction;
- (k) of any asset pursuant to a contractual arrangement to which a member of the Group is party as at the date of this Agreement;
- (l) of fixed assets where the proceeds of disposal are used within three Months of that disposal to purchase replacement fixed assets comparable or superior as to type, value and quality;
- (m) the payment of any dividend or distribution permitted by the terms of this Agreement;
- (n) of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed £50,000,000 (or its equivalent in any other currency or currencies) in total during the term of this Agreement; or
- (o) where the net proceeds of such disposal are applied in the prepayment of the Loan in accordance with Clause 9.2 (*Disposal and Capital Markets Proceeds*).

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) arising under any of the Finance Documents subject always to the terms of this Agreement;

- (b) arising under the Loan Notes;
- (c) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of business, but not a foreign exchange transaction for investment or speculative purposes;
- (d) any trade credit received (including for the avoidance of doubt, but not limited to, any liability under any advanced or deferred purchase agreement) from or guarantees extended by any member of the Group to its trading partners in the ordinary course of its business;
- (e) of any person acquired by a member of the Group after the date of this Agreement which is incurred under arrangements in existence at the date of acquisition, but not increased (other than by the capitalisation of interest) in contemplation of, or since, that acquisition and outstanding only for a period of six Months following the date of the acquisition;
- (f) arising under any loan facilities, Finance Leases, debt capital markets instruments or securities provided to, or borrowed by, Target, the Company or any of their respective wholly-owned Subsidiaries (i) existing at the date of this Agreement as set out in Part I of Schedule 10 (*Existing Financial Indebtedness and Security*) or which is incurred by a member of the Group to refinance or to extend the maturity date of such Financial Indebtedness **provided that** the principal amount of such Financial Indebtedness is not increased pursuant to such refinancing or extension unless, in the case of Target or its wholly-owned Subsidiaries, otherwise permitted by paragraph (g)(ii) or paragraph (k) below) or (ii) where the net proceeds of such financing are applied in the prepayment of the Loan in accordance with Clause 9.2 (*Disposal and Capital Markets Proceeds*);
- (g) owing between a member of the Group and:
 - (i) another member of the Group; or
 - (ii) (prior to the Closing Date) the Company and any of its Subsidiaries (including, for the avoidance of doubt, the Loan Notes);
- (h) under finance or capital leases of vehicles, plant, equipment or computers, **provided that** the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £10,000,000 (or its equivalent in other currencies) at any time;
- (i) arising under any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of one or more members of the Group;
- (j) incurred by any member of the Group in respect of credit granted by suppliers in the ordinary course of day-to-day business of the Group or any amount paid

to any member of the Group by customers which is treated as deferred income under the Accounting Principles; or

- (k) not permitted by the preceding paragraphs and the outstanding principal amount of which does not exceed at any time £25,000,000 (or its equivalent in any other currency or currencies) in aggregate for the Group at any time.

"Permitted Security" means:

- (a) any Security or Quasi-Security arising under the Finance Documents;
- (b) any Security or Quasi-Security existing as at the date of this Agreement and set out in Part I of Schedule 10 (*Existing Financial Indebtedness and Security*) **provided that** the principal amount secured by that Security does not exceed the amount stated in the Schedule);
- (c) any Security or Quasi-Security granted by any member of the Group to renew or replace any Security or Quasi-Security permitted by paragraph (b) above, in connection with any refinancing of existing Financial Indebtedness of any member of the Group;
- (d) Security or Quasi-Security granted after the date of this Agreement to secure Permitted Financial Indebtedness under paragraph (f) of that definition over assets the value of which (when aggregated with the value of any other assets over which Security or Quasi-Security has been granted by any member of the Group pursuant to this paragraph (d)) does not exceed £25,000,000 (or its equivalent in any other currency or currencies) as at the date of such grant.
- (e) any lien arising by operation of law and in the ordinary course of trading;
- (f) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including a Multi-account Overdraft) but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;
- (g) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness;
- (h) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group; and
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group;

- (i) any Security or Quasi-Security over or affecting any asset of any company 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 company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company; and
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company;
- (j) 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 day-to-day business or under any agreements to acquire or lease vehicles and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (k) any Security or Quasi-Security arising as a consequence of any Permitted Disposal or, over the relevant leased asset, a finance or capital lease permitted under paragraph (h) of the definition of "Permitted Financial Indebtedness";
- (l) any Security or Quasi-Security over bank accounts or retention rights in respect of deposits granted in favour of the account bank as part of that bank's standard terms and conditions;
- (m) any right of set-off arising under contracts entered into by any member of the Group in the ordinary course of day-to-day business;
- (n) Security or Quasi-Security for Taxes and other governmental charges which are not yet overdue or which are being contested in good faith and for which adequate reserves are being maintained;
- (o) any Security or Quasi-Security granted over assets the aggregate value of which (when aggregated with the value of any other assets over which Security or Quasi-Security has been granted by any member of the Group other than under paragraphs (a) to (n) above) does not exceed £25,000,000 (or its equivalent in any other currency or currencies) as at the date of such grant; or
- (p) any Security or Quasi Security created with the consent of the Majority Lenders.

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising as part of the Transaction or otherwise, under the Combination Documents or under the Finance Documents;

- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group; or
- (c) transactions (other than any disposal or acquisition of a company, shares or securities or a business or undertaking or the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of business on arm's length terms.

"Qualifying Lender" has the meaning given to that term in Clause 15 (*Tax Gross-up and Indemnities*).

"Quasi-Security" has the meaning given to that term in Clause 24.12 (*Negative pledge*).

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

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

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

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

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in the relevant currency and for the relevant period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or
- (b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

"Reference Banks" means such entities as may be appointed (and which have agreed to be appointed) by the Agent in consultation with the Company.

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

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

- (a) its Original Jurisdiction;

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

"**Relevant Period**" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

"**Remgro Facility Agreement**" means the facility agreement dated on or about the date of this Agreement between, amongst others, Remgro Limited as the company, Millennia Jersey Limited as the Jersey borrower, Remgro Healthcare Holdings Proprietary Limited as the South African borrower, Firststrand Bank Limited (acting through its Rand Merchant Bank Division) and Morgan Stanley Senior Funding, Inc. as original lenders and Firststrand Bank Limited (acting through its Rand Merchant Bank Division) as agent.

"**Remgro Healthcare Holdings Proprietary Limited**" means the company (previously known as Friedshelf 1670 Proprietary Limited) incorporated in South Africa with registration number 2015/118553/07.

"**Remgro Limited**" means the public company incorporated under the laws of the Republic of South Africa with registration number 1968/006415/06.

"**Repeating Representations**" means each of the representations set out in Clause 21.2 (*Status*) to Clause 21.7 (*Governing law and enforcement*), paragraph (b) of Clause 21.12 (*No misleading information*) and Clause 21.30 (*Centre of main interests and establishments*).

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

"**SA Companies Act**" means the South African Companies Act, 2008.

"**SA Takeover Authority**" means the Takeover Regulation Panel established in terms of Section 196 of the SA Companies Act.

"**Sanctioned Entity**" means:

- (a) a person, entity, country or territory which is listed on a Sanctions List; a person or entity which is organised or resident in a country or territory which is the target of comprehensive country Sanctions; or
- (b) a person or entity who is otherwise the subject of Sanctions.

"**Sanctions**" means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

"**Sanctions Authority**" means:

- (a) the United Nations;

- (b) the European Union;
- (c) the Council of Europe (founded under the Treaty of London, 1946);
- (d) the government of the United States of America; and
- (e) the government of the United Kingdom,

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury ("**OFAC**"), the US Department of Commerce, the US State Department or the US Department of the Treasury and Her Majesty's Treasury ("**HMT**").

"Sanctions List" means:

- (a) the Specially Designated Nationals and Blocked Persons List maintained and published by OFAC;
- (b) the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained and published by HMT;

and any similar list maintained and published, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

"Scheme" means the scheme of arrangement proposed to be effected by section 114 of the SA Companies Act to be proposed by the board of directors of Target to the Target Shareholders pursuant to which the Company will acquire Target, as contemplated by the Structure Paper.

"Scheme Circular" means the circular issued or to be issued by Target to Target Shareholders relating to the Scheme.

"Scheme Documents" mean:

- (a) the Scheme Press Release; and
- (b) the Scheme Circular

"Scheme Participant" means Target Shareholders who are entitled to participate in the Scheme in accordance with the terms of the Scheme.

"Scheme Press Release" means the Company and the Target's joint transaction announcement in the agreed form relating to the "Combination" (as defined therein).

"Scheme Shares" means all of the issued Target Shares which are not owned by the Company on the Closing Date.

"Screen Rate" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page

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

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

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

"Selection Notice" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests and Notices*) given in accordance with Clause 12 (*Interest Periods*) in relation to the Facility.

"SIJL" means the Security Interests (Jersey) Law 2012.

"Special Dividend" means the special interim cash dividend to be paid by the Company to the Original Company Shareholders, conditional on completion of the Scheme, as contemplated by the Structure Paper.

"Specified Time" means a day or time determined in accordance with Schedule 8 (*Timetables*).

"Spire Healthcare Group plc" means the company registered in England and Wales with company number 09084066.

"Structure Paper" means the steps paper in the agreed form as scheduled to the Bid Conduct Agreement.

"Subscription Agreement" means the subscription agreement between Al Noor Hospitals Group plc and Remgro Healthcare Holdings Proprietary Limited and dated on or about the date of this Agreement.

"Subsidiary" means any person (referred to as the **"first person"**) in respect of which another person (referred to as the **"second person"**):

- (a) holds a majority of the voting rights in that first person;
- (b) has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) controls alone or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or has the power to direct the operating and financial policies of the first person whether through ownership of voting capital by contract or otherwise;

or if the first person is a Subsidiary of a person that it is itself a Subsidiary of the second person. A Subsidiary shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or

ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security.

"Target Group" means Target and each of its subsidiaries for the time being.

"Target Offshore Assets Transfer" means the transfer of certain non-South African subsidiaries of Target to the Company Group, as contemplated by the Structure Paper.

"Target Shareholders" means the holders of Target Shares.

"Target Shares" means ordinary shares in the share capital of Target.

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

"Tender Offer" means the offer to be made by the Company to the Original Company Shareholders to buy back part of its issued share capital, conditional on completion of the Scheme and payment of the Special Dividend, contemplated by the Structure Paper.

"Tender Offer Circular" means the tender offer circular to be issued by the Company in respect of the Tender Offer.

"Total Commitments" means the aggregate of the Commitments, being £400,000,000 at the date of this Agreement.

"Total Net Debt" has the meaning given to that term in Clause 23.1 (*Financial definitions*).

"Trade Instruments" means any performance bonds, or 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 combination of the businesses of Target and the Company which will result in Target becoming a wholly-owned Subsidiary of the Company, including the Special Dividend, the Target Offshore Assets Transfer, the Scheme and the Tender Offer.

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

"Transaction Documents" means the Finance Documents and the Combination Documents.

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

"Transaction Security Documents" means each of the documents listed as being a Transaction Security Document in paragraph 1(d) of Part II of Schedule 2 (*Conditions Precedent*) and any document required to be delivered to the Agent under Part IV of

Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

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

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

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

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

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

"UK Takeover Code" means the City Code on Takeovers and Mergers published by the Panel from time to time.

"US" means the United States of America.

"Utilisation Date" means the date on which the Loan is to be made.

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

"VAT" means:

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

1.2 Construction

- (a) Unless a contrary indication appears a reference in this Agreement to:
 - (i) the **"Agent"**, the **"Arrangers"**, any **"Finance Party"**, any **"Lender"**, any **"Obligor"**, any **"Party"**, any **"Secured Party"**, the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents 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 Finance Documents;

- (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) a "**Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) a "**group of Lenders**" includes all the Lenders;
 - (vi) "**guarantee**" means (other than in Clause 20 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a provision of law is a reference to that provision as amended or re-enacted. Where such a reference is to a provision of law other than the law of England, then that provision shall have the meaning given to it in the relevant jurisdiction; and
 - (xi) a time of day is a reference to London time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default or an Event of Default is "**continuing**" if it has not been remedied or waived.

1.3 Currency symbols and definitions

"\$", "USD" and "**dollars**" denote the lawful currency of the United States of America, "£", "GBP" and "**sterling**" denote the lawful currency of the United Kingdom, "€", "EUR" and "**euro**" denote the single currency of the Participating Member States, "ZAR" and "**Rand**" denote the lawful currency of the Republic of South Africa, "AED" and "**Dirham**" denote the lawful currency of the United Arab Emirates and "CHF" denotes the lawful currency of Switzerland.

1.4 Third party rights

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

1.5 Jersey Terms

In each Finance Document, where it relates to a person incorporated or formed or having its "centre of main interests" (as that term is used in Article 3(1) of The Council of the European Union No.1346/2000) on Insolvency Proceedings) in Jersey, a reference to:

- (a) a "**composition**", "**compromise**", "**assignment**", "**moratorium**" or "**arrangement**" with any creditor, "**winding up**", "**liquidation**", "**administration**" or "**dissolution**" or "**insolvency**" includes, without limitation, bankruptcy (as that term is interpreted pursuant to Article 8 of the Interpretation (Jersey) Law 1954), a compromise or arrangement of the type referred to in Article 125 of the Companies (Jersey) Law 1991, any procedure or process referred to in Part 21 of the Companies (Jersey) Law 1991, and any other similar proceedings affecting the rights of creditors generally under Jersey law, and shall be construed so as to include any equivalent or analogous proceedings;
- (b) a "**liquidator**", "**receiver**", "**administrative receiver**", "**administrator**" or the like includes, without limitation, the Viscount of the Royal Court of Jersey, *Autorisés* or any other person performing the same function of each of the foregoing;

- (c) "**Security**" or a "**security interest**" includes, without limitation, any *hypothèque* whether conventional, judicial or arising by operation of law and any security interest created pursuant to the Security Interests (Jersey) Law 1983 or SIJL and any related legislation; and
- (d) any similar proceedings, analogous procedure or step being taken in connection with insolvency includes any step taken in connection with the commencement of proceedings towards the making of a declaration of en *désastre* in respect of any assets of such entity (or the making of such declaration).

1.6 Dutch Terms

In this Agreement, where it relates to a Dutch entity, a reference to:

- (a) a winding-up, administration or dissolution includes a Dutch entity being:
 - (i) declared bankrupt (*failliet verklaard*); and
 - (ii) dissolved (*ontbonden*);
- (b) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
- (c) a liquidator includes a curator;
- (d) an administrator includes a *bewindvoerder*;
- (e) a receiver or an administrative receiver does not include a curator or *bewindvoerder*; and
- (f) an attachment includes a *beslag*.

1.7 The Security Agent

- (a) Where the Security Agent is referred to in this Agreement as acting "**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), unless it is not required to do so, this shall mean that the Security Agent, shall, where it has in fact sought such instructions, be acting or coming to an opinion or determination on the instructions of the Majority Lenders acting reasonably and that the Security Agent shall be under no obligation to determine the reasonableness of such instructions from the Majority Lenders or whether in giving such instructions the Majority Lenders are acting in a reasonable manner.
- (b) Any entity into which the Security Agent may be merged or converted or with which the Security Agent may be consolidated, or which results from any merger, conversion or consolidation to which the Security Agent shall be a party, or any succeeding entity, including affiliated corporations, to which the Security Agent shall sell or otherwise transfer:

- (i) all or substantially all of its assets; or
- (ii) 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 Security Agent under the Finance Documents without the execution or filing of any paper or any further act or formality on the part of the parties to the Finance Documents and after the said effective date all references in this Agreement to the Security Agent shall be deemed to be references to such successor entity.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Company a sterling term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Increase

(a) The Parent may by giving prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:

(i) the Available Commitments of a Defaulting Lender in accordance with Clause 8.5 (*Right of cancellation in relation to a Defaulting Lender*); or

(ii) the Commitments of a Lender in accordance with:

(A) Clause 8.1 (*Illegality*); or

(B) paragraph (a) of Clause 8.4 (*Right of cancellation and repayment in relation to a single Lender*),

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

(iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Parent (each of which shall not be a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;

(iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;

(v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;

- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
 - (vii) any increase in the Commitments shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Parent and the Increase Lender upon being so satisfied.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) Unless the Agent or the Security Agent (as applicable) agrees otherwise, the Parent shall promptly on demand pay to the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (e) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 26.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 26.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
- (f) Clause 26.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
- (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.4 Obligors' Agent

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

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

3. **PURPOSE**

3.1 **Purpose**

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

- (a) payment (directly or indirectly) to the Original Company Shareholders of the amounts due to them from the Company pursuant to the Tender Offer and the Special Dividend; and
- (b) payment (directly or indirectly) of the Financing Costs.

3.2 **Monitoring**

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

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to the Loan if, on or before the Utilisation Date, the Agent has received all of the documents and other evidence listed in Part I and Part II of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to all the Original Lenders (acting reasonably), the receipt of which has not been waived or deferred in writing by the Agent (acting on the instructions of the all the Lenders). The Agent shall notify the Parent, Arrangers and Lenders promptly upon being so satisfied.

4.2 **Further conditions precedent**

- (a) Subject to Clause 4.1 (*Initial conditions precedent*) the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to the Loan if, on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Major Default is continuing or would result from the proposed Utilisation; and
 - (ii) all the Major Representations are true in all material respects.
- (b) During the Availability Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*) and subject as provided in Clause 8.1 (*Illegality*) and Clause 9.1 (*Change of Control or Delisting*) (**provided that** in relation to paragraph (a)(ii) of Clause 9.1 (*Change of Control or Delisting*) only to the extent such delisting or cessation of trading arises as a direct result of any action (or inaction) of the Company or any Original Guarantor), none of the Finance Parties shall be entitled to:
 - (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of the Loan;

- (ii) rescind, terminate or cancel this Agreement or the Facility or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of the Loan;
- (iii) refuse to participate in the making of the Loan;
- (iv) exercise any right of set-off or counterclaim in respect of the Loan to the extent to do so would prevent or limit the making of the Loan; or
- (v) cancel, demand, place on demand, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or take any other action that it would otherwise be entitled to take under Clause 25.16 (*Acceleration*) to the extent to do so would prevent or limit the making of the Loan,

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

4.3 **Maximum number of Utilisations**

The Company may deliver one Utilisation Request only.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

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

5.2 Completion of a Utilisation Request for the Loan

The Utilisation Request for the Loan is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Loan comply with Clause 5.3 (*Currency and amount*); and
- (c) the proposed Interest Period complies with Clause 12 (*Interest Periods*).

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be sterling.
- (b) The amount of the proposed Loan must be a minimum of £10,000,000 or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled immediately following the making of the Loan.

SECTION 4

EXTENSION, REPAYMENT, PREPAYMENT AND CANCELLATION

6. EXTENSION OPTION

- (a) The Company may by notice to the Agent (an "**Extension Notice**") request that the Facility remain available for two further periods of six Months from the Initial Maturity Date. The first Extension Notice may request an extension for a period of six Months from the Initial Maturity Date (the "**First Extension Maturity Date**"). The second Extension Notice may request an extension for a period of six Months from the First Extension Maturity Date.
- (b) An Extension Notice may only be given by the Company not more than 60 days and not less than 30 days before the Initial Maturity Date, in the case of the first Extension Notice, or not more than 60 days and not less than 30 days before the First Extension Maturity Date, in the case of the second Extension Notice.
- (c) Following the delivery of the Extension Notice, the Final Maturity Date shall be automatically extended for a further period of six Months (as applicable) **provided that** no Event of Default has occurred and is continuing on the date of the relevant Extension Notice and the Initial Maturity Date or First Extension Maturity Date (as applicable).
- (d) The Company shall not be entitled to request more than two extensions of the Facility under paragraph (a) above and in no circumstances may the Facility be extended for an aggregate period of more than one year from the Initial Maturity Date.
- (e) The Agent must promptly notify the Lenders of an Extension Notice.

7. REPAYMENT

The Company shall repay the aggregate amount of the Loan in full on the Final Maturity Date.

8. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

8.1 Illegality

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled; and

- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 40.6 (*Replacement of Lender*), the Company shall repay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

8.2 Voluntary cancellation

The Parent may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £10,000,000 or, if less, the amount of the Available Facility) of the Available Facility. Any cancellation under this Clause 8.2 shall reduce the Commitments of the Lenders rateably.

8.3 Voluntary prepayment of the Loan

The Company may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of £10,000,000 or, if less, the outstanding amount of the Loan).

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

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 15.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Company or an Obligor under Clause 15.3 (*Tax indemnity*) or Clause 16.1 (*Increased costs*),

the Parent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), the Company shall repay that Lender's participation in the Loan together with all interest and other amounts accrued under the Finance Documents.

8.5 **Right of cancellation in relation to a Defaulting Lender**

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

9. **MANDATORY PREPAYMENT AND CANCELLATION**

9.1 **Change of Control or Delisting**

- (a) Upon the occurrence of:
 - (i) a Change of Control; or
 - (ii) a delisting of the ordinary shares in the Company from the premium listing segment of the Official List maintained by the Financial Conduct Authority or such shares ceasing to trade on the London Stock Exchange's main market for listed securities (other than such shares ceasing to trade for a period not longer than five Business Days),

(whether or not the Parent has notified the Agent of that event in accordance with paragraph (b) below) the Facility will be cancelled and the Loan, together with accrued but unpaid interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.
- (b) The Parent shall promptly notify the Agent up becoming aware of the occurrence of any event referred to in paragraph (a) above or upon becoming aware that such event will occur.

9.2 **Disposal and Capital Markets Proceeds**

- (a) For the purposes of this Clause 9.2, Clause 9.3 (*Application of mandatory prepayments*) and Clause 9.4 (*Mandatory Prepayment Accounts*):

"Capital Markets Proceeds" means the cash proceeds received by any member of the Group in respect of:

- (i) the issuance of any shares or stock (whether ordinary or preference and whether or not redeemable) or any other equity or equity-linked issuance; and
- (ii) any loan facilities, bank debt, debt capital market instruments or securities,

in each case, except for Excluded Capital Markets Proceeds and after deducting all fees, costs and expenses which are properly incurred by any member of the Group with respect to any such transaction to persons who are not members of the Group or the transfer of proceeds thereof intra-Group and any Tax incurred and required to be paid or reasonably estimated to be required to be paid by the relevant member of the Group (taking account of any available credit, deduction or allowance) to be payable in connection with that capital markets issuance or the transfer of the proceeds thereof intra-Group.

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

"Disposal Proceeds" means the cash consideration actually received by any member of the Group (and if the proceeds are received by a person that is not a wholly-owned member of the Group, the amount of the consideration that is proportionate to the interest in such person held by the Group) for any Disposal made by any member of the Group, except for Excluded Disposal Proceeds and after deducting:

- (i) all fees, costs and expenses which are properly incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group or the transfer of the proceeds thereof intra-Group (including, without limitation, amounts payable by way of purchase price adjustment or otherwise to the purchaser);
- (ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance);
- (iii) any amount of cash retained in an escrow or similar arrangement (for so long as such amount is retained) or any amount for which the Company reasonably makes provision in its accounts in either case in respect of actual or potential liabilities determined by the Company acting in good faith in respect of that Disposal; and
- (iv) any costs of closure, relocation, reorganisation, restructuring or other costs incurred in preparing the asset for that Disposal,

and only to the extent that the Company is lawfully able to apply such net cash proceeds in prepayment and, in the case of any such Disposal effected or made by any member of the Group other than the Company, such part of the net cash proceeds thereof as:

- (A) such member of the Group would be able lawfully to make available directly or indirectly, by distribution, loan and/or otherwise to the Company to enable it to make such application; and

- (B) can be repatriated to the Company in order for the Company to apply the same in prepayment without the incurrence of a tax liability in excess of 5 per cent. of the amount to be prepaid or breaching any relevant exchange control or similar restriction in the country where the net cash proceeds are received or receivable by the relevant member of the Group,

provided that the Company shall use its commercially reasonable endeavours to ensure that all net cash proceeds in relation to any such Disposal (or an equivalent amount of other available cash resources of the Group) are capable of being and are used to prepay the Facility in accordance with this Clause 9 as soon as reasonably practicable.

"Excluded Capital Markets Proceeds" means Capital Markets Proceeds arising under:

- (i) any issue of equity (of any type and howsoever described) by one member of the Group to another member of the Group;
- (ii) the Tender Offer;
- (iii) any intra-group loan facilities, debt instruments or other instruments or securities (howsoever described);
- (iv) any loan facilities, bank debt, debt capital market instruments or securities existing on the date of this Agreement (including any utilisations or issuances after the date of this Agreement under such facilities, debt, instruments or securities) or following the refinancing of any such loan facilities, bank debt, debt capital market instruments or other securities permitted pursuant to paragraph (f) of the definition of "Permitted Financial Indebtedness"; and
- (v) any revolving credit or overdraft facilities made available to any member of the Group solely for the working capital purposes of the Group or any member of the Group.

"Excluded Disposal Proceeds" means Disposal Proceeds:

- (i) arising as a result of a Disposal falling within paragraphs (a) to (m) of the definition of "Permitted Disposal";
- (ii) which are received by a member of the Group in respect of any one transaction or series of related transactions and which do not exceed £5,000,000 (or its equivalent in any another currency or currencies); or
- (iii) which do not fall within paragraphs (i) or (ii) above and which, when aggregated with all other proceeds excluded by virtue of this paragraph (iii), do not exceed £25,000,000 (or its equivalent in any other currency or currencies) in aggregate in any Financial Year.

- (b) The Company shall prepay the Loan in amounts equal to the following amounts at the times and in the order of application contemplated by Clause 9.3 (*Application of mandatory prepayments*):
 - (i) the amount of Disposal Proceeds; and
 - (ii) the amount of Capital Markets Proceeds.

9.3 Application of mandatory prepayments

- (a) Unless the Company makes an election under paragraph (b) below, in the case of any prepayment relating to the amounts of Disposal Proceeds or Capital Markets Proceeds the Company shall prepay the Loan within five Business Days of receipt of those proceeds.
- (b) Subject to paragraph (c) below, the Company may elect that any prepayment under Clause 9.2 (*Disposal and Capital Markets Proceeds*) be applied in prepayment of the Loan on the last day of an Interest Period. If the Company makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.
- (c) If the Company has made an election under paragraph (b) above but an Event of Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan equal to the amount of the relevant prepayment shall be immediately due and payable unless the Majority Lenders otherwise agree in writing.

9.4 Mandatory Prepayment Accounts

- (a) The Parent shall ensure that an amount equal to any Disposal Proceeds and Capital Markets Proceeds in respect of which the Company has made an election under paragraph (b) of Clause 9.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group;
- (b) The Parent irrevocably authorises the Agent to apply amounts credited to the Mandatory Prepayment Account to pay amounts due and payable under Clause 9.3 (*Application of mandatory prepayments*).
- (c) The Agent with which a Mandatory Prepayment Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless an Event of Default is continuing and (ii) each such account is subject to the Transaction Security.

10. RESTRICTIONS

10.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*), paragraph (b) of Clause 9.3 (*Application of mandatory prepayments*) or Clause 9.4 (*Mandatory Prepayment Accounts*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

10.2 Interest and other amounts

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

10.3 No reborrowing of the Facility

The Company may not reborrow any part of the Facility which is prepaid.

10.4 Prepayment in accordance with Agreement

The Company shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

10.5 No reinstatement of Commitments

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

10.6 Agent's receipt of Notices

If the Agent receives a notice under Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*) or an election under paragraph (b) of Clause 9.3 (*Application of Mandatory prepayments*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

10.7 Effect of repayment and prepayment on Commitments

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

10.8 Application of prepayments

Any prepayment of the Loan (other than a prepayment pursuant to Clause 8.1 (*Illegality*) or Clause 8.4 (*Right of cancellation and repayment in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in the Loan.

SECTION 5 COSTS OF UTILISATION

11. INTEREST

11.1 Calculation of interest

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

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

11.2 Payment of interest

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

11.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 11.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

11.4 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the Company of the determination of a rate of interest under this Agreement.

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

12. INTEREST PERIODS

12.1 Selection of Interest Periods

- (a) The Company may select an Interest Period for the Loan in the Utilisation Request or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Agent by the Company not later than the Specified Time.
- (c) If the Company fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be three Months.
- (d) Subject to this Clause 12, the Company may select an Interest Period of one Month or three Months or of any other period agreed between the Company, the Agent and all the Lenders.
- (e) An Interest Period for the Loan shall not extend beyond the Final Maturity Date.
- (f) Each Interest Period for the Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

12.2 Non-Business Days

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

13. CHANGES TO THE CALCULATION OF INTEREST

13.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time for a period equal in length to the Interest Period of that Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for the Interest Period there shall be no LIBOR for that Loan and Clause 13.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

13.2 Calculation of Reference Bank Rate

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

13.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed 35 per cent. of that Loan) that the cost to it of funding its participation in the Loan from whatever source it may reasonably select would be in excess of LIBOR, then Clause 13.4 (*Cost of funds*) shall apply to the Loan for the relevant Interest Period.

13.4 Cost of funds

- (a) If this Clause 13.4 applies, the rate of interest on each Lender's share of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within five Business Days of the first day of that Interest Period (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan from whatever source it may reasonably select.
- (b) If this Clause 13.4 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.
- (d) If this Clause 13.4 applies pursuant to Clause 13.3 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

- (e) If this Clause 13.4 applies pursuant to Clause 13.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

13.5 **Notification to Company**

If Clause 13.4 (*Cost of funds*) applies the Agent shall, as soon as is practicable, notify the Company.

13.6 **Break Costs**

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

14. **FEES**

14.1 **Commitment fee**

- (a) Mediclinic CHF Finco Limited shall pay to the Agent (for the account of each Lender) a fee computed at the rate of 30 per cent. of the applicable Margin on that Lender's Available Commitment for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

14.2 **Duration fee**

If the Final Maturity Date is extended pursuant to Clause 6 (*Extension Option*), Mediclinic CHF Finco Limited shall pay to the Agent (for the account of each Lender):

- (a) on the Initial Maturity Date, a fee in sterling computed at the rate of 0.25 per cent. of the Total Commitments as at the Initial Maturity Date; and

- (b) on the First Extension Maturity Date, a fee in sterling computed at the rate of 0.75 per cent. of the Total Commitments as at the First Extension Date.

14.3 Non-Refundable Deal Origination fee

Mediclinic CHF Finco Limited shall pay to the Arrangers a non-refundable deal origination fee in the amount and at the times agreed in a Fee Letter.

14.4 Agency fee

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

14.5 Security Agent fee

Mediclinic CHF Finco Limited shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

15. TAX GROSS-UP AND INDEMNITIES

15.1 Definitions

In this Agreement:

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

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

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

"Qualifying Lender" means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
 - (i) a Lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

- (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
 - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (iii) a Treaty Lender; or
- (b) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

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

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

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 15.2 (*Tax gross-up*) or a payment under Clause 15.3 (*Tax indemnity*).

"Treaty Lender" means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty; and
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (c) meets all other conditions in the Treaty for full exemption from United Kingdom taxation on interest which relate to the Lender (including its tax or other status, the manner in which or the period for which it holds any rights under a Finance Document, the reasons or purposes for its acquisition of such rights and the nature of any arrangements by which it disposes of or otherwise turns to account such rights) except that for this purpose it is assumed that there are met:
 - (i) any condition contained in the Treaty which relates to the amount or terms of that advance or to there not being a special relationship between the Obligor and a Finance Party or between both of them and another person by reason of which the amount of interest paid exceeds the amount which would have been paid in the absence of such relationship; and
 - (ii) any necessary procedural formalities.

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

"UK Non-Bank Lender" means a Lender which gives a Tax Confirmation in the Assignment Agreement, or Transfer Certificate or Increase Confirmation which it executes on becoming a Party.

Unless a contrary indication appears, in this Clause 15 a reference to **"determines"** or **"determined"** means a determination made by the relevant person acting reasonably.

15.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax

Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Parent and that Obligor.

- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender (and if, in the case of a Treaty Lender, the payment were one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488)), but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "Qualifying Lender" and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "Qualifying Lender" and:
 - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or

- (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) below (as applicable) below.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g)
 - (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
 - (ii)
 - (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and
 - (B) a New Lender or an Increase Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes,

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

- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
 - (i) the Company has not made a Borrower DTTP Filing in respect of that Lender; or
 - (ii) the Company has made a Borrower DTTP Filing in respect of that Lender but:
 - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
 - (B) HM Revenue & Customs has not given the Company authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

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

15.3 Tax indemnity

- (a) The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident; or

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

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

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

- (A) is compensated for by an increased payment under Clause 15.2 (*Tax gross-up*); or

- (B) would have been compensated for by an increased payment under Clause 15.2 (*Tax gross-up*) but was not so compensated for solely because one of the exclusions in paragraph (d) of Clause 15.2 (*Tax gross-up*) applied; or

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

- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.

- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 15.3, notify the Agent.

15.4 Tax Credit

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

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

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

15.5 Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

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

- (c) a Treaty Lender.

If a New Lender or an Increase Lender fails to indicate its status in accordance with this Clause 15.5 then such New Lender or Increase Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 15.5.

15.6 Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, other than a Finance Document pursuant to which any rights under this Agreement are assigned or transferred by a Lender under Clause 26 (*Changes to the Lenders*).

15.7 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any amounts in respect of VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration);
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant Tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly,

following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant Tax authority.
- (d) Any reference in this Clause 15.7 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unit) 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 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 which is not 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 unit) 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 unit) at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

15.8 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests

for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

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

15.9 FATCA Deduction

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

16. INCREASED COSTS

16.1 Increased costs

- (a) Subject to Clause 16.3 (*Exceptions*) the Parent shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;

- (ii) compliance with any law or regulation made after the date of this Agreement; or
- (iii) the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

(b) In this Agreement:

(i) **"Increased Costs"** means:

- (A) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Finance Party);
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

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

(ii) **"Basel III"** means:

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

(iii) **"CRD IV"** means:

- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for

credit institutions and investment firms and amending Regulation (EU) No 648/2012); and

- (B) 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.

16.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 16.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

16.3 Exceptions

- (a) Clause 16.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 15.3 (*Tax indemnity*) (or would have been compensated for under Clause 15.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 15.3 (*Tax indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the application of or compliance with Basel III or CRD IV except to the extent that the relevant Finance Party confirms to the Company that it is generally seeking to claim such Increased Costs from comparable borrowers where the facilities extended to such borrowers include a right for the Finance Party to recover such costs **provided that** the claiming Finance Party shall determine comparability in this respect on the basis of all aspects of the relationship between that claiming Finance Party and its clients.
- (b) In this Clause 16.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 15.1 (*Definitions*).

17. OTHER INDEMNITIES

17.1 Currency indemnity

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

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

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

17.2 Other indemnities

- (a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arrangers and each other Secured Party against any cost, loss or liability (excluding loss of Margin) incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 32 (*Sharing Among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in the Loan requested by the Company in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Company.
- (b) The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) arising out of the

Acquisition, the funding of any part of the Acquisition or the Cancellation Offer or any other Acquisition Documents (including but not limited to those incurred in respect of with any litigation, arbitration or administrative proceedings or regulatory investigation concerning the Scheme or the Cancellation Offer or any Combination Documents), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate) or failure by that Finance Party (in wilful breach of an obligation under this Agreement) to fund its Commitment. Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 17.2 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

17.3 Indemnity to the Agent

The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

17.4 Environmental Indemnity

The Obligors agree to jointly and severally indemnify each Finance Party, each Affiliate of a Finance Party and their respective directors, officers and employees (together, the "**Indemnified Parties**") against any cost, loss or liability suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or wilful default) which:

- (a) arises by virtue of any breach of any Environmental Law (whether by any Obligor or any other person);
- (b) arises in connection with an Environmental Claim; or
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any

Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party,

which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Affiliate or any director, officer or employee of a Finance Party or its Affiliate may rely on this Clause 17.4 as a stipulation for its or his benefit.

17.5 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall within three Business Days of demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them (acting reasonably) as a result of:
 - (i) any failure by the Parent to comply with its obligations under Clause 19 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property,(otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 17.5 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

18. MITIGATION BY THE LENDERS

18.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or

pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 15 (*Tax Gross-up and Indemnities*) or Clause 16 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

18.2 Limitation of liability

- (a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 18.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 18.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

19. COSTS AND EXPENSES

19.1 Transaction expenses

The Parent shall (or shall procure that an Obligor will) pay the Agent, the Arrangers and the Security Agent the amount of all costs and expenses (including legal fees, reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security, within three Business Days of demand or on the last day of the Availability Period (if later); and
- (b) any other Finance Documents executed after the date of this Agreement, within five Business Days of demand.

19.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 33.10 (*Change of currency*),

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

19.3 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 17.5 (*Indemnity to the Security Agent*) and this Clause 19 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

19.4 Enforcement and preservation costs

The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees (including legal fees on the scale as between attorney and own client) whether incurred before or after judgment)) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7 GUARANTEE

20. GUARANTEE AND INDEMNITY

20.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 20 if the amount claimed had been recoverable on the basis of a guarantee.

20.2 Continuing Guarantee

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

20.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 20 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

20.4 Waiver of defences

The obligations of each Guarantor under this Clause 20 will not be affected by an act, omission, matter or thing which, but for this Clause 20, would reduce, release or prejudice any of its obligations under this Clause 20 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

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

20.5 **Guarantor Intent**

Without prejudice to the generality of Clause 20.4 (*Waiver of defences*), 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 whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

20.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 20. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

20.7 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 20.

20.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 20:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 20.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 33 (*Payment Mechanics*).

20.9 Release of Guarantors' right of contribution

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

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

20.10 Additional security

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

20.11 Guarantee Limitations

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

20.12 Jersey law waiver

- (a) Each Guarantor abandons and waives any right it may have at any time under the existing or future laws of Jersey, whether by virtue of the *droit de discussion* or otherwise, to require that recourse be had by the Agent or by any other Finance Party to the assets of any other Obligor or any other person before any claim is enforced against such Guarantor in respect of the obligations assumed by it under Clause 20 (*Guarantee and Indemnity*) or in respect of any obligation assumed by it under any Transaction Document.
- (b) Each Guarantor undertakes that if, at any time, the Agent or any other Finance Party sues or otherwise takes action against such Guarantor in respect of its obligations under Clause 20 (*Guarantee and Indemnity*) or in respect of any obligations assumed by it under any Transaction Document and any other Guarantor is not also sued, such Guarantor agrees to be bound by its obligations under Clause 20 (*Guarantee and Indemnity*) and by any other obligations under any Transaction Document whether or not such other Guarantor is made a party to legal proceedings for recovery of the amount due or owing and whether or not the formalities required by any of the laws of Jersey (whether or not now existing) regarding the rights and obligations of sureties shall have been observed.

- (c) Each Guarantor abandons and waives any right it may have at any time under existing or future laws of Jersey, whether by virtue of *droit de division* or otherwise, to require that any liability under Clause 20 (*Guarantee and Indemnity*) or any liability under any Transaction Document be divided or apportioned with any other Guarantor or any other person or reduced in any manner whatsoever.
- (d) Each Guarantor agrees that the waiver granted under this Clause 20.12 shall apply also in respect of any obligation by way of indemnity assumed under any Transaction Document by any such Guarantor.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

21. REPRESENTATIONS

21.1 General

Each Obligor makes the representations and warranties set out in this Clause 21 to each Finance Party.

Status, authorisations and governing law

21.2 Status

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

21.3 Binding obligations

- (a) The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid and, subject to the Legal Reservations and, in respect of the Transaction Security, applicable Perfection Requirements, binding and enforceable obligations; and
- (b) Without limiting the generality of paragraph (a) above, subject to the Legal Reservations and applicable Perfection Requirements, each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

21.4 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it where such conflict has or is reasonably likely to have a Material Adverse Effect;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or its assets or constitute a default or termination event (however described) under any such agreement or instrument to an extent that has, or is reasonably likely to have, a Material Adverse Effect.

21.5 Power and authority

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

21.6 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party and to ensure that the obligations expressed to be assumed by it in the Transaction Documents to which it is a party are legal, valid and binding and, subject to the Legal Reservations and applicable Perfection Requirements, enforceable; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions subject to the Legal Reservations and applicable Perfection Requirements,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

21.7 Governing law and enforcement

Subject to the Legal Reservations:

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

No insolvency, default or tax liability

21.8 Insolvency

- (a) No:
 - (i) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 25.7 (*Insolvency proceedings*); or

(ii) creditors' process described in Clause 25.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a Material Company and none of the circumstances described in Clause 25.6 (*Insolvency*) applies to a Material Company.

(b) To the best of its knowledge no Material Company incorporated in the Republic of South Africa is *financially distressed* (as defined in the SA Companies Act) and there is no reasonable likelihood of any Material Company becoming *financially distressed* (as defined in the SA Companies Act) within the next six Months.

21.9 No filing or stamp taxes

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

21.10 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Documents to a Lender which is:

(a) a Qualifying Lender:

(i) falling within paragraph (a)(i) of the definition of "Qualifying Lender";

(ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of "Qualifying Lender"; or

(iii) falling within paragraph (b) of the definition of "Qualifying Lender";
or

(b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

21.11 No default

(a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of the Loan or the entry into, the performance or, or any transaction contemplated by any Transaction Document.

(b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or

any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

Provision of information – general

21.12 No misleading information

Save as disclosed in writing to the Agent and the Arrangers prior to the date of this Agreement:

- (a) all material factual information provided to a Finance Party by or on behalf of the Company or Target in connection with the Transaction and/or the Group on or before the date of this Agreement and not superseded before that date is to the best of its knowledge, information and belief accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and
- (b) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.

21.13 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations (consolidated in the case of Target and the Company) during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of Target and the Company) since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 22.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
 - (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

No proceedings or breach of laws

21.14 No proceedings

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

21.15 No breach of Laws

It has not (and none of its Subsidiaries has) breached any law or regulation applicable to it which breach has or is reasonably likely to have a Material Adverse Effect.

21.16 Taxation

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax the failure to file of which or the failure to pay of which has or is reasonably likely to have a Material Adverse Effect.
- (b) No claims have been made, and to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group is reasonably likely to arise which has or is reasonably likely to have a Material Adverse Effect.

21.17 Environmental Laws

- (a) Each member of the Group is in compliance with Clause 24.3 (*Environmental Compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance or which is reasonably likely to give rise to a financial liability for any Finance Party.
- (b) No Environmental Claim (to the best of its knowledge and belief (having made due and careful enquiry)) has been commenced or is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect or which is reasonably likely to give rise to a financial liability for any Finance Party.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

21.18 Anti-corruption law

- (a) Neither it nor any other member of the Group nor, to its knowledge, any director, officer, agent, employee or Affiliate, has engaged in any activity or conduct which would violate, in any material respect, any applicable anti-corruption or anti-money laundering laws or regulations.
- (b) It and each member of the Group has instituted and maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve compliance with applicable anti-corruption or anti-money laundering laws or regulations.

21.19 Sanctions

- (a) Neither it nor any other member of its Group nor, to its knowledge, any director, officer, agent, employee or Affiliate of any member of the Group is the target of Sanctions or a Sanctioned Entity.
- (b) It and each member of the Group has instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with Sanctions.

Security and ownership of assets

21.20 Security and Financial Indebtedness

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

21.21 Ranking

Subject to the Legal Reservations and the Perfection Requirements, the Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

21.22 Good title to assets

It and each of its Subsidiaries has a good title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business where failure to do so or to so have has or is reasonably likely to have a Material Adverse Effect.

21.23 Legal and beneficial ownership

It is the sole legal and beneficial owner of the assets over which it purports to grant the Transaction Security.

21.24 **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.

21.25 **Intellectual Property**

It and each of its Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
- (b) does not, in carrying on its business, infringe any Intellectual Property of any third party in any material respect; and
- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it,

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

Provision of information - Group

21.26 **Group Structure Chart**

Assuming the Closing Date has occurred and all the steps set out in the Structure Paper have been completed, the Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions Precedent*) is true, complete and accurate in all material respects.

Miscellaneous

21.27 **Combination Documents**

The Combination Documents:

- (a) are or will each be in compliance in all material respects with the SA Companies Act and the UK Takeover Code; and
- (b) in the case of the Scheme Documents and the Tender Offer Circular contain or will contain all the material terms relating to the relevant steps of the Transaction as of the date of publication.

21.28 **Pari Passu Ranking**

Its payments obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by Law.

21.29 **No immunity**

In any proceedings taken in any Relevant Jurisdiction it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Finance Document to which it is a party.

21.30 **Centre of main interests and establishments**

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

21.31 **Banking Act 2009**

Neither it nor any member of the Group is an entity which is within the scope of the stabilisation powers under the special resolution regime under the Banking Act 2009 or similar laws in any other jurisdiction.

21.32 **Times when representations made**

- (a) All the representations and warranties in this Clause 21 are made by each Original Guarantor on the date of this Agreement.
- (b) All the representations and warranties in this Clause 21 are deemed to be made by each Obligor on the Utilisation Date.
- (c) The Repeating Representations are deemed to be made by each Obligor on the date of the Utilisation Request, on the Utilisation Date and on the first day of each Interest Period (except that those contained in paragraphs (a)-(c) of Clause 21.13 (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- (d) All the representations and warranties in this Clause 21 except Clause 21.12 (*No misleading information*) and Clause 21.26 (*Group Structure Chart*) are deemed to be made by each Additional Guarantor on the day on which it becomes (or it is proposed that it becomes) an Additional Guarantor.
- (e) All the representations and warranties in this Clause 21 are deemed to be made by the Company on the day on which it accedes to this Agreement in its capacity as the "Company" and the borrower of the Facility.
- (f) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

22. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 22:

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 22.1 (*Financial statements*).

22.1 Financial statements

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

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years:
 - (i) its audited consolidated financial statements for that Financial Year; and
 - (ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; and
- (b) as soon as they are available, but in any event within 90 days after the end of the first half of each of its Financial Years its consolidated financial statements for that Financial Half Year.

22.2 Provision and contents of Compliance Certificate

- (a) The Parent shall supply a Compliance Certificate to the Agent with each set of its Annual Financial Statements and each set of financial statements delivered pursuant to paragraph (b) of Clause 22.1 (*Financial statements*).
- (b) If applicable, each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 23 (*Financial Covenant*).
- (c) Each Compliance Certificate shall be signed by the financial director of the Parent.
- (d) If following the delivery of a Compliance Certificate pursuant to this Clause 22.2, the Agent (acting on the instructions of the Majority Lenders) notifies the Parent in writing that it requires a Compliance Certificate to be reported on by the Company's Auditors, the Parent shall procure that the Company's Auditors deliver a report on the relevant Compliance Certificate (in the form agreed between the Parent and the Agent acting reasonably) within 15 days of such notice by the Agent.

22.3 Requirements as to financial statements

- (a) The Parent shall procure that each set of Annual Financial Statements and each set of financial statements delivered pursuant to paragraph (b) of Clause 22.1 (*Financial statements*) includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that each set of its Annual Financial Statements shall be audited by the Company's Auditors.

- (b) Each set of financial statements delivered pursuant to Clause 22.1 (*Financial statements*):
 - (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up;
 - (ii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the case of any Obligor in the preparation of the Original Financial Statements for that Obligor, unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and the Company's Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:
 - (A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which that Obligor's Original Financial Statements were prepared; and
 - (B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 23 (*Financial Covenant*) has been complied with, and to make an accurate comparison between the financial position indicated in those financial statements or that Obligor's Original Financial Statements (in the case of an Obligor).

22.4 **Information: miscellaneous**

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

- (a) at the same time as they are dispatched, copies of all material documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them);
- (b) as soon as reasonably practicable upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group or its assets and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and

- (d) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group as any Finance Party through the Agent may reasonably request where (unless a Default is continuing) such information can be provided without material cost to the Group or any Group Company.

22.5 Notification of default

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

22.6 No personal liability

No director, officer or employee of the Company or any member of the Group shall be personally liable for any statement made by it in any certificate or other document as required to be delivered to any Finance Party pursuant to the Finance Documents.

22.7 "Know your customer" checks

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

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

under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) If the accession of the Company or an Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of the Company or an Additional Guarantor to this Agreement.

23. FINANCIAL COVENANT

23.1 Financial definitions

In this Agreement:

"Adjusted EBITDA" means, in relation to a Relevant Period, EBITDA for that Relevant Period adjusted by:

- (a) including the operating profit before interest, tax, depreciation and amortisation (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; and
- (b) excluding the operating profit before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) attributable to any member of the Group (or to any business or assets) disposed of during the Relevant Period for that part of the Relevant Period.

"Adjusted Leverage" means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to Adjusted EBITDA in respect of that Relevant Period.

"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 for or in respect of:

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

- (b) any amount raised by acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any amount raised pursuant to 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 any payment obligations (but not any such obligations arising under Trade Instruments);
- (g) any amount raised by the issue of shares which are redeemable before the Final Maturity Date or are otherwise classified as borrowings under the Accounting Principles;
- (h) any amount raised under a transaction of any other kind (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
- (i) (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 (h) above.

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

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) not including any accrued interest owing to any member of the Group;
- (c) before taking into account any Exceptional Items;
- (d) before deducting any Transaction Costs;
- (e) after deducting the amount of any profit (or adding back the amount of any loss) of any member of the Group which is attributable to minority interests;
- (f) plus or minus the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities;

- (g) before taking into account any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (h) excluding the charge to profit represented by the expensing of all non-cash costs incurred in connection with any share option scheme;

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.

"Exceptional Items" means any exceptional, one off, non-recurring or extraordinary items.

"Finance Lease" means any lease or hire purchase contract which would, in accordance with the Accounting Principles applicable to the Original Financial Statements, be treated as a finance or capital lease.

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

"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.

"Relevant Period" means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the day starting six months after the last day of the Financial Year.

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

- (a) excluding any such obligations to any other member of the Group;
- (b) including, in the case of Finance Leases only, their capitalised value; and
- (c) deducting the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Group at that time,

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

23.2 Financial condition

The Company shall ensure that Adjusted Leverage in respect of any Relevant Period (beginning with the Relevant Period ending on 30 June 2016) shall not exceed 5.50:1.

23.3 Financial testing

- (a) Subject to paragraph (b) below, the financial covenant set out in Clause 23.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraphs (a)(i) and (b) of Clause 22.1 (*Financial statements*)

and/or each Compliance Certificate delivered pursuant to Clause 22.2 (*Provision and contents of Compliance Certificate*).

- (b) For the purpose of Clause 23.2 (*Financial condition*) for each of the Relevant Periods ending on a date which is less than 12 months after the Closing Date, EBITDA shall be calculated on a *pro forma* basis by reference to the amount of EBITDA as disclosed in the semi-annual financial statements and/or Compliance Certificates for the six month period ending after the Closing Date which shall include the operating profit before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Company, the Target and each of their respective Subsidiaries for the six month period ending prior to the Closing Date that form part of the Relevant Period.
- (c) In relation to any calculation under this Clause 23.3 in respect of any Relevant Period, any amount denominated in a currency other than sterling shall be taken into account using the relevant spot rate of exchange on the last day of such Relevant Period.

24. GENERAL UNDERTAKINGS

The undertakings in this Clause 24 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and compliance with laws

24.1 Authorisations

Each Obligor shall promptly:

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

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

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

24.2 Compliance with laws

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

24.3 **Environmental Compliance**

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

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law to the extent appropriate in light of the business of the relevant member of the Group.

24.4 **Environmental Claims**

Each Obligor shall (through the Parent), as soon as possible upon becoming aware of the same, inform the Agent in writing of:

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

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect or where the claim is reasonably likely to give rise to a financial liability for any Finance Party.

24.5 **Anti-corruption law**

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) knowingly directly or indirectly engage in any activity or conduct which would violate any applicable anti-corruption or, in any material respect, anti-money laundering laws or regulations.
- (b) Each Obligor shall (and the Parent shall ensure each member of the Group will) institute and maintain policies and procedures reasonably designed to promote and achieve compliance with any applicable anti-corruption or anti-money laundering laws or regulations.
- (c) It will not knowingly directly or indirectly use the proceeds of the Facility or lend, contribute or otherwise make available such proceeds to any member of the Group or other person or entity for the purpose of financing or facilitating any activity that would violate applicable anti-corruption or, in any material respect, anti-money laundering laws and regulations.

24.6 **Sanctions**

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) knowingly contravene any Sanctions.

- (b) Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain policies and procedures designed to promote and achieve compliance with applicable Sanctions.
- (c) Neither it nor any other member of the group will use the proceeds of the Facility or lend, contribute or otherwise make available such proceeds to any member of the Group or other person or entity for the purpose of financing or facilitating any activity that, at the time of such financing or facilitation, would be impermissible under any Sanctions.

Restrictions on business focus

24.7 Merger

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than pursuant to the Transaction, a Permitted Transaction or any sale, lease, transfer or other disposal permitted pursuant to Clause 24.13 (*Disposals*).

24.8 Change of business

The Parent shall procure that no substantial change (other than as a result of the Transaction) is made to the general nature of the business of the Group taken as a whole from that carried on by the Group at the date of this Agreement.

24.9 Acquisitions

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

24.10 Joint ventures

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any Joint Venture established in the form of an unlimited partnership.

Restrictions on dealing with assets and Security

24.11 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those

creditors whose claims are mandatorily preferred by laws of general application to companies.

24.12 Negative pledge

In this Clause 24.12, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (d) below:

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms other than by way of a Permitted Disposal;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Mediclinic Jersey Limited shall not (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security or Quasi-Security over the shares held by it in Spire Healthcare Group plc other than the Transaction Security.
- (d) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

24.13 Disposals

- (a) Except as permitted under paragraph (c) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Mediclinic Jersey Limited shall not (and the Parent shall ensure no other member of the Group will) enter into a single transaction or series of transactions (whether related or not) and whether voluntary or involuntary to

sell, lease, transfer or otherwise dispose of any shares held by it in Spire Healthcare Group plc.

- (c) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

24.14 **Arm's length basis**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.
- (b) Paragraph (a) above does not apply to:
 - (i) a transaction between one member of the Group and another; or
 - (ii) any transaction with a "related party" for the purpose of any applicable listing or stock exchange rules or regulations in respect of a venue on which the Parent or Company's shares are listed, provided such transaction is in accordance with the rules and regulations of the relevant stock exchange or market,

Restrictions on movement of cash – cash out

24.15 **Dividends and share redemption**

- (a) Except as permitted under paragraph (b) below, the Parent shall not:
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Company; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (b) Paragraph (a) above does not apply to:
 - (i) the Tender Offer;
 - (ii) the Special Dividend;
 - (iii) payment of any management, advisory or other fee to or to the order of any of the shareholders of the Company **provided that** such payments do not exceed ZAR 20,000,000 in aggregate in any Financial Year and

no Event of Default is continuing at the time of, or would arise as result of, such payment; or

- (iv) any dividend declared or paid by the Company in respect of its ordinary share capital which is consistent with the dividend policy of Target as at the date of this Agreement **provided that** the amount of any such dividend (when aggregated with the amount of any other dividends declared or paid during the relevant Financial Year) do not exceed 30 per cent. of the normalised earnings per share in the preceding Financial Year.

Restrictions on movement of cash- cash in

24.16 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness.

Miscellaneous

24.17 Insurance

Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

24.18 Pensions

The Parent shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any employees are fully funded in accordance with applicable law if failure to do so has or is likely to have a Material Adverse Effect.

24.19 Intellectual Property

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

- (a) use reasonable endeavours to preserve and maintain the subsistence and validity of the Intellectual Property owned by and necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property owned by it;
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect;

- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of such Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

where failure to do so, or such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

24.20 Financial assistance

Each Obligor shall (and the Parent shall procure that each other member of the Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 sections 44, 45 and 46 of the SA Companies Act and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under the Finance Documents.

24.21 Further assurance

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

be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

24.22 Transaction Undertakings

- (a) Target shall ensure if the Scheme Press Release is issued, it is issued within 5 Business Days of the date of this Agreement in the form delivered to the Agent under Part I of Schedule 2 (*Conditions Precedent*) of this Agreement, subject to any amendments that would not materially and adversely affect the interests of the Finance Parties (including amendments as are required by the Panel or the SA Takeover Authority) or have been approved by the Agent in writing (such approval not to be unreasonably withheld or delayed).
- (b) The Parent shall ensure that the Scheme Circular is issued within 60 days of the date of this Agreement and the terms of the Scheme Circular are consistent in all material respects with the terms of the Scheme Press Release, subject to any amendments that would not materially and adversely affect the interests of the Finance Parties (including any amendments as are required by the Panel or the SA Takeover Authority) or have been approved by the Agent in writing (such approval not to be unreasonably withheld or delayed).
- (c) The Parent shall keep the Agent informed as to the status and progress of the Transaction, including notifying the Agent as soon as the Parent becomes aware that the Scheme has become effective.
- (d) The Parent shall:
 - (i) promptly deliver to the Agent copies of all material documents, certificates or notices received or issued by it (or on its behalf) in relation to the Scheme or the Tender Offer and of all press and other public announcements made by itself (or on its behalf) or by Target in connection with or in relation to the Scheme or the Tender Offer and any material documents or statements issued by the Panel, the SA Takeover Authority, the Competition Tribunal in South Africa, the Namibian Competition Commission or any other regulatory authority (including the courts) received by it in relation to the Transaction; and
 - (ii) where any announcement, press release or publicity material refers to the Agent or any other Finance Party or the Facility, not release or permit such announcement, press release or publicity material to be released until the Agent has given its consent to such release (such consent not to be unreasonably withheld) **provided that** no such consent will be required to make an announcement, press release or publicity material required to be made to comply with the UK Takeover Code, the SA Companies Act or any other relevant laws or regulation (in which case the Company shall notify the Agent as soon as practicable upon becoming aware of the requirement and the Company shall use all reasonable endeavours to consult with the Agent prior to releasing the announcement, press release or publicity material).

- (e) The Parent shall ensure that:
 - (i) the Scheme Press Release, the Scheme Circular, the Tender Offer Circular and all other documents issued by it or on its behalf and all other documents issued by Target or on Target's behalf, in each case, in connection with the Scheme or the Tender Offer and the conduct of the Scheme comply in all material respects with the SA Companies Act, the UK Takeover Code and all applicable laws and regulations; and
 - (ii) that as and when necessary all consents from all governmental and other regulatory authorities required in connection with the Scheme or the Tender Offer are obtained, maintained and/or renewed (as appropriate).
- (f) The Parent shall not without the prior consent of the Arrangers:
 - (i) take or permit to be taken any step as a result of which any amount of cash would be payable by the Company in respect of the Target Shares in connection with the Transaction;
 - (ii) agree to amend, waive, revise, withdraw or agree to decide not to enforce in whole or in part any term or condition of the Scheme Documents regarding, to the extent required for the Transaction, receipt of mandatory competition approvals under any applicable laws or regulations in South Africa or Namibia; or
 - (iii) waive or amend or declare or treat as satisfied (in whole or in part) any condition of the Scheme where such waiver, amendment, declaration or treatment would materially and adversely affect the interests of the Finance Parties.

24.23 Conditions subsequent

- (a) Mediclinic Jersey Limited shall deliver at least two originals of an English law share charge over the shares it holds in Spire Healthcare Group plc executed by Mediclinic Jersey Limited within 2 Business Day of the Utilisation Date together with an executed copy of all notices required to be sent under the such share charge.
- (b) If Mediclinic Holdings Netherlands B.V. or Mediclinic Middle East Holdings Ltd is not transferred to the Company as part of the Target Offshore Assets Transfer as set out in Step 2b of the Structure Paper on or prior to the Closing Date, the Parent shall procure that Mediclinic Europe Proprietary Limited and/or Mediclinic Middle East Investment Holdings Proprietary Limited (as applicable) accedes as an Additional Guarantor and grants the Transaction Security by the specified date identified opposite the name of that member of the Group in Part IV of Schedule 2 (*Conditions Precedent*).
- (c) If all the steps set out in the Structure Paper have not been completed on or before the Closing Date, the Parent shall procure that an updated Group

Structure Chart showing the Group as at the Closing Date is delivered to the Agent within 10 Business Days of the Closing Date certifying that the updated Group Structure Chart is true, complete and accurate in all material respects.

25. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 25 is an Event of Default (save for Clause 25.16 (*Acceleration*) and Clause 25.17 (*Clean Up Period*)).

25.1 Non-payment

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

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

25.2 Financial covenants and Conditions Subsequent

Any requirement of Clause 23 (*Financial Covenant*) or paragraphs (a) or (b) of Clause 24.23 (*Conditions Subsequent*) is not satisfied.

25.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 25.1 (*Non-payment*) and Clause 25.2 (*Financial covenants and Conditions Subsequent*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.

25.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made and the circumstances giving rise to such misrepresentation, if capable of alteration, are not altered so as to make such representation or statement correct or not misleading by the date falling 15 Business Days after the earlier of the date upon which the Parent or such Obligor becomes aware of such misrepresentation and the date on which the Parent or such Obligor receives notice of such misrepresentation from the Agent.

25.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 25.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £10,000,000 (or its equivalent in any other currency or currencies).
- (f) No Event of Default will occur under paragraph (b), (c) or (d) above in relation to a Hirslanden Bond Rating Failure **provided that** the Parent or its Subsidiaries have, prior to a Hirslanden Bond Ratings Failure, obtained equivalent waivers or permissions in respect of all other Financial Indebtedness of the Parent or its Subsidiaries under which a cross-default would arise on a Hirslanden Bond Ratings Failure.

25.6 Insolvency

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

25.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other analogous procedure or step is taken in relation to:
 - (i) winding-up, dissolution, administration, business rescue proceedings, or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company;
 - (ii) a composition, compromise, assignment or arrangement with any class of creditors of any Material Company in connection with or as a result of any financial difficulty;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, business rescue practitioner, compulsory manager or other similar officer in respect of any Material Company or all or substantially all of its assets; or
 - (iv) enforcement of any Security over any assets of any Material Company having an aggregate value in excess of £10,000,000;
- (b) Any Material Company convenes any meeting to authorise the commencement of any business rescue proceedings in respect of it, its assets or its estate.
- (c) Paragraph (a) above shall not apply to:
 - (i) any winding-up petition or application for the appointment of a receiver, administrator, administrative receiver, compulsory manager or other similar officer which is frivolous or vexatious or being contested in good faith and is discharged, stayed or dismissed within 30 days of commencement; or
 - (ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction".

25.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Company the value of which exceeds £10,000,000 (or its equivalent) and is not discharged within 30 days.

25.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor to perform any of its material obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.
- (b) Any material obligation or obligations of any Obligor under any Finance Documents are not or cease to be legal, valid or binding or, subject to the

Legal Reservations and applicable Perfection Requirements, enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

25.10 Cessation of business

Any Material Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

25.11 Change of ownership

After the Closing Date, an Obligor (other than the Company) is not or ceases to be a wholly-owned Subsidiary of the Company.

25.12 Audit qualification

The Company's Auditors qualify the financial statements delivered under Clause 22.1 (*Financial statements*) on the grounds that they are unable to prepare such statements on a going concern basis.

25.13 Expropriation

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

25.14 Repudiation and rescission of agreements

- (a) An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.
- (b) An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Combination Document to which it is a party in whole or in part where to do so has or is reasonably likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

25.15 Material adverse change

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

25.16 Acceleration

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

- (a) by notice to the Parent:
 - (i) cancel the Total Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Loan be payable on demand, at which time it shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

25.17 Clean Up Period

Notwithstanding any other provision of any Finance Document, during the Clean-Up Period, if an event or circumstance arises prior to or as a direct result of the Transaction that would otherwise constituted a breach of representation or warranty pursuant to Clause 21 (*Representations*), a breach of undertaking pursuant to Clause 24 (*General Undertakings*) or an Event of Default in respect of any member of the Group (other than a member of the Target Group as at the date of this Agreement) (a "**Clean-Up Default**"), that Clean-Up Default will not:

- (a) constitute such a breach of representation, undertaking or an Event of Default;
- (b) operate to prevent an Advance; or
- (c) allow the Agent to declare any amount under the Finance Documents due and payable prior to its specified maturity date or to otherwise take any enforcement action under the Finance Documents,

provided that the relevant Clean-Up Default:

- (i) is capable of remedy and reasonable steps are being taken to remedy it;
- (ii) has not been procured or approved by Target; and
- (iii) is not reasonably likely to have a Material Adverse Effect.

For the avoidance of doubt, if the relevant event or circumstance is continuing at the end of the Clean-Up Period, there shall be a breach of representation or warranty, a breach of undertaking or an Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

SECTION 9 CHANGES TO PARTIES

26. CHANGES TO THE LENDERS

26.1 Assignments and transfers by the Lenders

Subject to this Clause 26 and to Clause 27 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

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

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

26.2 Conditions of assignment or transfer

- (a) The prior written consent of the Parent is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is made by the Existing Lender:
 - (i) to another Lender or an Affiliate of any Lender;
 - (ii) to a fund which is a Related Fund of that Existing Lender;
 - (iii) to an entity on the Approved Lender List; or
 - (iv) at a time when an Event of Default is continuing.
- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender; and
 - (ii) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

- (d) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 15 (*Tax Gross-up and Indemnities*) or Clause 16 (*Increased Costs*),

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

- (A) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or
 - (B) in relation to Clause 15.2 (Tax gross-up), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 15.2 (*Tax gross-up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.
- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

26.3 Assignment or transfer fee

- (a) Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £3,000.
- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the Agent agrees that no fee is payable; or
 - (ii) the assignment or transfer is made by an Existing Lender:
 - (A) to an Affiliate of that Existing Lender;
 - (B) to a Related Fund of that Existing Lender; or
 - (C) in connection with primary syndication of the Facility.

26.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other 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 each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

26.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a

duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Arrangers, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arrangers and the Security Agent shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".

26.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 26.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 26.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*).

26.7 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent**

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

26.8 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

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

26.9 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 26.5 (*Procedure for transfer*) or any assignment pursuant to Clause 26.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (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 Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 26.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 26.9 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

27. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

27.1 Prohibition on Debt Purchase Transactions by the Group

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or be a Lender or a party to a Debt Purchase

Transaction of the type referred to in paragraph (b) or (c) of the definition of "Debt Purchase Transaction".

27.2 Disenfranchisement on Debt Purchase Transactions entered into by members of the Group

- (a) For so long as any member of the Group:
 - (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:

- (A) the Majority Lenders; or
- (B) (B) whether:
 - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
 - (2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such member of the Group or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a member of the Group it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each member of the Group that is a Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

27.3 Member of the Group's notification to other Lenders of Debt Purchase Transactions

Any member of the Group which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 p.m. on the

Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.

28. CHANGES TO THE OBLIGORS

28.1 Assignment and transfers by Obligors

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

28.2 Accession of the Company

- (a) The Company shall accede to this Agreement in its capacity as the "Company" and as the borrower of the Facility if:
 - (i) the Company delivers to the Agent a duly completed and executed Accession Deed signed by the Company;
 - (ii) the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) in relation to the Company, each in form and substance satisfactory to the Agent (acting reasonably).
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

28.3 Additional Guarantors

- (a) The Parent shall ensure that each member of the Group identified in Part IV of Schedule 2 (*Conditions Precedent*) as an Additional Guarantor shall become an Additional Guarantor and shall grant the Transaction Security identified opposite the name of that member of the Group in Part IV of Schedule 2 (*Conditions Precedent*) on or prior to the date specified in that Schedule.
- (b) A member of the Group shall become an Additional Guarantor if:
 - (i) the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part III and, if applicable, Part IV of Schedule 2 (*Conditions*

Precedent) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent (acting reasonably).

- (c) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part III and, if applicable, Part IV of Schedule 2 (*Conditions Precedent*).
- (d) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (c) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

28.4 **Repeating Representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary and the Parent that the representations and warranties referred to in paragraphs (d) and (f) of Clause 21.32 (*Times when representations made*) respectively are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

SECTION 10
THE FINANCE PARTIES

29. ROLE OF THE AGENT, THE ARRANGERS AND OTHERS

29.1 Appointment of the Agent

- (a) Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arrangers and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

29.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
 - (B) all Lenders if the Original Lenders (or any of their Affiliates or Related Funds) are the only Lenders under this Agreement; and
 - (C) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or

security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) 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.

29.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent in its capacity as Agent or for that Party by any other Party.
- (c) Without prejudice to Clause 26.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

29.4 Role of the Arrangers

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

29.5 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Agent or the Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Agent or the Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

29.6 **Business with the Group**

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

29.7 **Rights and discretions**

- (a) The Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 25.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and

- (iii) any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; and
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts if the Agent in its reasonable opinion deems this to be necessary.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) 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 directly caused by the Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Parent and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Arrangers is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

29.8 Responsibility for documentation

None of the Agent or the Arrangers is responsible or liable for:

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

29.9 No duty to monitor

The Agent shall not be bound to enquire:

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

29.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Agent will not be liable (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 under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arrangers to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the 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 Agent or the Arrangers.

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

29.11 Lenders' indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Parent shall promptly on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

29.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom or the Republic of South Africa as successor by giving notice to the Lenders and the Parent.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Parent (or any shorter period as may be agreed by the Lenders and the Parent), in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom or the Republic of South Africa).
- (d) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Clause 17.3 (*Indemnity to the Agent*) and this Clause 29 (and any agency fees for the account of the retiring 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 amongst themselves as they would have had if such successor had been an original Party.
- (g) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 15.8 (*FATCA Information*) and the Parent or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 15.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Parent and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

29.13 Replacement of the Agent

- (a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom or the Republic of South Africa).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 17.3 (*Indemnity to the Agent*) and this Clause 29 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

29.14 Confidentiality

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

29.15 Relationship with the Lenders

- (a) Subject to Clause 26.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and paragraph (a)(ii) of Clause 36.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

29.16 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

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

29.17 Agent's management time

Any amount payable to the Agent under Clause 17.3 (*Indemnity to the Agent*), Clause 19 (*Costs and Expenses*) and Clause 29.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 14 (*Fees*).

29.18 Deduction from amounts payable by the Agent

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

29.19 Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports 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.

29.20 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant 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 Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 29.20 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

29.21 Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 29.20 (*Role of Reference Banks*), and Clause 42 (*Confidentiality of Funding Rates and Reference Bank*

Quotations) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

30. THE SECURITY AGENT

30.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Parallel debt

- (a) Notwithstanding any other provision of this Agreement, each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by such Obligor to Secured Parties under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Obligor, to preserve its entitlement to be paid that amount.
- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Obligor under this Clause 30.2, irrespective of any discharge of such Obligor's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Obligor, to preserve their entitlement to be paid those amounts.
- (c) Notwithstanding that the amounts payable by each Obligor under the Finance Documents (the "**Principal Debts**") may be expressed in different currencies, the parallel debts of each Obligor to the Security Agent under this Clause 30.2 (each a "**Parallel Debt**") shall be expressed in sterling. For the purposes of establishing the amount of the Parallel Debt from time to time, the Principal Debts expressed in other currencies shall be notionally converted to sterling at the Agent's Spot Rate of Exchange.

30.3 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (c) and (d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Agent (acting on behalf of the Majority Lenders or, as the case may be, all the Lenders); and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 30.6 (*No duty to account*) to Clause 30.11 (*Exclusion of liability*), Clause 30.14 (*Confidentiality*) to Clause 30.19 (*Custodians and nominees*) and Clause 30.22 (*Acceptance of title*) to Clause 30.27 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 35.1 (*Order of Application*); and
 - (B) Clause 35.4 (*Permitted Deductions*).
- (d) If giving effect to instructions given by the Agent (acting on the instructions of the Majority Lenders) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 32.5 (*Exceptions*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (c)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (f) The Security Agent may refrain from acting in accordance with any instructions of the Agent, the Majority Lenders or any other group of Lenders

until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (g) Without prejudice to the provisions of the remainder of this Clause 30.3, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (h) At any time after receipt by the Security Agent of notice from the Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.
- (i) Subject to paragraph (j) below, the Secured Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.
- (j) Notwithstanding paragraph (i) above, in the event that it becomes necessary or desirable for any enforcement proceedings to be commenced in or before any court of competent jurisdiction in the Republic of South Africa in relation to any SA Transaction Security Document in order to enforce the rights of the Secured Parties under that SA Transaction Security Document (including, without limitation, for the purposes of realising and/or perfecting any Transaction Security granted under that SA Transaction Security Document):
 - (i) that enforcement action shall be taken either:
 - (A) by all of the Secured Parties that are beneficiaries of the Transaction Security under that SA Transaction Security Document acting together; or
 - (B) by one or more of such Secured Parties acting for the benefit of all of such Secured Parties,(any such Secured Party taking such enforcement action, an Enforcing Secured Party) as determined by:
 - (1) all Lenders if the Original Lenders (or any of their Affiliates or Related Funds) are the only Lenders under this Agreement; and
 - (2) in all other cases, the Majority Lenders,
- (k) **provided that** no such Secured Party shall be obliged to take any such enforcement action unless it has expressly agreed to do so;
 - (i) each Enforcing Security Party shall, in relation to any such enforcement action, have all the rights, benefits and protections

afforded to the Security Agent under this Clause 30 *mutatis mutandis*;
and

- (ii) all amounts from time to time received or recovered by any Enforcing Secured Party in connection with the realisation or enforcement of all or any part of such Transaction Security shall be promptly upon receipt thereof by such Enforcing Secured Party be paid over to the Security Agent, in the currency of receipt, to be applied by the Security Agent in accordance with Clause 35 (*Application of Proceeds*).

For the purposes of this Clause 30.3 "**SA Transaction Security Document**" means any Transaction Security Document expressed to be governed by the laws of the Republic of South Africa.

30.4 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Agent.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.5 No fiduciary duties to Obligors

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

30.6 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

30.7 Business with the Group

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

30.8 Rights and discretions

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Lenders through the Agent and may give to the Agent any notice or other communication required to be given by the Security Agent to the Lenders.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party, any Lenders or any group of Lenders has not been exercised; and
 - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Obligor.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts if the Security Agent in its reasonable opinion deems this to be necessary.

- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be necessary.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) 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 directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security 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.

30.9 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any 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 Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Secured 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.

30.10 No duty to monitor

The Security Agent shall not be bound to enquire:

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

30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct;
 - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, 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; 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 Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent 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 Security Agent.

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

Delegate (as the case may be) has been advised of the possibility of such loss or damages.

30.12 Lenders' indemnity to the Security Agent

- (a) Each Lender shall in proportion to its share of the Total Commitments (or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Parent shall promptly on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

30.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Parties (or to the Agent on behalf of the Lenders).
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Agent on behalf of the Lenders), in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Transaction Security to that successor.

- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 30.13 and Clause 17.5 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security 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 amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

30.14 Confidentiality

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not 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 regulation or a breach of any fiduciary duty.

30.15 Information from the Lenders

Each Lender shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

30.16 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any 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 Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; 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.

30.17 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

30.18 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

30.19 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

30.20 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

30.21 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Parent and the Secured Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) properly incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

30.22 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

30.23 Voting Rights

- (a) Notwithstanding any other provision of this Agreement or any other Finance Document the Security Agent may in its discretion and without any consent or authority from the other Secured Parties or the relevant Obligor by notice in accordance with the provisions of any Transaction Security Documents (which notice shall be irrevocable) elect to give up the right to exercise (or refrain from exercising) voting rights and powers in respect of the any shares secured pursuant to any Transaction Security Document conferred or to be conferred on the Security Agent pursuant to the terms of the Transaction Security Documents.
- (b) The other Secured Parties unconditionally waive any rights they may otherwise have to require the Security Agent not to make the election in paragraph (a) above or to require the Security Agent to indemnify, compensate or otherwise make them good for any losses, costs or liabilities incurred by any of them in relation to or as a consequence of the Security Agent making such election.

30.24 Winding up of trust

If the Security Agent, with the approval of all the Lenders, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the

Transaction Security and the rights of the Security Agent under each of the Security Documents; and

- (ii) any Security Agent which has resigned pursuant to Clause 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

30.25 Releases

Upon a disposal of any of the Charged Property:

- (a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent; or
- (b) if that disposal is permitted under the Finance Documents,

the Security Agent shall (at the cost of the Obligors) release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

30.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

30.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

31. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

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

32. SHARING AMONG THE FINANCE PARTIES

32.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 33 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 33 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 33.6 (*Partial payments*).

32.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 33.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

32.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 32.2 (*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.

32.4 Reversal of redistribution

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

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

- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

32.5 **Exceptions**

- (a) This Clause 32 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 32, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 11 ADMINISTRATION

33. PAYMENT MECHANICS

33.1 Payments to the Agent

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

33.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to an Obligor*) and Clause 33.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party 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, as specified by that Party).

33.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 34 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

33.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Company before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Company:
 - (i) the Agent shall notify the Company of that Lender's identity and the Company shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Company, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

33.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 33.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) or (b) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 33.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 29.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account

is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 33.2 (*Distributions by the Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

33.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
 - (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Agent, the Arrangers or the Security Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

33.7 Set-off by Obligors

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

33.8 Business Days

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

33.9 Currency of account

- (a) Subject to paragraphs (b) and (c) below, sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

33.10 Change of currency

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

33.11 Disruption to Payment Systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 40 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 33.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

34. **SET-OFF**

Without prejudice to the right of the Finance Parties at law, at any time after an Event of Default has occurred and is continuing, a Finance Party may, on giving notice to the Parent, set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

35. **APPLICATION OF PROCEEDS**

35.1 **Order of Application**

All amounts from time to time received or recovered by the Security Agent under Clause 30.2 (*Parallel debt*) and/or in connection with the realisation or enforcement of all or any part of the Transaction Security shall be held by the Security Agent on trust to apply them at such times as the Security Agent sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as trustee, any Receiver or any Delegate;
- (b) in payment to the Agent, on behalf of the Secured Parties, for application towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with Clause 33.6 (*Partial payments*);

- (c) if none of the Obligor is under any further actual or contingent liability under any Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Obligor; and
- (d) the balance, if any, in payment to the relevant Obligor.

35.2 Investment of Proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 35.1 (*Order of Application*) the Security Agent may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent or Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 35.

35.3 Currency Conversion

- (a) For the purpose of or pending the discharge of any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.
- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

35.4 Permitted Deductions

The Security Agent shall be entitled (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Tax or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Tax which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (except in connection with its remuneration for performing its duties under this Agreement).

35.5 Discharge of Secured Obligations

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Agent on behalf of the Lenders and that payment shall be a good discharge to the extent of that payment, to the Security Agent.
- (b) The Security Agent is under no obligation to make payment to the Agent in the same currency as that in which any Unpaid Sum is denominated.

35.6 Sums received by Obligors

If any of the Obligors receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause 35.6.

35.7 Application and Consideration

In consideration for the covenants given to the Security Agent by each Obligor in Clause 30.2 (*Parallel debt*), the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the provisions of Clause 35.1 (*Order of Application*).

36. NOTICES

36.1 Communications in writing

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

36.2 Addresses

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

- (a) in the case of the Original Guarantors, that identified with its name below;
- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Agent, that identified with its name below,

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

36.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or 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 36.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Parent in accordance with this Clause 36.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

36.4 Notification of address and fax number

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

36.5 Communication when Agent is Impaired Agent

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

36.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 36.6.

36.7 Use of websites

- (a) The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the "**Designated Website**") if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the 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 Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall, at its own cost, supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall, at its own cost, supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the 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 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 Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the 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 ten Business Days.

36.8 English language

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

37. CALCULATIONS AND CERTIFICATES

37.1 Accounts

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

37.2 Certificates and determinations

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

37.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day-to-day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

38. **PARTIAL INVALIDITY**

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

39. **REMEDIES AND WAIVERS**

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

40. **AMENDMENTS AND WAIVERS**

40.1 **Required consents**

- (a) Subject to Clause 30.25 (*Releases*), Clause 40.2 (*All Lender matters*) and Clause 40.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 40.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 29.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 40 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Guarantors.

40.2 All Lender matters

Subject to Clause 40.4 (*Replacement of Screen Rate*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents (other than in relation to Clause 9 (*Mandatory Prepayment and Cancellation*));
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (e) a change to the borrower of the Facility or Guarantors (other than, for the avoidance of doubt, a change to the Parties pursuant to the operation of Clause 28 (*Changes to the Obligors*));
- (f) any provision which expressly requires the consent of all the Lenders;
- (g) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 9.1 (*Change of Control or Delisting*), Clause 10.8 (*Application of prepayments*), Clause 26 (*Changes to the Lenders*), Clause 28 (*Changes to the Obligors*), Clause 32 (*Sharing Among the Finance Parties*), this Clause 40, Clause 45 (*Governing Law*) or Clause 46.1 (*Jurisdiction of English Courts*);
- (h) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 20 (*Guarantee and Indemnity*);
 - (ii) the Charged Property; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed(except in the case of paragraph (ii) and paragraph (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (i) the release of any guarantee and indemnity granted under Clause 20 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where

such sale or disposal is expressly permitted under this Agreement or any other Finance Document;

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

40.3 **Other exceptions**

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

40.4 **Replacement of Screen Rate**

If any Screen Rate is not available for sterling, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to sterling in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Majority Lenders and the Company.

40.5 **Excluded Commitments**

If any Lender fails to respond to a request for a consent, waiver or amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 10 Business Days of that request being made (unless, the Parent and the Agent agree to a longer time period in relation to any request):

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

40.6 **Replacement of Lender**

- (a) If:
 - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
 - (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 8.1 (*Illegality*) or to pay additional amounts pursuant to Clause 16.1 (*Increased costs*), Clause 15.2 (*Tax gross-up*) or Clause 15.3 (*Tax indemnity*) to any Lender,

then the Company may, on 5 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders*) all (and not part only) of its rights and obligations

under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Agent has not given a notification under Clause 26.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 40.6 shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 20 Business Days after the date on which that Lender is deemed a Non-Consenting Lender;
 - (iv) in no event shall the Lender replaced under this Clause 40.6 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.
- (d) In the event that:
 - (i) the Company or the Agent (at the request of the Company) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Lenders, more than 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 85 per

cent. of the Total Commitments prior to that reduction); or have consented or agreed to such waiver or amendment,

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

40.7 **Disenfranchisement of Defaulting Lenders**

(a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

(i) the Majority Lenders; or

(ii) whether:

(A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or

(B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

(b) For the purposes of this Clause 40.7, the Agent may assume that the following Lenders are Defaulting Lenders:

(i) any Lender which has notified the Agent that it has become a Defaulting Lender;

(ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

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

40.8 **Replacement of a Defaulting Lender**

(a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving not less than five Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank,

financial institution, trust, fund or other entity (a "Replacement Lender") selected by the Parent, which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loan and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between the Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 40.8 (*Replacement of a Defaulting Lender*) shall be subject to the following conditions:
 - (i) the Parent shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
 - (iii) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (iv) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.

41. CONFIDENTIAL INFORMATION

41.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 41.2 (*Disclosure of Confidential Information*) and Clause 41.3 (*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.

41.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 29.15 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom and to the extent that information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom and to the extent that information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

- (vii) to whom or for whose benefit and to the extent that that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.8 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Parent;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the reasonable opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to

carry out its normal rating activities in relation to the Finance Documents and/or the Obligors.

41.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 45 (*Governing Law*);
 - (vi) the names of the Agent and the Arrangers;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Final Maturity Date for the Facility;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Parent,

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

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) The Company represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price sensitive information.

41.4 Entire agreement

This Clause 41 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

41.5 Inside information

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

41.6 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information to be made (where practicable) or made pursuant to paragraph (b)(v) of Clause 41.2 (*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 41.

41.7 Continuing obligations

The obligations in this Clause 41 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

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

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

42.1 **Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Company pursuant to Clause 11.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The 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 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 Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Agent's obligations in this Clause 42 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 11.4 (*Notification of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

42.2 **Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 42.1 (*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 42.

42.3 **No Event of Default**

No Event of Default will occur under Clause 25.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 42.

43. DISCLOSURE OF LENDER DETAILS BY AGENT

43.1 Supply of Lender details to Parent

The Agent shall provide to the Parent within 10 Business Days of a request by the Parent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

43.2 Supply of Lender details at Company's direction

- (a) The Agent shall, at the request of the Parent, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
 - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
 - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Parent shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

44. COUNTERPARTS

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

SECTION 12

GOVERNING LAW AND ENFORCEMENT

45. GOVERNING LAW

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

46. ENFORCEMENT

46.1 Jurisdiction of English Courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) Each Obligor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, any Finance Party or Secured Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

46.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints at any time after the date on which the Company has acceded to this Agreement in its capacity as the "Company" and the borrower of the Facility, the Company and, prior to such date, Trusec Limited of 2 Lambs Passage, London EC1Y 8BB as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

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

**SCHEDULE 1
THE ORIGINAL PARTIES**

**PART I
THE ORIGINAL GUARANTORS**

Name of Original Guarantor	Registration number (or equivalent, if any) and Original Jurisdiction
Mediclinic International Ltd	1983/010725/06 South Africa
Mediclinic CHF Finco Limited	106317 Jersey
Mediclinic Jersey Limited	118590 Jersey
Mediclinic Middle East Holdings Ltd	110806 Jersey
Mediclinic Holdings Netherlands B.V.	24418117 The Netherlands

PART II
THE ORIGINAL LENDERS

Name of Original Lender	Facility Commitment	Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
Morgan Stanley Senior Funding, Inc.	£200,000,000	13/M/227953/DTTP USA
FirstRand Bank Limited (acting through its Rand Merchant Bank Division)	£200,000,000	69/F/226120/DTTP South Africa
Total	£400,000,000	

SCHEDULE 2
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO SIGNING OF THE AGREEMENT

1. Obligors

- (a) A copy of the constitutional documents of each Original Guarantor and the Company, including the consent issued pursuant to the Control of Borrowing (Jersey) Order 1958 in the case of any Original Obligor incorporated in Jersey.
- (b) A copy of a resolution of the board (or, if applicable, the board of managing directors or a committee of the board) of directors of each Original Guarantor and the Company (or, in each case, an extract thereof):
 - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
 - (ii) in the case of each Original Guarantor incorporated in South Africa under the SA Companies Act:
 - (A) confirming, in accordance with the provisions of section 44(3)(b)(i) and/or section 45(3)(b)(i) (as applicable) of the SA Companies Act, that the board of directors of that Original Guarantor is satisfied that, immediately after providing any direct or indirect financial assistance to be provided by that Original Guarantor pursuant to any of the Transaction Documents to which it is a party, that Original Guarantor would satisfy the "solvency and liquidity test" (as defined in the SA Companies Act);
 - (B) confirming, in accordance with the provisions of section 44(3)(b)(ii) and/or section 45(3)(b)(ii) (as applicable) of the SA Companies Act, that the board of directors of that Original Guarantor is satisfied that the terms under which any direct or indirect financial assistance pursuant to any of the Transaction Documents to which it is a party proposed to be given by that Original Guarantor are fair and reasonable to that Original Guarantor;
 - (C) confirming, for the purposes of section 44(4) and/or section 45(4) (as applicable) of the SA Companies Act, that any conditions or restrictions respecting the granting of any direct or indirect financial assistance by that Original Guarantor pursuant to any of the Transaction Documents to which it is a party set out in the constitutional documents of that Original Guarantor have been satisfied;

- (D) in relation to the making of any proposed "distribution" (as defined in the SA Companies Act) pursuant to the Transaction Documents to which it is a party that takes the form of the incurrence of a debt or other obligation by that Original Guarantor, as contemplated in paragraph (b) of the definition of "distribution" in section 1 of the SA Companies Act:
 - (1) confirming, in accordance with section 46(1)(b) of the SA Companies Act (as read with section 46(4)(a) of the SA Companies Act), that it reasonably appears that that Original Guarantor will satisfy the "solvency and liquidity test" (as defined in the SA Companies Act) immediately after completing such proposed "distributions"; and
 - (2) resolving, in accordance with section 46(1)(c) of the SA Companies Act, that the board of directors of that Original Guarantor has acknowledged that it has applied the "solvency and liquidity test" (as defined in the SA Companies Act) and reasonably concluded that that Original Guarantor will satisfy the "solvency and liquidity test" immediately after completing such proposed "distribution";
- (iii) if applicable, authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf;
- (iv) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, in relation to the Company, a Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
- (v) in the case of each Original Guarantor, authorising Target and, following its accession to this Agreement in its capacity as the "Company" and the borrower of the Facility, the Company to act as its agent in connection with the Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.

- (d) In the case of each Original Guarantor incorporated in South Africa under the SA Companies Act, a copy of a special resolution, adopted at a "shareholders' meeting" (as defined in the SA Companies Act) or in accordance with section 60 of the SA Companies Act of the shareholder(s) of each Original Guarantor approving, in accordance with section 45(3)(a)(ii) of the SA Companies Act, any financial assistance to be granted by that Original Guarantor pursuant to section 45(2) of the SA Companies Act under the Transaction Documents to which it is a party for the recipients of such financial assistance.
- (e) In the case of an Original Guarantor incorporated in Jersey, a copy of a resolution signed by all the holders of the issued shares in any such Original Guarantor approving the terms of and the transactions contemplated by the Finance Documents to which it is a party.
- (f) In the case of an Original Guarantor incorporated in the Netherlands, a copy of the resolution of the shareholder(s) of any such Dutch Guarantor.
- (g) A certificate of an authorised signatory of each Original Guarantor and the Company certifying that each copy document relating to it specified in this Part I of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2. **Combination Documents**

- (a) A copy of the Scheme Press Release.
- (b) An executed copy of:
 - (i) the Subscription Agreement; and
 - (ii) the Bid Conduct Agreement.

3. **Finance Documents**

- (a) This Agreement executed by the Original Guarantors.
- (b) The Fee Letters executed by Target.

4. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders.

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Agent and the Arrangers as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of the following:
 - (i) Allen & Overy (South Africa) LLP, legal advisers to the Agent and the Arrangers as to South African law;

- (ii) Cliffe Dekker Hofmeyr, legal advisers to Target as to South African law;
- (iii) Clifford Chance LLP, legal advisers to the Agent and the Arrangers as to Dutch law; and
- (iv) Carey Olsen, legal advisers to the Agent and the Arrangers as to Jersey law,

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

5. Other documents and evidence

- (a) The Group Structure Chart which shows the Group assuming the Closing Date has occurred and all the steps set out in the Structure Paper have completed.
- (b) The Approved Lender List.
- (c) A copy, certified by an authorised signatory of Target to be a true copy, of the Original Financial Statements of each Original Guarantor.
- (d) A copy, certified by an authorised signatory of Target to be a true copy, of the Original Financial Statements of the Company.
- (e) The Structure Paper.
- (f) Evidence that any process agent referred to in Clause 46.2 (*Service of process*) has accepted its appointment.

PART II

CONDITIONS PRECEDENT TO UTILISATION

1. Company accession

- (a) An Accession Deed duly completed and executed by the Company and Target evidencing Al Noor Hospitals Group plc has acceded to this Agreement in its capacity as the "Company" and as the borrower of the Facility.
- (b) A certificate of Target (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any guarantee, security or similar limit binding on any Original Guarantor to be exceeded.
- (c) A certificate of the Company (signed by a director) confirming that:
 - (i) borrowing or securing, as appropriate, the Total Commitments would not cause any borrowing, security or similar limit binding on it to be exceeded; and
 - (ii) the following documents have not been amended (except for any amendment to its constitutional documents that would not adversely affect a firm's ability to deliver the legal opinions referred to in paragraph 3 below, and (if any amendment has been made) attaching its updated constitutional documents) of and remain correct, complete and in full force and effect as at the first Utilisation Date:
 - (A) the constitutional documents of the Company;
 - (B) the resolution of the board (or, if applicable, the board of managing directors or a committee of the board) of the Company; and
 - (C) the specimen of the signature of each person authorised by such resolution,

in each case, in the form delivered to the Agent pursuant to paragraphs 1(a) to (c) of Part I of Schedule 2.
- (d) At least two originals of the following Transaction Security Documents executed by the Obligor specified below opposite the relevant Transaction Security Document:

Name of Original Guarantor	Transaction Security Document
Al Noor Hospitals Group plc	If Mediclinic CHF Finco Limited is transferred to the Company as part of the Target Offshore Assets Transfer as set out in Step 2b of the Structure Paper on or prior to the Closing Date, a Jersey law security agreement over all the

Name of Original Guarantor	Transaction Security Document
	<p>shares in Mediclinic CHF Finco Limited</p> <p>If Mediclinic Middle East Holdings Ltd is transferred to the Company as part of the Target Offshore Assets Transfer as set out in Step 2b of the Structure Paper on or prior to the Closing Date, a Jersey law security agreement over all the shares in Mediclinic Middle East Holdings Ltd</p> <p>If Mediclinic Holdings Netherlands B.V. is transferred to the Company as part of the Target Offshore Assets Transfer as set out in Step 2b of the Structure Paper on or prior to the Closing Date, a Dutch law notarial deed of pledge of all the shares in the capital of Mediclinic Holdings Netherlands B.V. granted by the Company as pledgor and the Security Agent as pledgee</p>
Mediclinic International Limited	South African law pledge over all the shares in Mediclinic Investments (Pty) Limited
Mediclinic CHF Finco Limited	Jersey law security agreement over all the shares in Mediclinic Jersey Limited

- (e) An executed copy of all notices required to be sent under the Transaction Security Documents set out in paragraph (d) above.
- (f) Any power(s) of attorney in respect of the relevant Transaction Security Documents, including legalisation and (if applicable) apostille.
- (g) All original share certificates, transfers and stock transfer forms or equivalent duly executed by the Obligor in blank in relation to the shares subject to or expressed to be subject to the Transaction Security set out in paragraph (d) above and other documents of title to be provided under the Transaction Security Documents set out in paragraph (d) above.

- (h) All registers of members of any Original Guarantor incorporated in Jersey whose shares are the subject of any Transaction Security set out in paragraph (d) above noting the security interest created in respect of those shares.
- (i) Consent letters executed by the Company and Mediclinic CHF Finco Limited consenting to the registration of the security interest created under each of the Transaction Security Document governed by Jersey law set out in paragraph (d) above on the Jersey Security Register.
- (j) A copy of a resolution of the board (or, if applicable, the board of managing directors or a committee of the board) of directors of Mediclinic Investments Proprietary Limited (or, in each case, an extract thereof) noting and giving its consent to the pledge and cession in security of the shares and claims held by the Company in it and consenting to the transfer of any such shares pursuant to any enforcement under the pledge and cession in security.
- (k) In the case of each Original Guarantor incorporated in South Africa under the SA Companies Act, a copy of a special resolution, adopted at a "shareholders' meeting" (as defined in the SA Companies Act) or in accordance with section 57(2) of the SA Companies Act of the sole shareholder of each Original Guarantor approving, in accordance with section 44((3)(a)(ii) of the SA Companies Act, any financial assistance to be granted by that Original Guarantor pursuant to section 44(2) of the SA Companies Act under the Transaction Documents to which it is a party for the recipients of such financial assistance.
- (l) In the case of an Original Guarantor incorporated in the Netherlands, a copy of the resolution of the shareholder(s) of any such Dutch Guarantor approving the resolutions of the board of managing directors referred to under paragraph 1(b) of Part I of Schedule 2.

2. **Transaction**

- (a) Copies of the following documents:
 - (i) the Scheme Circular; and
 - (ii) evidence that the Company Shareholders have passed the Company shareholder resolutions approving those elements of the Transaction that require shareholder approval or for which shareholder approval is sought as set out in Appendix III: Conditions of the Scheme Press Release.
- (b) A certificate of the Company (signed by a director) certifying that:
 - (i) the Scheme has become operative;
 - (ii) steps 1 to 5d of the Structure Paper have been completed (other than step 2b if it has not been completed);

- (iii) no Major Event of Default is outstanding in relation to Clause 24.22 (*Transaction Undertakings*);
- (iv) a utilisation request requesting the advance of the total amount available under the Remgro Facility Agreement on or before the Utilisation Date has been issued by Remgro Limited and each of the conditions precedent to such utilisation have been satisfied; and
- (v) all fees, costs and expenses then due from the Company or Target under the Finance Documents have been paid or will be paid concurrently with, or immediately following the Utilisation Date.

3. **Legal Opinions**

The following legal opinions, each addressed to the Agent, the Security Agent, the Arrangers and the Original Lenders:

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Agent and the Arrangers as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of the following:
 - (i) Allen & Overy (South Africa) LLP, legal advisers to the Agent and the Arrangers as to South African law;
 - (ii) Cliffe Dekker Hofmeyr, legal advisers to Target as to South African law;
 - (iii) Clifford Chance LLP, legal advisers to the Agent and the Arrangers as to Dutch law; and
 - (iv) Carey Olsen, legal advisers to the Agent and the Arrangers as to Jersey law,

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

4. **Other documents and evidence**

Any requisite exchange control approvals of the Financial Surveillance Department of the South African Reserve Bank as are necessary for the implementation of the "Combination" (as defined in the Bid Conduct Agreement) (including the financing thereof) on the terms envisaged in the Bid Conduct Agreement.

PART III
CONDITIONS PRECEDENT REQUIRED TO BE
DELIVERED AN ADDITIONAL GUARANTOR

1. An Accession Deed executed by the Additional Obligor.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors the Additional Guarantor (or an extract thereof):
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is a party;
 - (b) in the case of an Additional Guarantor incorporated in South Africa under the SA Companies Act:
 - (i) confirming, in accordance with the provisions of section 44(3)(b)(i) and/or section 45(3)(b)(i) (as applicable) of the SA Companies Act, that the board of directors of the Additional Guarantor is satisfied that, immediately after providing any direct or indirect financial assistance to be provided by the Additional Guarantor pursuant to any of the Transaction Documents to which it is a party, the Additional Guarantor would satisfy the "solvency and liquidity test" (as defined in the SA Companies Act);
 - (ii) confirming, in accordance with the provisions of section 44(3)(b)(ii) and/or section 45(3)(b)(ii) (as applicable) of the SA Companies Act, that the board of directors of the Additional Guarantor is satisfied that the terms under which any direct or indirect financial assistance pursuant to any of the Transaction Documents to which it is a party proposed to be given by the Additional Guarantor are fair and reasonable to the Additional Guarantor;
 - (iii) for the purposes of section 44(4) and/or section 45(4) (as applicable) of the SA Companies Act, that any conditions or restrictions respecting the granting of any direct or indirect financial assistance by the Additional Guarantor pursuant to any of the Transaction Documents to which it is a party set out in the constitutional documents of the Additional Guarantor have been satisfied;

- (iv) in relation to the making of any proposed "distribution" (as defined in the SA Companies Act) pursuant to the Transaction Documents to which it is a party that takes the form of the incurrence of a debt or other obligation by the Additional Guarantor, as contemplated in paragraph (b) of the definition of "distribution" in section 1 of the SA Companies Act:
 - (A) confirming, in accordance with section 46(1)(b) of the SA Companies Act (as read with section 46(4)(a) of the SA Companies Act), that it reasonably appears that the Additional Guarantor will satisfy the "solvency and liquidity test" (as defined in the SA Companies Act) immediately after completing such proposed "distributions"; and
 - (B) resolving, in accordance with section 46(1)(c) of the SA Companies Act, that the board of directors of the Additional Guarantor has acknowledged that it has applied the "solvency and liquidity test" (as defined in the SA Companies Act) and reasonably concluded that the Additional Guarantor will satisfy the "solvency and liquidity test" immediately after completing such proposed "distribution";
 - (c) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
 - (d) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (e) if applicable, authorising the Company to act as its agent in connection with the Finance Documents.
- 4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
- 5. If applicable, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
- 6. If applicable, a copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor (or an extract thereof) approving the terms of the resolution referred to in paragraph 5 above.
- 7. A certificate of the Additional Guarantor (signed by a director) confirming that guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
- 8. A certificate of an authorised signatory the Additional Obligor certifying that each copy document listed in this Part III of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.

9. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
10. If available, the latest audited financial statements of the Additional Guarantor.
11. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
 - (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
 - (b) If the Additional Guarantor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in Clause 21.30 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
12. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 46.2 (*Service of process*) has accepted its appointment in relation to the proposed Additional Guarantor
13. Any security documents which are required by the Agent to be executed by the Additional Guarantor.
14. Any notices or documents required to be given or executed under the terms of those security documents.

PART IV
TRANSACTION SECURITY DOCUMENTS AND SECURITY RELATED
DOCUMENTS TO BE DELIVERED BY ADDITIONAL GUARANTORS

Name of Additional Guarantor	Date by which must become Additional Guarantor	Description of Transaction Security Document and Transaction Security	Date by which Transaction Security Document to be executed and delivered to Agent
Mediclinic Europe Proprietary Limited	within 2 Business Days of the Utilisation Date	A Dutch law notarial deed of pledge of all the shares in the capital of Mediclinic Holdings Netherlands B.V. granted by Mediclinic Europe Proprietary Limited as pledgor and the Security Agent as pledgee.	within 2 Business Days of the Utilisation Date
Mediclinic Middle East Investment Holdings Proprietary Limited	within 2 Business Days of the Utilisation Date	A Jersey law security agreement over all the shares in Mediclinic Middle East Holdings Ltd	within 2 Business Days of the Utilisation Date

**SCHEDULE 3
REQUESTS AND NOTICES**

**PART I
UTILISATION REQUEST**

From: [Company]

To: [Agent]

Dated:

Dear Sirs

**Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow the Loan on the following terms:
 - (a) Proposed [•] (or, if that is not a Business Day, the next
Utilisation Date: Business Day)
 - (b) Amount: £[•] or, if less, the Available Facility
 - (c) Interest Period: [•]
3. The proceeds of this Loan should be credited to [account].
4. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for and on behalf of
[Company]

**PART II
SELECTION NOTICE**

From: [Company]

To: [Agent]

Dated:

Dear Sirs

**Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")**

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

Yours faithfully

.....
authorised signatory for and on behalf of
[Company]

NOTES:

* Insert details of the Loan.

** Amend as appropriate.

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [•] as Agent and [•] as Security Agent and the Company for and on behalf of each Obligor

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

Dated:

Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")

1. We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.5 (*Procedure for transfer*) of the Facility Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 26.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Facility Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 26.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].*

5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.])**
6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]) and is tax resident in [•] ***, so that interest payable to it by the Company is generally subject to full exemption from UK withholding tax that it wishes that scheme to apply to the Facility Agreement.]****
- [5./6.] 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.
- [6./7.] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [7./8.] This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

WARNING: Please seek Dutch legal advice (i) until the interpretation of the term "public" (as referred to in Article 4.1(1) of the CRR) has been published by the competent authority, if the participation of a Lender in the Facility is less than EUR 100,000 (or the foreign currency equivalent thereof) and (ii) as soon as the interpretation of the term "public" has been published by the competent authority, if a Lender is or would be considered to be part of the public on the basis of such interpretation.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

For and on behalf of
[Existing Lender]

For and on behalf of
[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent and the Security Agent and the Transfer Date is confirmed as [•].

For and on behalf of
[Agent]

By:

For and on behalf of
[Security Agent]

By:

NOTES:

- * Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.
- ** Include if New Lender comes within paragraph (a)(ii) of the definition of "Qualifying Lender" in Clause 15.1 (*Definitions*).
- *** Insert jurisdiction of tax residence.
- **** This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facility Agreement.
- ***** Delete as applicable.
- ***** Delete as applicable.

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: [•] as Agent, [•] as Security Agent and the Company for and on behalf of each Obligor

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

Dated:

Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.6 (*Procedure for assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Facility Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [•].
4. On the Transfer Date the New Lender becomes party to the relevant Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 26.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.

7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].*
 8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]**
 9. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]) and is tax resident in [•]***, so that interest payable to it by the Company is generally subject to full exemption from UK withholding tax and that it wishes that scheme to apply to the Facility Agreement.]****
- [8./9.] This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 26.7 [*(Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent)*], to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.
- [9./10.] 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./11.] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [11./12.] This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

WARNING: Please seek Dutch legal advice (i) until the interpretation of the term "public" (as referred to in Article 4.1(1) of the CRR) has been published by the competent authority, if the participation of a Lender in the Facility is less than EUR 100,000 (or the foreign currency equivalent thereof) and (ii) as soon as the interpretation of the term "public" has been published by the competent authority, if a Lender is or would be considered to be part of the public on the basis of such interpretation.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

For and on behalf of
[Existing Lender]

For and on behalf of
[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent and the Security Agent and the Transfer Date is confirmed as [•].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.

For and on behalf of
[Agent]

By:

For and on behalf of
[Security Agent]

By:

NOTES:

- * Delete as applicable - each New Lender is required to confirm which of these three categories it falls within
- ** Include only if New Lender comes within paragraph (a)(ii) of the definition of "Qualifying Lender" in Clause 15.1 (*Definitions*).
- *** Insert jurisdiction of tax residence.
- **** This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facility Agreement.
- ***** Delete as applicable.
- ***** Delete as applicable.

SCHEDULE 6
FORM OF ACCESSION DEED

To: [•] as Agent and [•] as Security Agent for itself and each of the other parties to the Facility Agreement referred to below

From: [•] and [•]

Dated:

Dear Sirs

Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")

1. We refer to the Facility Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [•] agrees to become [the "Company" and the borrower of the Facility and] [an Additional Guarantor] and to be bound by the terms of the Facility Agreement and the other Finance Documents as [the "Company" and the borrower of the Facility and] [an Additional Guarantor] pursuant to Clause [28.2 (*Accession of the Company*)]/[Clause 28.3 (*Additional Guarantors*)] of the Facility Agreement. [•] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company and registered number [•].
3. [•] administrative details for the purposes of the Facility Agreement are as follows:

Address:

Fax No.:

Attention:
4. [•] (for the purposes of this paragraph 4, the "**Acceding Obligor**") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of liabilities under the Facility Agreement]:

[•]

together, the "**Relevant Documents**".

IT IS AGREED as follows:

- (a) The Acceding 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
 - (iii) all obligations expressed to be undertaken by the Acceding Obligor to pay amounts in respect of the liabilities to the Security Agent as trustee 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 Acceding Obligor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Facility Agreement.

5. [The Company accepts its appointment as agent under the Finance Documents for service of process under Clause 46.2 (*Service of process*) of the Facility Agreement.]
6. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only)[, signed on behalf of [Target]/[the Company]] and executed as a deed by [the Company]/[Additional Guarantor] and is delivered on the date stated above.

[•]

[EXECUTED AS A DEED])
By: [•])

_____ Director

_____ Director/Secretary

OR

[EXECUTED AS A DEED])
By: [•])

_____ Signature of Director

_____ Name of Director

in the presence of

_____	Signature of witness
_____	Name of witness
_____	Address of witness

_____	Occupation of witness]

[The [Company/Target]

For and on behalf of
[•]

By:]

The Security Agent

For and on behalf of
[*Full Name of Current Security Agent*]

By:

Date:

SCHEDULE 7
FORM OF COMPLIANCE CERTIFICATE

To: [•] as Agent

From: [Company]

Dated:

Dear Sirs

Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that on the last day of the Relevant Period ending on [•] Total Net Debt was [•] and Adjusted EBITDA for such Relevant Period was [•]. Therefore Total Net Debt at such time [did/did not] exceed 5.50 times Adjusted EBITDA for such Relevant Period and the covenant contained in Clause 23 (*Financial Covenant*) [has/has not] been complied with;
3. [We confirm that no Default is continuing.]*
4. We confirm that the following companies constitute Material Companies for the purpose of the Facility Agreement:

Signed
Director
For and on behalf of
[Company]

[Insert applicable certification language if required]

.....
for and on behalf of
[name of [Company's Auditors]]

NOTES:

- * If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

SCHEDULE 8 TIMETABLES

	Loans in sterling
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 12.1 (<i>Selection of Interest Periods</i>))	U-1 9.30am
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	U-1 noon
LIBOR is fixed	Quotation Day 11:00 a.m.
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 13.2 (<i>Calculation of Reference Bank Rate</i>)	Noon on the Quotation Day
<p>"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.</p> <p>"U – X" = X Business Days prior to date of utilisation</p>	

SCHEDULE 9
FORM OF INCREASE CONFIRMATION

To: [•] as Agent, [•] as Security Agent, and [•] as Company, for and on behalf of each Obligor

From: [*the Increase Lender*] (the "**Increase Lender**")

Dated:

Mediclinic International Limited - £400,000,000 Senior Facility Agreement
dated [•] (the "Facility Agreement")

1. We refer to the Facility Agreement. This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.2 (*Increase*) of the Facility Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facility Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [•].
5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender; and
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].*
9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes;

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

10. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [•]) and is tax resident in [•]***, so that interest payable to it by the Company is generally subject to full exemption from UK withholding tax and that it wishes the scheme to apply to the Facility Agreement.]****

[11/12] 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.

[12/13] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[13/14] This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender 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.

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facility Agreement by the Agent and the Security Agent and the Increase Date is confirmed as [•].

For and on behalf of
Agent

By:

For and on behalf of
Security Agent

By:]

NOTES:

- * Delete as applicable - each Increase Lender is required to confirm which of these three categories it falls within.
- ** Include only if the Increase Lender is a UK Non-Bank Lender i.e. falls within paragraph (a)(ii) of the definition of "Qualifying Lender" in Clause 15.1 (*Definitions*).
- *** Insert jurisdiction of tax residence.
- **** This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facility Agreement.
- ***** Delete as applicable.

SCHEDULE 10
EXISTING FINANCIAL INDEBTEDNESS AND SECURITY

PART I
(EXISTING FINANCIAL INDEBTEDNESS)

1. All drawings under a ZAR 6,200,000,000 senior loan facilities and preference share facility entered into between (amongst others) MCSA, Mediclinic Finance Corporation Proprietary Limited and Mediclinic Properties Proprietary Limited, FirstRand Bank, SBSA Limited, and ABSA Bank Limited dated 1 October 2012 (the **“Direct Facilities Agreement”**), including (but not exclusively):
 - (a) Mediclinic Properties Proprietary Limited: R2,950,000,000 to assorted lenders under a term loan facility A;
 - (b) Mediclinic Finance Corporation Proprietary Limited: R220,000,000 to assorted lenders under a term loan facility B;
 - (c) Mediclinic Finance Corporation Proprietary Limited: R200,000,000 to assorted lenders under a Capex facility;
 - (d) Mediclinic Southern Africa Proprietary Limited (**“MCSA”**): R2,000,000,000 under class A redeemable, cumulative preference shares issued to Monte Rosa Financing SPV Proprietary Limited (RF) pursuant to the terms of the Direct Facilities Agreement; and
 - (e) General banking facilities granted to Mediclinic Finance Corporation Proprietary Limited by SBSA Limited, ABSA Bank Limited and FirstRand Bank Limited.
2. All drawings under the facility agreement dated 24 March 2011 (as amended on 10 December 2012, 26 February 2014 and 31 March 2014) (the **“Emirates/Middle East Facility”**), including (but not exclusively):
 - (a) Emirates Healthcare Limited: a USD 172,000,000 term loan facility and USD 54,000,000 term loan facility; and
 - (b) Mediclinic Middle East Management Services FZ-LLC: AED 33,000,000 uncommitted overdraft facility.
3. CHF 1,550,000,000 senior short term loan and revolving credit facilities agreement originally dated 31 July 2012, as amended on 3 October 2012, 17 December 2014 and 24 March 2015 between (amongst others) Hirslanden AG as company, borrower and guarantor, Credit Suisse AG as agent and certain financial institutions as lenders,
4. CHF 100,000,000 junior term loan credit facility agreement originally dated 31 July 2012 as amended on 3 October 2012, 17 December 2015 and 24 March 2015 between (amongst others) Hirslanden AG as borrower, Credit Suisse AG as agent and certain financial institutions as lenders.
5. CHF 145,000,000 listed Swiss Bond issued by Hirslanden AG, ISIN CH0269698772 (maturing 25/2/2021).

6. CHF 90,000,000 listed Swiss Bond issued by Hirslanden AG, ISIN CH0269698798 (maturing 25/2/2025).
7. Any other financial indebtedness disclosed in the Original Financial Statements of the Original Guarantors, in the amount disclosed therein.

PART II (EXISTING SECURITY)

1. The first ranking property-backed continuing covering mortgage bonds registered by Mediclinic Finance Corporation Proprietary Limited, Mediclinic Properties Proprietary Limited, and MCSA (the “**Original Obligor**”) under the Direct Facilities Agreement, for a principal amount of R7,500,000,000 and an additional sum of 25% (twenty-five percent) of such principal amount.
2. The general notarial bond issued pursuant to the Direct Facilities Agreement by each Original Obligor.
3. A cession in *securitatem debiti* by each Original Obligor of all of its rights, title and interest in and to:
 - (a) all claims Original Obligor has or may have in the future in respect of debts against any party, including but not limited to trade debtors and all other claims sounding in money from time to time;
 - (b) the insurance policies of each Original Obligor;
 - (c) the proceeds payable to each Original Obligor under any of its insurance policies;
 - (d) any and all bank accounts maintained by each Original Obligor from time to time and sums standing to the credit of any such bank accounts from time to time;
 - (e) the Cash Equivalent Investments of such Original Obligor;
 - (f) any Intellectual Property of such Original Obligor;
 - (g) the Hedging Agreements to which such Original Obligor is a party; and
 - (h) in the case of Mediclinic Properties Proprietary Limited, the lease agreement entered into by it and Mediclinic OpCo on 29 November 2007.
4. A pledge by each Original Obligor of:
 - (a) all or any shares in the issued share capital of any material group company owned by it at any time;
 - (b) 68% (sixty-eight percent) of the issued share capital of Curamed Holdings Limited owned by it from time to time);

- (c) 75% (seventy-five percent) plus 1 (one) share of the issued share capital of any Hospital Investment Company owned by it at any time; and
 - (d) all or any shares in the issued share capital of any direct wholly-owned subsidiary (subject to certain exceptions) owned by it at any time.
- 5. A cession in *securitatem debiti* by each Original Obligor of all of its rights, title and interest in and to all current and future claims that such Obligor may have against:
 - (a) any material group company (other than Mediclinic Investments Proprietary Limited);
 - (b) any Hospital Investment Company; and
 - (c) any direct wholly-owned subsidiary (subject to certain exceptions).
- 6. A pledge of shares and claims by MCSA of all of the shares it holds in, and all of its claims against, Mediclinic Holdings (Namibia) (Proprietary) Limited.
- 7. Any other security disclosed in Original Financial Statements of the Original Guarantors in respect of any Mediclinic group borrowings, borrowings in South African operations, borrowings in Middle East operations, and borrowings in Swiss operations, in the amounts disclosed therein..

For the purpose of this Schedule 10 only:

“Cash Equivalent Investments” means:

- (a) certificates of deposit maturing within 1 (one) year after the relevant date of calculation and issued by certain banks subject to certain ratings criteria or acceptable to the Facility Agent under the Direct Facilities Agreement;
- (b) any investment in marketable obligations issued or guaranteed by the Government of South Africa or by an instrumentality or agency of any of the Government of South Africa having an equivalent credit rating which:
 - (i) matures within 1 (one) year after the relevant date of calculation; and
 - (ii) is not convertible to any other security;
- (c) investments accessible within 30 (thirty) days in money market funds which have a credit rating of either a A-1 or higher by S&P or Fitch or P-1 or higher by Moody’s and invest substantially all their assets in securities of the types described in (a) and (b) above; or
- (d) any other debt security or investment approved by the Facility Agent under the Direct Facilities Agreement,

in each case, denominated in Rand and to which a member of the MCSA group is alone (or together with other members of the MCSA group) beneficially entitled and which is not issued or guaranteed by any member of the MCSA group or subject to any security (other than that arising under the security documents related to the Direct Facilities Agreement);

“Hedging Agreements” means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by a borrower under the Direct Facilities Agreement and a hedge counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the term facilities under the Direct Facilities Agreement in accordance with the relevant hedging policy, and subject to certain exceptions, in the Direct Facility Agreement.

“Hospital Investment Company” means any limited liability company incorporated in South Africa in which MCSA:

- (a) holds, or will hold, legally and beneficially at least 75% (seventy-five percent) plus 1 (one) of the issued shares; and
- (b) is, or will be, able to cast, or control the casting of, directly or indirectly, at least 75% (seventy-five percent) plus 1 (one) of the maximum number of votes that might be cast at a general meeting of such company,

(as at the date of signature of the Direct Facilities Agreement including, without limitation, certain companies listed in Schedule 10 of the Direct Facilities Agreement), and (a) in which certain doctors selected by MCSA may own up to 25% (twenty-five percent) minus 1 (one) share of the issued shares, and (b) which will have as its sole asset certain shares issued by Mediclinic OpCo to each Hospital Investment Company linked to a specific MCSA Hospital;

“Intellectual Property” means:

- (a) any patents, trademarks, service marks, designs, trading or business names, copyrights, design rights, moral rights, inventions, confidential information, know-how, domain names, topographical or similar rights, data base and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use (including by way of licence) such assets of each member of the MCSA group, in each case whether registered or unregistered.

“MCSA Hospitals” means each of the hospitals owned and operated by Mediclinic OpCo.

SIGNATURES

THE ORIGINAL GUARANTORS

For and on behalf of
MEDICLINIC INTERNATIONAL LTD

By:

Name: CRAIG TINGLE

Title: DIRECTOR

Address: Mediclinic Offices
Strand Road
Stellenbosch
7599
South Africa

Attention: The Company Secretary

Tel: +27 (0)21 809 6500

Fax: +27 (0)21 809 6703

For and on behalf of
MEDICLINIC HOLDINGS NETHERLANDS B.V.

By:

Name: CRAIG TINGLE

Title: DIRECTOR

Address: Schiekade 830
3032 AL Rotterdam
Netherlands

Attention: Michel Warmerdam

Tel:

Fax:

Email: andante@andantetrust.nl

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Mediclinic Offices
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Stellenbosch
7599
South Africa

Attention: The Company Secretary

Fax: +27 (0)21 809 6703

Email: gch@mediclinic.com and lhs@mediclinic.com

For and on behalf of
MEDICLINIC MIDDLE EAST HOLDINGS LTD

By:

Name: CRAIG TINGLE

Title: DIRECTOR

Address: Sanne Group
13 Castle Street
St. Helier
Jersey
JE4 5UT
Channel Islands

Attention: Deborah Johansen – Senior Administrator

Tel:

Fax:

Email: Deborah.Johansen@sannegroup.com

Copy to

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Mediclinic Offices
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7599
South Africa

Attention: The Company Secretary

Fax: +27 (0)21 809 6703

Email: gch@mediclinic.com and lhs@mediclinic.com

For and on behalf of
MEDICLINIC JERSEY LIMITED

By:

Name: GC HATTINGH

Title: DIRECTOR

Address: Stonehage Fleming Corporate Services
PO Box 639
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Channel Islands

Attention: Michelle Donnelly

Tel:

Fax:

Email: Michelle.Donnelly@stonehage.com

Copy to

Address: Mediclinic International Limited
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South Africa

Attention: The Company Secretary

Fax: +27 (0)21 809 6703

Email: gch@mediclinic.com and lhs@mediclinic.com

For and on behalf of
MEDICLINIC CHE FINCO LIMITED

By:

Name: CRAIG TINGLE

Title: DIRECTOR

Address: Sanne Group
13 Castle Street
St Helier
Jersey
JE4 5UT
Channel Islands

Attention: Deborah Johansen – Senior Administrator

Tel:

Fax:

Email: Deborah.Johansen@sannegroup.com

Copy to

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7599
South Africa

Attention: The Company Secretary

Fax: +27 (0)21 809 6703

Email: gch@mediclinic.com and lhs@mediclinic.com

THE ARRANGERS

For and on behalf of
MORGAN STANLEY BANK INTERNATIONAL LIMITED

By:



Address: 25 Cabot Square
Canary Wharf
London E14 4QA
United Kingdom

Fax: +44 207 056 3484

Telephone: +44 141 2450125/2457477

Email: gla.loandocs@morganstanley.com

Attention: Chris McCullagh/Robbie Dunsmore

For and on behalf of
FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)

By:

Address: 14th Floor, 1 Merchant Place
Cnr Rivonia Road and Fredman Drive
Sandton, 2196
South Africa

Attention: Ravendra Bheamadu – Deal Management

Email: ravendra.bheamadu@rmb.co.za

Telephone: +27 11 282 1740

Fax: +27 11 282 4056

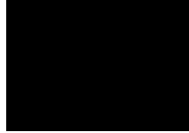
THE AGENT

For and on behalf of

FIRSTRAND BANK LIMITED

(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)

By:



Address: 14th Floor, 1 Merchant Place
Cnr Rivonia Road and Fredman Drive
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South Africa

Attention: Theresa Rheeder – Leveraged Finance

Email: theresa.rheeder@rmb.co.za

Telephone: +27 11 282 4315

Fax: +27 11 282 4043

THE SECURITY AGENT

For and on behalf of

U.S. BANK TRUSTEES LIMITED

By:

[Redacted Signature]

By:

[Redacted Signature]

Christopher Eastlake
Authorised Signatory

David Harnett
Authorised Signatory

Address: U.S. Bank Trustees Limited
5th Floor
125 Old Broad Street
London
EC2N 1AR

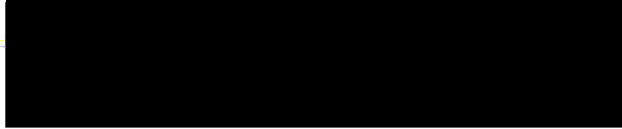
Attention: Loan Agency

Email: loan.agency.london@usbank.com

THE ORIGINAL LENDERS

For and on behalf of
MORGAN STANLEY SENIOR FUNDING, INC.

By:



Address: C/O Morgan Stanley Bank International Limited
25 Cabot Square
Canary Wharf
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E14 4WQ
UK

Attention: Chris McCullagh/Robbie Dunsmore

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For and on behalf of
FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)

By:



Address: 14th Floor, 1 Merchant Place
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