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LOAN MARKET ASSOCIATION ("LMA") STANDARD TERMS AND CONDITIONS FOR PAR AND DISTRESSED TRADE TRANSACTIONS (BANK DEBT/CLAIMS)

1. APPLICABILITY AND INTERPRETATION

1.1 Applicability

These Conditions apply to a transaction in respect of which:

- a. they are expressly incorporated by way of Confirmation, oral agreement or otherwise; and
- b. the Trade Date occurs on or after 29 October 2018 and before the date on which they are superseded by revised conditions.

1.2 Interpretation

For the purpose of construing these Conditions in relation to a transaction to which they

apply (the **“transaction”**):

“Agents” means any facility, security or other agent, trustee, representative or co-ordinator under the Credit Documentation and **“Agent”** shall be construed accordingly.

“Agent’s Expenses” means any costs, liabilities, losses, claims, damages and expenses incurred by, and any indemnification of, any Agent or any person being a member of a steering committee, a co-ordinator or otherwise involved in any standstill or other arrangement in relation to the Borrower(s) for which such Agent or person has recourse under the Credit Documentation to the Seller but only to the extent attributable to or applicable by reference to the Purchased Assets or the Purchased Obligations.

“Agreed Terms” means the terms agreed between the Buyer and the Seller in relation to the transaction, as evidenced by the Confirmation.

“Ancillary Rights and Claims” means:

- a. to the extent that the same are capable of being or permitted to be assigned, by the Seller in contract and under applicable law; or
- b. (in the case of a transaction which settles as a funded participation or a risk participation) to the extent that the same are capable of being or permitted to be made the subject of a funded participation or as the case may be, a risk participation, by the Seller in contract and under applicable law,

all claims, suits, causes of action, and any other right of the Seller (including where such claims, suits, causes of action or other rights have been acquired by the Seller from

its Predecessor-in-Title), whether known or unknown, against any Obligor, or any of their respective affiliates, agents, representatives, contractors, advisors, or any other person that in any way is based upon, arises out of or is related to assets referred to in paragraph (a) or paragraph (b) of the definition of Purchased Assets, including:

- i. all claims (in contract or in tort), suits, causes of action, and any other right of the Seller (including where such claims, suits, causes of action or other rights have been acquired by the Seller from its Predecessor-in- Title), against any auditor, legal, tax, financial or other professional advisor, or other person arising under or in connection with the Credit Documentation, but excluding:
- ii. the Seller's rights, title, interest and benefit in, to and under the Predecessor Transfer Agreements (other than claims, suits, causes of action and any other rights referred to above that have been acquired by the Seller from its Predecessor-in-Title).

“Benefit Plan” means an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, a “plan” as defined in Section 4975 of the Code or any entity whose assets include (for purposes of United States Department of Labour Regulations Section 2510.3-101 as modified by Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Binding Amendment and Debt Restructuring” means:

- a. any amendment, restatement, amendment and restatement, waiver or other modification of any term of the Credit Documentation or any refinancing of the indebtedness of any Borrower under the Credit Documentation in each case made in accordance with the terms of the Credit Documentation; or
- b. any compromise or arrangement under Part 26 of the Companies Act 2006, rescheduling, restructuring or re-organisation in each case of the indebtedness (or of any class of the indebtedness) of any Obligor on or after the Trade Date and up to and including the Settlement Date which satisfies the following tests:
 - i. the holders of more than half of that indebtedness or of any class of that indebtedness participate in or agree to the same; and
 - ii. the same arises in relation to any actual or purported insolvency, payments difficulty, moratorium, exchange control or transfer restrictions, withholding of foreign currency payments or similar circumstance.

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

- a. London;

- a. the place of the office of each of the Seller and Buyer through which they perform their respective obligations under the Agreed Terms or the Transaction Documentation; and
- b.
 - i. (in relation to any date for payment of currency other than euro) the principal financial centre of the country of that currency; or
 - ii. (in relation to any date for payment of euro) any TARGET Day.

“Buy-in Compensation” means, for any day an amount equal to:-

- a. the cash pay element of the Contractual Margin and Recurring Fees for each such day (to the extent payable by each Obligor under the Credit Agreement in respect of all or any part of the funded principal amount of the Purchased Assets) multiplied by the funded principal amount of the Purchased Assets (excluding the amount of any PIK Interest that has been capitalised on or after the Trade Date in respect of the Purchased Assets) for each such day; and
- b. the Recurring Fees for each such day (to the extent payable by each Obligor under the Credit Agreement in respect of all or any part of the unfunded portion of the Purchased Assets) multiplied by the unfunded portion of the Purchased Assets for each such day.

“Buy-in Transaction” means a transaction entered into on arm’s length terms and in good faith in which the Buyer purchases (at a purchase price which is commercially reasonable in the circumstances) the equivalent of the Traded Portion from a counterparty other than the Seller.

“Buyer Insolvent Party Amount” has the meaning given to it in paragraph (g) of Condition 3 (Termination).

“Buyer Related Entity” means an entity managed or advised by the same investment manager or investment adviser as the Buyer.

“Buyer Related Transactions” means each transaction evidenced by an LMA trade confirmation between the Seller (as seller) and a Buyer Related Entity (as buyer) dated the same date as the Confirmation with a trade date of the Trade Date and which relates to the Credit Agreement.

“Buyer Warranties” means the warranties, representations and indemnities made by, and the covenants and agreements of, the Buyer in the Agreed Terms.

“Claim” means the Seller’s right to prove in the Insolvency Proceedings of any Obligor in respect of the Traded Portion, together with (to the extent of the Traded Portion) (i) all the Seller’s rights relating to any proof of debt filed or to be filed in those Insolvency Proceedings and (ii) all the Seller’s rights in and to any distribution of an Obligor’s assets by an Insolvency Officer as part of those Insolvency Proceedings.

“Claim Impairment” means:

- a. any right of any person or authority in respect of the Purchased Assets or any part thereof, the effect of which is or would be to reduce, impair or otherwise materially and prejudicially affect the Purchased Assets and the Purchased Obligations or any part thereof or any guarantee or Collateral thereto;
- b. any claim or action of any person or authority whatsoever in respect of the Purchased Assets and the Purchased Obligations or any part thereof, the effect of which, if determined adversely, is or would be to reduce, impair or otherwise materially and prejudicially affect the Purchased Assets and the Purchased Obligations or any part thereof or any guarantee or Collateral thereto; or
- c. any right of set-off of any person in respect of the Purchased Assets or the Purchased Obligations.

“Claims Trade” means a transaction where the Confirmation executed or to be executed in relation to that transaction is substantially in the form of the LMA recommended form of trade confirmation (claims).

“Code” means the United States Internal Revenue Code of 1986 and the rules and regulations promulgated under it.

“Collateral” means any property, whether real or personal, tangible or intangible, of whatever kind and wherever located, whether now owned or hereafter acquired or created, in or over which an Encumbrance has been, or is purported to have been, granted to or for the benefit of the Lenders under the Credit Documentation.

“Confidentiality Agreement” means any confidentiality agreement or undertaking entered into between the Seller and the Buyer in connection with the transaction and in the form required by the terms of the Credit Documentation or, if no such form is provided by the Credit Documentation, in the then current recommended form of the LMA or such other form agreed between the Buyer and the Seller.

“Confirmation” means the confirmation executed and delivered by the Seller and the Buyer in relation to the transaction.

“Contractual Notarial Fee” means any notarial fee attributable to the sale and/or purchase of the Traded Portion (but not any other part of the Purchased Assets and Purchased Obligations or related Collateral) where the notarisation(s) to which such notarial fee relates is undertaken pursuant to an express requirement in the Credit Agreement including where such express requirement is exercised at the discretion of the Agent or any other party to the Credit Agreement.

“Credit Agreement” means the credit agreement to which the transaction relates as set out in the Agreed Terms.

“Credit Documentation” means the Credit Agreement (including all schedules and appendices to the Credit Agreement), any amendments, supplements, accessions, waivers or variations to the Credit Agreement and all guarantee, security, intercreditor and restructuring documentation relating to the Credit Agreement.

“Delay Period” means the period from (and including) the Delay Period Commencement Date to (but excluding) the Settlement Date.

“Delay Period Commencement Date” means in the case of a Par Trade, the date ten Business Days after the Trade Date and, in the case of a Distressed Trade, the date twenty Business Days after the Trade Date.

“Delayed Settlement Compensation” means any amounts payable pursuant to Condition 11 (*Delayed Settlement Compensation*) (other than pursuant to paragraph (c)(iii) of Condition 11 (*Delayed Settlement Compensation*)).

“Distressed Trade” means a transaction:

- a. designated as a distressed trade transaction by the Buyer and the Seller in the Agreed Terms; or
- b. which is a Claims Trade.

“Early Termination Amount” means the amount determined by the Non-Insolvent Party pursuant to paragraph (d) of Condition 3 (*Termination*).

“Early Termination Date” means the date on which the transaction is terminated under paragraph (a) or, as the case may be, (b) of Condition 3 (*Termination*).

“Early Termination Payment Amount” means the Seller Insolvent Party Amount or, as the case may be, the Buyer Insolvent Party Amount.

“Early Termination Payment Date” means the date specified in the Early Termination Amount Statement (as defined in Condition 3 (*Termination*)) as being the date on which the Early Termination Payment Amount(s) must be paid.

“Encumbrance” means any:

- a. mortgage, pledge, lien, charge, hypothecation, security interest or other encumbrance, security agreement or security arrangement of any kind;
- b. purchase or option agreement or arrangement;
- c. subordination agreement or arrangement; or
- d. agreements to create or effect any of the foregoing.

“ERISA” means the United States Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated under it.

“EURIBOR” means for any day, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for a period of one month displayed on page EURIBOR 01 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 as of 11:00 am (Brussels time) on such day. If such page or service ceases to be available, the Seller,

acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, EURIBOR shall be the Interpolated Rate.

“FATCA” means:

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

“FATCA Deduction” means a deduction or withholding required by FATCA from a payment under the transaction which constitutes US source fixed, determinable, annual or periodic income for US federal tax purposes.

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

“Governmental Authority” means any federal, state or other governmental agency or body, authority, administrative or regulatory body, arbitrator, court or other tribunal, foreign or domestic.

“Group” means, in respect of any person, such person and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 2006).

“IBOR” means the interbank offered rate on the appropriate page of the Thomson Reuters screen (or the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters) specified by the Seller at or about 11.00 a.m. (local time) on the date upon which quotations would ordinarily be given by prime banks in the relevant interbank market for deposits in the relevant currency for delivery on the Settlement Date for the Relevant Period on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for the Relevant Period, IBOR shall be the Interpolated Rate.

“Insolvency Event” in relation to the Buyer or, as the case may be, Seller means that the Buyer or, as the case may be Seller:

- 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 exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- g. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- h. 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 publically disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- i. 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;
- j. 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 (i) (inclusive); or
- k. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence, in any of the foregoing acts.

“Insolvency Officer” means any receiver, administrator, liquidator, provisional liquidator, administrative receiver, trustee, supervisor of a voluntary arrangement, similar officer appointed pursuant to a scheme of arrangement under section 899 of the Companies Act 2006 or similar officer appointed under the Insolvency Act 1986 or any other officer appointed under any other procedure under any law or any jurisdiction of, or having, similar or analogous powers over all or any of the assets of an Obligor.

“Insolvent Party” has the meaning given to that term in paragraph (a) of Condition 3 (Termination).

“Insolvency Proceedings” means receivership, administration, liquidation, appointment of a provisional liquidator, winding-up, dissolution voluntary arrangement, scheme of arrangement under section 899 of the Companies Act 2006 or any insolvency procedure under the Insolvency Act 1986 or any other procedure under any law of any jurisdiction having a similar or analogous nature or effect.

“Insolvency Risk Period” means the period from and including the Trade Date up to and including the Settlement Date.

“Interest” means the interest payable in connection with the Traded Portion in accordance with the Credit Documentation.

“Interpolated Rate” means for the purpose of determining:

- a. a Relevant Benchmark Rate, the rate for a period equal to one month which results from interpolating on a linear basis the relevant screen rate for the longest period (for which that rate is available) which is less than one month and the relevant screen rate for the shortest period (for which that rate is available) which exceeds one month; and
- b. IBOR, the rate for a period equal to the Relevant Period which results from interpolating on a linear basis the relevant screen rate for the longest period (for which that rate is available) which is less than the Relevant Period and the relevant screen rate for the shortest period (for which that rate is available) which exceeds the Relevant Period.

“Lenders” means the persons originally named as lenders in the Credit Agreement and their successors and assigns from time to time.

“LIBOR” means for any day, 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 for a period of one month displayed on pages LIBOR01 or LIBOR02 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 as of 11:00 a.m. (London time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, LIBOR shall be the Interpolated Rate.

“LIBOR Currency” means US dollars, sterling, Japanese yen, Swiss franc or (where interest under the Credit Documentation is not calculated using the euro interbank offered rate administered by the European Money Markets Institute (or any other person that takes over administration of that rate)), euro.

“Non-Cash Distribution” means any note, debenture or other financial instrument, non-cash asset or right, whether debt, equity or otherwise, issued in satisfaction or purported satisfaction of any obligation of an Obligor to make any payment in respect of the Traded Portion or any part thereof.

“Non-Insolvent Party” has the meaning given to that term in paragraph (a) of Condition 3 (Termination).

“Non-Recurring Fees” means any fees that are to be paid to a Lender under the Credit Documentation (such as, without limitation, amendment, consent or waiver fees) that are not Recurring Fees in respect of the Traded Portion.

“Obligor” means any Borrower or Guarantor and if more than one, each Borrower or Guarantor and each other obligor under the Credit Documentation.

“Other Party” means the counterparty to a transaction which is not the Responsible Party.

“Par Trade” means a transaction:

1. designated as a par trade transaction by the Buyer and the Seller in the Agreed Terms; or
2. where the Confirmation executed or to be executed in relation to that transaction is substantially in the form of the LMA recommended form of trade confirmation (risk participation).

a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

“Permanent Reductions” means any permanent commitment reductions and permanent repayments of principal applicable to the Purchased Assets under the Credit Documentation, but shall not include:

1. any permanent repayment of principal which is satisfied by the issue of a Non- Cash Distribution; and
2. any distribution of an Obligor’s assets by an Insolvency Officer as part of Insolvency Proceedings of that Obligor which discharges (in whole or in part) any Claim,

and any such permanent repayment of principal and any such distribution referred to in paragraphs (a) and (b) above shall be disregarded when determining the principal amount of the Purchased Assets funded in any relevant currency as of the Settlement Date for the purposes of the Settlement Amount calculation set out in Condition 14.2 (*Settlement Amount calculation*).

“PIK Interest” means any paid-in-kind interest, fees or other amounts payable by an Obligor under the Credit Agreement which are either:

- a. automatically deferred or capitalised; or
- b. deferred or capitalised at the option of any Obligor,

provided that PIK Interest shall not include any interest, fees or other sums which are payable by an Obligor under the Credit Agreement in respect of such amounts and which are not themselves so deferred or capitalised.

“Predecessor-in-Title” means any of the Seller’s predecessors-in-title to the Purchased Assets or the Purchased Obligations or any part thereof.

“Predecessor Transfer Agreements” means all transfer agreements under which (a) the Seller and (b) any of the Seller’s Predecessors-in-Title acquired the Purchased Assets or any part thereof and assumed the Purchased Obligations or any part thereof.

“Pricing Letter” means any letter agreement made or to be made between the Seller and the Buyer that specifies the calculations for determining the Settlement Amount.

“PTE” means a prohibited transaction class exemption issued by the United States Department of Labour.

“Purchased Assets” means any and all of the Seller’s rights, title and interest in and to:

1. the commitment, advances, other utilisations (including letters of credit), claims and other rights of the Seller (including to any Non-Cash Distributions other than Non-Cash Distributions received by the Buyer in the circumstances set out in Condition 15.2 (*Settled without accrued interest*) or Condition 15.9 (*Allocation of Interest and Recurring Fees/Non-Recurring Fees*)) included in the Traded Portion of the Seller’s participation under or in respect of the Credit Documentation together with any and all corresponding rights and benefits under any ancillary guarantee or security relating to the Traded Portion;
2. in the case of a Claims Trade, the Claim; and
3. the Ancillary Rights and Claims,

provided that the Purchased Assets shall not include any of the Seller’s rights that are attributable to the Seller’s rights in any capacity other than as a Lender.

“Purchased Obligations” means all of the obligations under the Credit Documentation expressly assumed or to be assumed by the Buyer from the Settlement Date in accordance with the provisions of the Transaction Documentation including without limitation the obligations of the Seller with respect to the Traded Portion but excluding the Retained Obligations.

“Recurring Fees” means fees (such as commitment, ticking, facility and letter of credit fees and commissions) that are expressed to accrue by reference to time elapsed in connection with the Traded Portion in accordance with the Credit Documentation.

“Relevant Benchmark Rate” means for any day:

- a. in respect of any sum denominated in euro (and where interest under the Credit Documentation is calculated using the euro interbank offered rate administered by European Money Markets Institute (or any other person that takes over administration of that role)), EURIBOR;
- b. in respect of any sum denominated in a LIBOR Currency, LIBOR;
- c. in respect of any sum denominated in Australian dollars:
 - i. the Australian bank bill swap reference rate (Bid) administered by the Australian Financial Markets Association (or any other person which takes over the administration of that rate) for a period of one month displayed on page BBSY of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) as of about 10.10 a.m. (local time) but no later than 10.30 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the Relevant Benchmark Rate shall be the Interpolated Rate; or
 - ii. if the rate described in paragraph (i) above cannot be determined, the sum of:
 - A. the Australian bank bill swap reference rate administered by the Australian Financial Markets Association (or any other person which takes over the administration of that rate) for a period of one month displayed on page BBSW of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) as of about 10.10 a.m. (local time) but no later than 10.30 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the rate shall be the Interpolated Rate; and
 - B. 0.05 per cent. per annum.
- d. in respect of any sum denominated in New Zealand dollars, the New Zealand bank bill buy/sell rate (Average MID) administered by the New Zealand Financial Markets Association (or any other person which takes over the administration of that rate) for a period of one month displayed on page BKBM of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) as of 10.20 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the Relevant Benchmark Rate shall be the Interpolated Rate;

- e. in respect of any sum denominated in Canadian dollars, the average bid rate for Canadian bankers' acceptances with a period to maturity equal in length to a period of one month displayed on page CDOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) as of 10.00 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the Relevant Benchmark Rate shall be the Interpolated Rate;
- f. in respect of any sum denominated in Danish krone, the Copenhagen interbank offered rate administered by the Danish Bankers' Association (or any other person which takes over the administration of that rate) for a period of one month displayed on page CIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) at 10.30 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the Relevant Benchmark Rate shall be the Interpolated Rate;
- g. in respect of any sum denominated in Swedish krona, the Stockholm interbank offered rate administered by the Swedish Bankers' Association (or any other person which takes over the administration of that rate) for a period of one month displayed on page STIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) as of 10.40 a.m. (local time) on such day. If such page or service ceases to be available, the Seller, acting reasonably, may specify another page or service displaying the relevant rate. If no such screen rate is available for a period of one month, the Relevant Benchmark Rate shall be the Interpolated Rate; or
- h. in respect of:
 - i. any sum denominated in a currency referred to in sub-paragraphs (a) to (g) above for which the specified screen rate is not available and for which it is not possible to calculate the Interpolated Rate; or
 - ii. any sum denominated in any currency not specified in any of paragraphs (a) to (g) above,

such rate as specified in the Agreed Terms (or if no such rate is specified such rate as specified by the Seller (acting reasonably)).

“Relevant Participation” means, in the case of a risk participation, the commitment included in the Traded Portion including any drawn portion of that commitment.

“Relevant Period” means the period from the Settlement Date to the next payment date applicable under the Credit Agreement for the relevant funded portion.

“Relevant Rate” means, unless otherwise agreed by the Seller and the Buyer, for the Delay Period the result of dividing (a) the sum of all the individual Relevant Benchmark Rates for each day in the period from and including the date that is two Business Days before the Delay Period Commencement Date and to but excluding the date that is two Business Days before the Settlement Date by (b) the total number of days in such period.

“Responsible Party” means either the party responsible for preparing the Confirmation as agreed between the Seller and the Buyer on the Trade Date or the party responsible for preparing the Transaction Documentation as specified in the Agreed Terms, as the context may require.

“Retained Obligations” means, save as otherwise provided in the Agreed Terms, all obligations of the Seller:

- a. under the Credit Documentation that relate to facts, events or circumstances arising or occurring before the Settlement Date;
- b. under the Predecessor Transfer Agreement;
- c. that relate to a breach of any of the Seller Warranties;
- d. that arise out of the Seller’s bad faith, gross negligence or wilful misconduct;
- e. that arise out of any Predecessor in Title’s bad faith, gross negligence or wilful misconduct;
- f. that do not relate to the Purchased Assets or the Purchased Obligations; and
- g. that are attributable to the Seller’s actions or obligations in any capacity other than as a Lender.

“Retained Portion” means, in relation to a facility or, as the case may be, tranche of a facility specified in the Traded Portion, that part of the commitments, loans and other utilisations in respect of such facility or, as the case be, tranche that are retained by the Seller and not included in the Traded Portion.

“Sell-out Costs of Carry” means, for any day an amount equal to the amount payable for the Purchased Assets and Purchased Obligations (calculated in accordance with Condition 14 (Settlement Amount Calculation) but without being adjusted to take account of Delayed Settlement Compensation and any applicable recordation, processing, transfer or similar fee) multiplied by the Relevant Rate for each such day minus the amount of interest actually received by the Seller (and not capitalised or deferred) in respect of the Purchased Assets for each such day.

“Sell-out Transaction” means a transaction entered into on arm’s length terms and in good faith in which the Seller sells (at a purchase price which is commercially reasonable in the circumstances) the Traded Portion to a counterparty other than the Buyer.

“Seller Insolvent Party Amount” has the meaning given to it in paragraph (f) of Condition 3 (Termination).

“Seller Related Entity” means an entity managed or advised by the same investment manager or investment adviser as the Seller.

“Seller Related Transactions” means each transaction evidenced by an LMA trade confirmation between the Buyer (as buyer) and a Seller Related Entity (as seller) dated the same date as the Confirmation with a trade date of the Trade Date and which relates to the Credit Agreement.

“Seller Representation Date” means:

- a. in relation to each of the representations set out in paragraph (a) (No acceleration or payment default) of Condition 22.3 (*Seller’s representations – Par Trades*) and paragraphs (e) (*No impairment*) and (g) (*No litigation*) of Condition 22.4 (*Seller’s representations – Distressed Trades*), the Trade Date;
- b. in relation to each of the representations set out in paragraphs (b) (*No other documents*), (c) (*No default*), (d) (*Alienability*), (f) (*Seller ERISA*) and (g) (*Ancillary Rights and Claims*) of Condition 22.2 (*Seller’s representations – all trades*), paragraph (b) (*No set-off*) of Condition 22.3 (*Seller’s representations – Par Trades*) and paragraphs (a) (*Provision of Credit Documentation*), (b) (*No connected parties*), (c) (*No bad acts*), (d) (*No rights of set-off*), and (f) (*No funding obligations*) of Condition 22.4 (*Seller’s representations – Distressed Trades*), the Trade Date and the Settlement Date; and
- c. in relation to each of the representations set out in paragraphs (a) (*Unencumbered title*) and (e) (*Pricing Letter and PIK Interest*) of Condition 22.2 (*Seller’s representations – all trades*), the Settlement Date.

“Seller Warranties” means the warranties, representations and indemnities made by, and the covenants and agreements of, the Seller in the Agreed Terms.

“Settlement Amount” means the amount payable for the Purchased Assets and the Purchased Obligations pursuant to Condition 14 (Settlement Amount calculation).

“Settlement Date” means the date on which settlement of the transaction occurs. “Settlement Delivery Obligations” means the obligation of each of the Seller and the

Buyer, as the case may be, to:

- a. execute and deliver to the other party the Confirmation; and/or
- b. execute and deliver to the other party and/or if applicable the Agent under the Credit Agreement, the Form of Purchase for the purposes of settling the transaction.

“Substitute Confirmation” means the confirmation signed on behalf of the non-defaulting party and the substitute counterparty in the form most recently published by the LMA evidencing the agreed terms for the Substitute Transaction.

“Substitute Settlement Date” means the settlement date specified in the Substitute Confirmation.

“Substitute Trade Date” means the date on which the non-defaulting party agrees the terms (whether orally or in writing) of the Substitute Transaction with a substitute counterparty.

“Substitute Transaction” means a Buy-in Transaction or, as the case may be, a Sell- out Transaction.

“Successor-in-Title” means any of the Buyer’s successors-in-title to the Purchased Assets or the Purchased Obligations or any part thereof.

“Successor Transfer Agreement” means any transfer agreement under which any of the Buyer’s Successors-in-Title acquires the Purchased Assets or the Purchased Obligations or any part thereof.

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

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

“Termination Notice” means a termination notice substantially in the recommended form of the LMA from time to time or any other form agreed between the Seller and the Buyer.

“Transaction Documentation” means the documentation required to implement the transaction (including the agreed Form of Purchase and any Pricing Letter) and, “Transaction Document” shall be construed accordingly.

“Transfer Fee” means a recordation, processing, transfer or similar fee payable to the Agent under the Credit Documentation.

“Unadjusted Settlement Amount” means the Settlement Amount but without being adjusted to take account of:

- a. any Transfer Fee and Agent’s Expenses; and
- b. any Delayed Settlement Compensation.

“Upstream Trade” means a binding trade with a trade date of no later than 5 Business Days after the Trade Date pursuant to which the Seller has agreed to purchase, and its counterparty has agreed to sell, not less than the Purchased Assets and Purchased Obligations, on terms which include a provision substantially the same as Condition 23.3 (Buy-in/Sell-out).

“Upstream Obligations” means the obligations of the Seller set out in paragraph (h) of Condition 23.3 (Buy-in/Sell-out).

“US” means the United States of America.

1.3 Construction

- a. Unless a contrary indication appears, capitalised terms used in these Conditions shall have the meaning given to them in the Confirmation.

- a. If the parties agree to enter into a transaction using an electronic medium (for example an internet website) then the terms applicable to that electronic medium shall prevail to the extent they are binding on the parties and are inconsistent with these Conditions.
- b. A provision of law is a reference to that provision as amended or re-enacted.
- c. Headings are for ease of reference only.

1.4 **Agreed Terms prevail**

- a. In the case of any inconsistency between the Agreed Terms and these Conditions, the Agreed Terms shall prevail.
- b. Each of these Conditions shall apply unless disapplied or otherwise specified in the Agreed Terms.

2 **CONTRACT POINT**

- a. A binding contract for the sale or participation by the Seller to the Buyer of the Purchased Assets and the Purchased Obligations shall come into effect between the Seller and the Buyer upon oral or, in the absence of such oral agreement, written agreement of the terms on the Trade Date and shall be documented and completed in accordance with these Conditions.
- b. The occurrence before the Settlement Date of:
 - i. an event of default or potential event of default under the Credit Documentation; or
 - ii. an event which affects (either adversely or beneficially) the ability of an Obligor to perform its obligations under the Credit Documentation,

shall not relieve either party of its obligations under the Agreed Terms.

3 **TERMINATION**

- a. **Termination by notice:** Unless paragraph (b) below applies to the transaction, if at any time during the Insolvency Risk Period, an Insolvency Event occurs in relation to a party (the “**Insolvent Party**”), the other party (the “**Non-Insolvent Party**”) may at any time after the occurrence of that Insolvency Event which is continuing, deliver a Termination Notice to the Insolvent Party and the transaction shall be terminated on and with effect from the date specified in such Termination Notice (being a date no earlier than the date on which delivery of that Termination Notice becomes effective and no later than 20 Business Days after such date).
- b. *Automatic termination on insolvency:* If automatic termination on insolvency applies to the Insolvent Party and:
 - i. an Insolvency Event specified in paragraphs (a), (c), (d), (e), (f), (g) and/or (h) of the definition of Insolvency Event and to the extent

- b.
 - i. analogous thereto, paragraph (j) thereof occurs at any time during the Insolvency Risk Period in relation to that Insolvent Party (whether or not automatic termination on insolvency applies to the Non-Insolvent Party), the transaction shall (subject to any grace periods set out in the Agreed Terms):
 - A. in the case of an Insolvency Event specified in paragraph (a), (c), (f), (g), (h) and, to the extent analogous thereto, (j) of the definition of “Insolvency Event” be automatically terminated immediately upon the occurrence of such Insolvency Event; and
 - B. in the case of an Insolvency Event specified in paragraphs (d) and (e) of the definition of Insolvency Event and, to the extent analogous thereto, paragraph (j) thereof, terminate at the time immediately preceding the institution of the relevant proceeding or, as the case may be, the presentation of the relevant petition or analogous procedure;
 - ii. an Insolvency Event specified in paragraph (b) and/or (i) of the definition of Insolvency Event and, to the extent analogous thereto, paragraph (j) thereof occurs at any time during the Insolvency Risk Period in relation to that Insolvent Party (whether or not automatic termination on insolvency applies to the Non Insolvent Party) the transaction shall be terminated by delivery of a Termination Notice and otherwise in accordance with paragraph (a) above.
- c. *Application of automatic termination on insolvency:* For the purposes of paragraph (b) above, automatic termination on insolvency shall apply to a party (the “**Relevant Party**”) if either:
 - i. the Agreed Terms provide that automatic termination on insolvency shall apply to that party; or
 - ii. the other party has, at any time prior to the occurrence of an Insolvency Event in relation to the Relevant Party (and whether before or after the Trade Date and whether in general or specific terms), notified the Relevant Party that automatic termination on insolvency will apply to the Relevant Party in respect of the transaction.
- d. *Calculation of early termination amount:* If the transaction is terminated in accordance with paragraph (a) or (b) above, as soon as reasonably practicable following the Early Termination Date, the Non-Insolvent Party shall, acting in good faith:
 - i. subject to sub-paragraph (iii) below, obtain quotations (indicative or firm) from at least two broker-dealers each of whom buys and sells loans for itself and others for a transaction in which the Non-Insolvent Party purchases or, as the case may be, sells the equivalent of the Traded Portion on substantially the same terms as the Agreed Terms;

- d.
 - i. where quotations have been obtained from at least two broker dealers in accordance with sub-paragraph (i) above, calculate the average amount of such quotations;
 - ii. if the Non-Insolvent Party reasonably believes that the quotations specified in sub-paragraph (i) above are not readily available or would not produce a commercially reasonable result the Non-Insolvent Party will instead calculate the amount representing the purchase rate for such a transaction using commercially reasonable procedures to produce a commercially reasonable result; and
 - iii. calculate an amount (the “Early Termination Amount”) in respect of each relevant currency using the same methodology contained in Condition 14 (*Settlement Amount Calculation*) for the Settlement Amount calculation except that:
 - A. the Purchase Rate shall be the amount calculated in accordance with sub-paragraph (ii) or, as the case may be, (iii) above;
 - B. references to Settlement Date shall be to Early Termination Payment Date; and
 - C. the Delay Period for the purposes of Delayed Settlement Compensation shall be from (and including) the Delay Period Commencement Date to (but excluding) the Early Termination Payment Date.
- e. *Early Termination Amount Statement*
 - i. Promptly after calculating the Early Termination Amount in accordance with paragraph (d) above, the Non-Insolvent Party shall provide the Insolvent Party with a statement (the “**Early Termination Amount Statement**”) showing in reasonable detail such calculation (including all relevant quotations) and the calculation of the Early Termination Payment Amount and specifying the Early Termination Payment Date.
 - ii. The Early Termination Payment Date shall be no earlier than the date on which delivery of the Early Termination Amount Statement becomes effective and no later than the date which is 20 Business Days from the date of the Early Termination Amount Statement. The Early Termination Amount Statement shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- f. *Seller Insolvent Party Amount*
 - 1. If the Seller is the Insolvent Party, the Insolvent Party shall pay to the Buyer on the Early Termination Payment Date, the amount (if any) (each such amount the “Seller Insolvent Party Amount”) by which each Early Termination Amount exceeds the relevant Settlement Amount (which, for the purposes of this paragraph (f) shall be calculate by the

Non-Insolvent Party as if the Settlement Date occurs on the Early Termination Payment Date for the Traded Portion).

- ii. If the calculation results in a negative amount, the Non-Insolvent Party shall pay to the Seller the absolute value of that amount.
- g. *Buyer Insolvent Party Amount*
 - i. If the Buyer is the Insolvent Party, the Insolvent Party shall pay to the Seller on the Early Termination Payment Date the amount (if any) (each such amount the “**Buyer Insolvent Party Amount**”) by which each Early Termination Amount is less than the relevant Settlement Amount for the Traded Portion (which for the purpose of this paragraph (g) shall be calculated by the Non-Insolvent Party as if the Settlement Date occurs on the Early Termination Payment Date).
 - ii. If the calculation results in a negative amount, the Non Insolvent Party shall pay to the Buyer the absolute value of that amount.
- h. *Interest accrual:* If the Early Termination Payment Amount is not paid on the Early Termination Payment Date, interest will accrue on that Early Termination Payment Amount from (and including) the Early Termination Payment Date to (but excluding) the date of actual payment (both before and after judgment) at a rate per annum which is equal to the cost (without proof or evidence of any actual cost) to the payee (as certified by it) if it were to fund or of funding an amount equal to that Early Termination Payment Amount.

4 **CONFIRMATION**

- a. The Responsible Party shall send to the Other Party a form of Confirmation, duly completed, signed on behalf of the Responsible Party and substantially in the form most recently published by the LMA, not later than the close of business on the second Business Day after the Trade Date and the Other Party shall, unless it has raised any disagreement pursuant to paragraph (b) below, sign, and return to the Responsible Party, the Confirmation not later than the close of business on the second Business Day after delivery of that Confirmation becomes effective.
- b. The Other Party shall immediately after receipt of that Confirmation and, in any event, not later than the close of business on the second Business Day after delivery of that Confirmation becomes effective, raise with the Responsible Party any disagreement with any of the terms of such Confirmation.

5 **SALE OF ANCILLARY RIGHTS AND CLAIMS**

- a. Pursuant to these Conditions the Seller sells, assigns and conveys to the Buyer, and the Buyer purchases and accepts, the Ancillary Rights and Claims with effect from the Settlement Date.
- b. Paragraph (a) above shall not apply to any transaction which settles as a funded participation or as a risk participation.

6 **MANDATORY SETTLEMENT OBLIGATIONS**

6.1 Consents and conditions

- a. Each of the Seller and the Buyer shall use its reasonable endeavours to ensure that any conditions specified in the Agreed Terms are duly fulfilled on or before the Settlement Date.
- b. The Seller shall use its reasonable endeavours to obtain any required third party consents in connection with the transaction.

6.2 Legal transfer

- a. *Settlement by novation or assignment:* If “Legal Transfer” is specified in the Agreed Terms as the Form of Purchase for the transaction, then the transaction shall be settled by way of novation or assignment (as provided in the Agreed Terms).
- b. *Failure of consents or conditions:* A transaction shall not be settled by way of novation or assignment pursuant to paragraph (a) above in any of the following circumstances:
 - i. any condition specified in the Agreed Terms remains unfulfilled on the proposed Settlement Date;
 - ii. any third party consent required in connection with the transaction has not been obtained by the proposed Settlement Date; or
 - iii. at any time prior to the Settlement Date the Seller receives notice that any third party consent required in connection with the transaction has not been granted,

and in such circumstances the transaction shall be settled on the terms of a funded participation (using an LMA recommended form of funded participation with such changes as are mutually agreed between the parties).

- c. *Alternative Settlement:* If:
 - i. settlement of the transaction cannot be effected by a funded participation pursuant to paragraph (b) above; or
 - ii. the parties fail to agree on any proposed change to the LMA recommended form of funded participation pursuant to paragraph (b) above,

the transaction shall be settled on the basis of an alternative structure or arrangement mutually acceptable to the Seller and the Buyer that provides the Seller and the Buyer with the economic equivalent of the agreed-upon trade (including, for the avoidance of doubt, cash settlement) (an “**Alternative Settlement**”).

6.3 Legal transfer and legal transfer only

- a. *Settlement by novation or assignment:* If **“Legal Transfer”** and **“Legal Transfer Only”** are specified in the Agreed Terms as the Form of Purchase for the transaction, then the transaction shall be settled by way of novation or assignment (as provided in the Agreed Terms).
- b. *Failure of consents or conditions:* A transaction shall not be settled by way of novation or assignment pursuant to paragraph (a) above in any of the following circumstances:
 - i. any condition specified in the Agreed Terms remains unfulfilled on the proposed Settlement Date;
 - ii. any third party consent required in connection with the transaction has not been obtained by the proposed Settlement Date; or
 - iii. at any time prior to the Settlement Date the Seller receives notice that any thirdparty consent required in connection with the transaction has not been granted,

and in such circumstances the transaction shall be settled on the basis of an Alternative Settlement.

6.4 Funded participation/risk participation

- a. Settlement by funded participation or risk participation: If **“Funded/Risk Participation”**, **“Risk Participation”**, **“Risk to Funded Participation”** or **“Funded Participation”** is specified in the Agreed Terms as the Form of Purchase for the transaction, then the transaction shall be settled by way of a funded participation or a risk participation (as provided in the Agreed Terms).
- b. Failure of consents or conditions: The transaction shall not be settled by way of funded participation or risk participation pursuant to paragraph (a) above in any of the following circumstances:
 - i. any condition specified in the Agreed Terms remains unfulfilled on the proposed Settlement Date;
 - ii. any third party consent required in connection with the transaction has not been obtained by the proposed Settlement Date; or
 - iii. at any time prior to the Settlement Date the Seller receives notice that any third party consent required in connection with the transaction has not been granted,

and in such circumstances the transaction shall be settled on the basis of an Alternative Settlement.

7 DUE DILIGENCE

7.1 Credit appraisal by Buyer

The Buyer agrees that it has satisfied itself as to the creditworthiness of each Obligor and the acceptability of the transaction prior to the Trade Date and the transaction shall not be conditional upon this.

7.2 Credit Documentation and other information

If the Agreed Terms specify that the Credit Documentation shall be delivered to the Buyer then (to the extent not already done prior to the Trade Date):

- a. the Buyer shall sign and deliver to the Seller at its request a Confidentiality Agreement; and
- b. subject to receipt of the Confidentiality Agreement where requested and to all necessary consents having been obtained, the Seller shall provide to the Buyer:
 - i. a true and complete copy of the Credit Documentation (that the Agent, if any, has made generally available to the Lenders) as promptly as practicable following the Trade Date; and
 - ii. a copy of each notice or other document received by the Seller (in its capacity either as a Lender or as a buyer under a trade pursuant to which it has agreed to acquire the Purchased Assets or assume the Purchased Obligations) on or after the Trade Date and on or before the Settlement Date pursuant to the Credit Documentation or that trade as promptly as practicable following receipt thereof.

8 TRANSACTION DOCUMENTATION

- a. The Responsible Party shall prepare the Transaction Documentation on the agreed basis and, subject to any relevant condition specified in the Agreed Terms, endeavour to deliver it to the Other Party within five Business Days after the Trade Date.
- b. The parties shall endeavour to execute the Transaction Documentation and, where appropriate, provide copies to the Agents as required under the Credit Documentation, as soon as reasonably practicable after the Trade Date.

9 INSOLVENCY PROCEEDINGS

- 9.1 *Existing proofs of debt:* Where Insolvency Proceedings involving one or more Obligors have been commenced as at the Trade Date the Seller shall use its reasonable endeavours to provide the Buyer as soon as reasonably practicable after the Trade Date copies of any existing proofs of debt or other claims which have been submitted by or on behalf of the Seller or any Predecessor-in-Title.
- 9.2 *Submission of proofs of debt:* If no existing proofs of debt or other claims have been submitted by or on behalf of the Seller or any Predecessor-in-Title, the Seller shall provide the Buyer with such information within the Seller's possession which the Buyer reasonably requests and which is reasonably necessary to assist the Buyer in submitting a proof of debt or other claim, on account of the Traded Portion, in the Insolvency Proceedings of the relevant Obligor(s).
- 9.3 *Notification of Insolvency Proceedings:* The Seller shall notify the Buyer promptly upon becoming aware of any Insolvency Proceedings that are commenced against any Obligor following the Trade Date and prior to the Settlement Date and shall use its reasonable endeavours to provide the Buyer with any proofs of debt or other claims which, prior to the Settlement Date, have been submitted by or on behalf of the Seller. The Seller may redact such proofs of debt or other claims to conceal information which does not relate to the Traded Portion and which is commercially sensitive to it.

9.4 *Additional Information:* To the extent that the same is received by the Seller on or prior to the Settlement Date and to the extent that the Seller is lawfully able to do so without breaching any duty of confidentiality or other obligation owed to any person, the Seller shall provide copies to the Buyer of:

- a. any information circulated by an Agent to the Lenders generally which relates to Insolvency Proceedings which have been commenced against any Obligor; and
- b. any written information received by the Seller in connection with Insolvency Proceedings which have been commenced against any Obligor where such Seller has been admitted as a claimant in such Insolvency Proceedings in its own right and has received such information in its capacity as a claimant in such Insolvency Proceedings,

including (without limitation):

- c. details of deadlines for the submission of claims;
- d. the status of any notifications to any Insolvency Officer; and
- e. the status of any filings of any proof of debt or other claim against any Obligor relating to the Purchased Assets or Purchased Obligations.

9.5 *Claims Trade:*

- a. If the transaction is a Claims Trade then, unless otherwise specified in the Agreed Terms, any distribution of an Obligor's assets made on or after the Trade Date in respect of the Traded Portion by an Insolvency Officer as part of the Insolvency Proceedings of that Obligor shall be for the account of the Buyer.
- b. If the Seller receives an amount in respect of any distribution of an Obligor's assets which are for the account of the Buyer pursuant to paragraph (a) above, the Seller shall promptly and in any event within two Business Days of receipt of such distribution (but not earlier than the Settlement Date), pay such amount to the Buyer.
 - i. If the Seller pays an amount to the Buyer in accordance with paragraph (b) above; and
 - ii. after making such payment, the Insolvency Officer invokes any right it has to require the Seller to repay, whether directly or through any Successor-in-Title, the whole or any part of such payment made by or through such Insolvency Officer,

then the Buyer shall promptly after demand by the Seller, repay to the Seller, such amount.

- d. If the Seller receives a Non-Cash Distribution in respect of a distribution which is for the account of the Buyer pursuant to paragraph (a) above, the Seller shall, as soon as reasonably practicable after receipt of such Non-Cash Distribution (but not earlier than the Settlement Date) and to the extent permitted by the Credit Documentation and under the Insolvency Proceedings, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the Buyer (or such other name or names as the Buyer may reasonably and lawfully require). Until such transfer and registration, the Seller shall, as soon as reasonably practicable after receipt, pay to the Buyer an amount equal to any income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the Buyer.

10.1 Settlement date

The Seller and the Buyer shall use their reasonable endeavours to settle the transaction as soon as reasonably practicable.

10.2 Payment for purchased assets

The action necessary to complete the transaction shall include the payment for the Purchased Assets and Purchased Obligations on the Settlement Date, unless the transaction is to take effect only as a risk participation.

10.3 Funded participations

Where the transaction is to take effect as a funded participation, any payment in respect of the principal amount of the Purchased Assets and Purchased Obligations shall be by way of limited recourse loan by the Buyer to the Seller on the terms of the applicable Transaction Documentation.

DELAYED SETTLEMENT COMPENSATION

If the transaction settles after the Delay Period Commencement Date, Delayed Settlement Compensation shall be paid for each day during the Delay Period as follows.

- a. **Cost of Carry:** On the Settlement Date the Buyer shall pay to the Seller (or if the Seller is required to pay the Buyer the Settlement Amount pursuant to Condition 14 (Settlement Account Calculation) or, if the Relevant Rate is less than zero, the Seller shall pay to the Buyer) an amount equal to interest that would accrue for each day during the Delay Period at the Relevant Rate on the Unadjusted Settlement Amount calculated as of the Delay Period Commencement Date (in respect of each relevant currency).
- b. **Adjusted Cost of Carry Calculation:** If the Unadjusted Settlement Amount calculated as of the Settlement Date and any day within the Delay Period differs by a factor of greater than 25 per cent. from the Unadjusted Settlement Amount calculated as of the Delay Period Commencement Date, then the payment of Delayed Settlement Compensation pursuant to paragraph (a) above shall be calculated on a daily basis based on the Unadjusted Settlement Amount calculated on each day during the Delay Period.
- c. **Interest, Accrued Fees and Clawback:** If “Settled Without Accrued Interest” or “Paid on Settlement Date” or “Paid on Settlement Date and Discounted from next payment date” is specified in the Agreed Terms:
 - i. the Seller shall pay the Buyer on the Settlement Date an amount equal to any Interest or Recurring Fees (based on contractual rates, as set forth in the Credit Documentation) accrued in respect of the Traded Portion (to include any cash pay Interest accrued in respect of PIK Interest capitalised on the Traded Portion on or after the Trade Date) and attributable to the Delay Period, whether or not the Seller has received payment of such amounts from an Obligor;
 - ii. the Seller shall have no obligation to make payment to the Buyer pursuant to sub-paragraph (i) of this paragraph (c) if: (i) “Settled without Accrued Interest” is specified in the Agreed Terms and the provisions of Condition 15.2(c) apply to the transaction, or (ii) any Interest or Recurring Fees due and payable to the Seller by the relevant Obligor are outstanding as at the Settlement Date in either of the following circumstances:
 - A. beyond any applicable grace period (as specified in the Credit Documentation as in effect on the Trade Date); or
 - B. if no such grace period exists, for more than 30 days after their scheduled payment date (as specified in the Credit Documentation as in effect on the Trade Date);
 - iii. if the Seller makes a payment to the Buyer in respect of Interest or Recurring Fees in accordance with sub-paragraph (i) of this paragraph (c) but it proves to be the case that the relevant Obligor does not pay all

or any part of such Interest or Recurring Fees in any of the following circumstances:

- A. on the scheduled payment date for such Interest or Recurring Fees or within any applicable grace period (each as specified in the Credit Documentation as in effect on the Trade Date) or if no such grace period exists, within 30 days of such scheduled payment date; or
- B. such Interest or Recurring Fees becomes PIK Interest at any time after the Settlement Date and up to the scheduled payment date,

then the Buyer shall, on the earlier of (i) the date the Buyer becomes aware of such non-payment of Interest or Recurring Fees and (ii) the date the Seller makes demand on the Buyer, pay the Seller an amount equal to the Interest or Recurring Fees that were not so paid or that so became PIK Interest as described in sub-paragraphs (A) and (B) above respectively plus interest on such amount (from (and including) the Settlement Date to (but excluding) the day the Buyer makes such payment) at the Relevant Benchmark Rate (in each case determined on the day the Buyer makes such payment) applied on a daily basis; and

- iv. if all or part of the Interest or Recurring Fees referred to in sub-paragraph (i) of this paragraph (c) above are settled in favour of the Seller by way of a Non-Cash Distribution, the Seller shall, as soon as reasonably practicable after receipt of such Non-Cash Distribution (but not earlier than the Settlement Date) and to the extent permitted by the Credit Documentation, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the Buyer (or such other name or names as the Buyer may reasonably and lawfully require). Until such transfer and registration (but not earlier than the Settlement Date), the Seller shall, as soon as reasonably practicable after receipt, pay to the Buyer an amount equal to the income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the Buyer.

12 PURCHASE AMOUNT

The amount of the Purchased Assets and Purchased Obligations to be sold or participated by the Seller to the Buyer shall be allocated pro rata to the facilities provided under the Credit Agreement, including revolving credit facilities, acceptance credit, letter of credit and term loan facilities and, within each facility, pro rata to the tranches thereof, if more than one.

13 PERMANENT REDUCTION

- a. Permanent commitment reductions and permanent repayments of principal relating to a facility or, as the case may be, tranche of a facility specified in the Traded Portion shall be allocated pro rata as between the Retained Portion and the Traded Portion of such facility or, as the case may be, tranche of such facility.
- b. The economic benefit of the Permanent Reductions shall be treated in accordance with Condition 14 (Settlement Amount Calculation).
- c. In the case of a risk participation, any permanent commitment reductions relating to the Traded Portion after the Trade Date shall reduce the Relevant Participation accordingly.
- d. Permanent repayments of principal which occur on or after the Trade Date and on or before the Settlement Date are for the account of the Seller. If on or after the Settlement Date any such repayments of principal referred to in this paragraph (d) are paid to the Buyer, the Buyer shall promptly after receipt pay a corresponding amount to the Seller.

14 SETTLEMENT AMOUNT CALCULATION

14.1 Treatment of currencies

The amount payable for the Purchased Assets and Purchased Obligations shall be calculated in accordance with this Condition 14 and shall be determined for:

- a. each currency in which the principal amount of the Purchased Assets has been funded as of the Settlement Date;
- b. the base currency of each unfunded portion of the Purchased Assets as of the Settlement Date; and
- c. the currency of any Non-Recurring Fees received by the Seller on or before the Settlement Date to which the Buyer is entitled pursuant to the Agreed Terms.

14.2 Settlement Amount calculation

The amount payable for the Purchased Assets and Purchased Obligations shall be equal to the Purchase Rate multiplied by the principal amount of the Purchased Assets funded in the same currency as of the Settlement Date less:

- a. (100% minus the Purchase Rate) multiplied by the unfunded portion of the Purchased Assets as of the Settlement Date, where the base currency of such unfunded portion is the same currency as the principal amount of the funded portion of the Purchased Assets;
- b. (100% minus the Purchase Rate) multiplied by any Permanent Reductions made in the same currency as the principal amount of the funded portion or, if no funded portion, the unfunded portion of the Purchased Assets and which occur in respect of the Purchased Assets on or after the Trade Date and on or before the Settlement Date; and
- c. without double counting, any Non-Recurring Fees received by the Seller on or before the Settlement Date to which the Buyer is entitled pursuant to the Agreed Terms where the currency of those Non-Recurring Fees is the same currency as the principal amount of the funded portion of the Purchased Assets,

adjusted to take account of any Delayed Settlement Compensation and any applicable recordation, processing, transfer or other fee and Agent's Expenses which under the Agreed Terms is to be payable by either party in the same currency as the principal amount of the funded portion of the Purchased Assets.

14.3 Different currencies

If none of the funded portion of the Purchased Assets is denominated in the same currency as either:

- a. the base currency of any unfunded portion of the Purchased Assets as of the Settlement Date; or
- b. any Non-Recurring Fees received by the Seller on or before the Settlement Date to which the Buyer is entitled pursuant to the Agreed Terms,

the amount payable in respect of the unfunded portion of the Purchased Assets or the Non-Recurring Fees (as the case may be) shall be determined in accordance with the provisions of this Condition 14 save that the principal amount of the Purchased Assets shall be deemed to be zero and shall be deemed to be denominated in the same currency as the unfunded portion or the Non-Recurring Fees (as the case may be).

14.4 Payments

- a. If the amount payable in respect of any currency is positive it shall be payable in that currency by the Buyer to the Seller.
- b. If the amount payable in respect of any currency is negative the absolute value of that amount shall be payable in that currency by the Seller to the Buyer.

15 INTEREST PAYMENTS AND FEES

15.1 Contract rates

All Interest and all Recurring Fees are based on contractual rates, as set forth in the Credit Documentation.

15.2 Settled without accrued interest

The following applies if “Settled Without Accrued Interest” is specified in the Agreed Terms:

- a. Accrued Interest and Recurring Fees: all Interest (other than PIK Interest) and Recurring Fees accrued up to but excluding the Settlement Date (the “Seller’s Portion”) shall be for the account of the Seller. All other Interest and Recurring Fees shall be for the account of the Buyer.
- b. Buyer’s obligation to pay: The Buyer shall promptly and in any event within two Business Days of receipt of all or any part of the Seller’s Portion, pay that amount to the Seller.

- c. **Payment default by Obligor:** The Buyer shall have no obligation to make payment to the Seller pursuant to paragraph (b) above if all or any part of the Seller's Portion is paid by the relevant Obligor in either of the following circumstances:
- i. after its due date, and beyond any applicable grace period (each as specified in the Credit Documentation as in effect on the Trade Date) or if no such grace period exists, the expiration of 30 days from such due date; or
 - ii. after a default in connection with any other payment obligation of any Obligor under the Credit Documentation (irrespective of whether such default is remedied or waived).

All amounts received by the Buyer in respect of the Seller's Portion in either of the circumstances set out in sub-paragraphs (i) or (ii) of this paragraph (c) shall be for the account of the Buyer. If, for any reason, the Seller receives all or any part of the Seller's Portion in either of the circumstances set out in sub-paragraphs (i) or (ii) of this paragraph (c), the Seller shall promptly and in any event within two Business Days of receipt pay all such amounts to the Buyer.

- d. *Clawback by Agent:* If:
- a. the Buyer pays all or any part of the Seller's Portion to the Seller in accordance with paragraph (a) above; and
 - b. after the Buyer has made such payment to the Seller, the Agent invokes any right it has under the Credit Agreement to require the Buyer to repay, whether directly or through any Successor-in-Title, the whole or any part of such payment made by or through such Agent and which are attributable to the Seller's Portion,

then the Seller shall promptly, after demand by the Buyer, repay to the Buyer such amounts.

- e. *Non-Cash Distribution*
- i. If the Buyer receives a Non-Cash Distribution in respect of the Seller's Portion which is not attributable to any amounts referred to in sub-paragraphs (i) and (ii) of paragraph (c) above, the Buyer shall, as soon as reasonably practicable after receipt of such Non-Cash Distribution and to the extent permitted by the Credit Documentation, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the Seller (or such other name or names as the Seller may reasonably and lawfully require). Until such transfer and registration, the Buyer shall, as soon as reasonably practicable after receipt, pay to the Seller an amount equal to any income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the Seller.

- ii. If the Seller receives a Non-Cash Distribution in respect of amounts that, pursuant to paragraph (a) above, are for the account of the Buyer, the Seller shall as soon as reasonably practicable after receipt of such Non- Cash Distribution (but not earlier than the Settlement Date) and to the extent permitted by the Credit Documentation, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the Buyer (or such other name or names as the Buyer may reasonably and lawfully require). Until such transfer and registration, the Seller shall, as soon as reasonably practicable after receipt, pay to the Buyer an amount equal to any income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the Buyer.
- f. *Pro rata interest settlement under Credit Documentation:*
 - i. Subject to sub-paragraph (ii) below, if pursuant to the terms of the Credit Documentation the Seller is to retain the right to receive its portion of any Interest or Recurring Fees accrued up to but excluding the Settlement Date in respect of the Purchased Assets (other than PIK Interest) then, notwithstanding Condition 15.2(a) to (e) (*Settled without accrued interest*) above and Condition 15.3 (*Paid on Settlement Date*) below: (1) the Seller shall be so entitled pursuant to this Condition 15.2 (*Settled without accrued interest*); and (2) the Seller shall have no recourse whatsoever to the Buyer for Interest or Recurring Fees that are not received by it.
 - ii. Sub-paragraph (i) above shall not apply if the exceptions at items (i) and (ii) of paragraph (c) of this Condition 15.2 (*Settled without accrued interest*) apply.
- g. *Delayed settlement:* Amounts payable pursuant to this Condition 15.2 (*Settled without accrued interest*) are exclusive of amounts payable under Condition 11 (*Delayed Settlement Compensation*).

15.3 Paid on Settlement Date

- a. Buyer's obligation to pay: If "Paid on Settlement Date" is specified in the Agreed Terms, the Buyer shall pay to the Seller on the Settlement Date any Interest or Recurring Fees accrued up to but excluding the Settlement Date in respect of the Purchased Assets (other than PIK Interest).
- b. Seller's obligation to pay: If, on or after the Settlement Date, the Seller receives any Interest or Recurring Fees accrued up to but excluding the Settlement Date in respect of the Purchased Assets (other than PIK Interest), the Seller shall promptly pay that amount to the Buyer.
- c. *No recourse to the Seller:* The Buyer shall have no right of recourse to the Seller in relation to any amounts paid to the Seller in accordance with paragraph (a) above including, without limitation, in circumstances where:
 - i. the Buyer does not receive all or part of any Interest or Recurring Fees on their due date; or
 - ii. the Agent invokes any right of clawback under the Credit Agreement.
- d. *Delayed settlement:* Amounts payable pursuant to this Condition 15.3 (*Paid on Settlement Date*) are exclusive of amounts payable under Condition 11 (*Delayed Settlement Compensation*).

15.4 **Paid on Settlement Date and Discounted from next payment date**

The following applies if “Paid on Settlement Date and Discounted from next payment date” is specified in the Agreed Terms:

- a. Condition 15.3 (*Paid on Settlement Date*) shall apply; and
- b. any Interest or Recurring Fees accrued up to but excluding the Settlement Date in respect of the Purchased Assets (other than PIK Interest) but which are not payable until the next payment date applicable under the Credit Agreement shall be discounted from such payment date back to the Settlement Date at IBOR (as such rate is calculated in accordance with paragraph (b) of Condition 16 (*Breakfunding*)) on a simple interest basis.

15.5 **Trades flat**

- a. *Interest or other fees:* The following applies if “Trades Flat” is specified in the Agreed Terms; or the transaction is a Claims Trade:
 - i. any Interest or Recurring Fees paid by any Obligor on or after the Trade Date in respect of the Traded Portion shall be for the account of the Buyer;
 - ii. the Buyer shall not be obliged to make any payment to the Seller in respect of Interest or Recurring Fees, either on the Settlement Date or on receipt of any such amounts; and
 - iii. if the Seller receives any Interest or Recurring Fees which are for the account of the Buyer, the Seller shall promptly (and, in any event, within two Business Days of receipt but not earlier than the Settlement Date) pay the same to the Buyer.
- b. *Non-Cash Distribution:* If any Interest or Recurring Fees are settled in favour of the Seller by way of a Non-Cash Distribution, the Seller shall, as soon as reasonably practicable after receipt of such Non-Cash Distribution (but not earlier than the Settlement Date) and to the extent permitted by the Credit Documentation, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the Buyer (or such other name or names as the Buyer may reasonably and lawfully require). Until

such transfer and registration (but not earlier than the Settlement Date), the Seller shall, as soon as reasonably practicable after receipt, pay to the Buyer an amount equal to any income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the Buyer.

15.6 PIK Interest

- a. All PIK Interest shall be allocated as follows (regardless of how cash Interest and Recurring Fees are allocated):
 - i. PIK Interest that is capitalised prior to the Trade Date shall be included in the Traded Portion and shall be treated as part of the funded principal amount of the Purchased Assets for the purposes of Condition 14 (Settlement Amount Calculation);
 - ii. PIK Interest that is capitalised on or after the Trade Date shall be for the account of the Buyer for no additional consideration; and
 - iii. PIK Interest that has accrued but has not yet been capitalised as of the Settlement Date shall be for the account of the Buyer upon capitalisation for no additional consideration.
- b. Any Interest or Recurring Fees (other than PIK Interest) which accrues on PIK Interest shall be treated in accordance with Conditions 15.1 (Contract rates) to 15.5 (Trades flat) and Conditions 15.7 (Partial interest payments) to 15.10 (Payment from obligor to be received first) to the extent that those Conditions apply to the transaction.

15.7 Partial interest payments

Partial payments of Interest shall be applied to payment dates pro rata to the amounts due on such payment dates.

15.8 Upfront fee

Any Upfront Fee shall be paid at the time, in the amount and by the party specified in the Agreed Terms.

15.9 Allocation of Interest and Recurring Fees/Non-Recurring Fees

- a. Interest and fee allocation: Unless these Conditions or the Agreed Terms otherwise provide, the following applies (save where the transaction is to take effect as a risk participation only):
 - i. Any accrued Interest or Recurring Fees (other than PIK Interest) in respect of the period before (and not including) the Settlement Date shall be for the account of the Seller.

- ii. Any accrued Interest or Recurring Fees (other than PIK Interest) in respect of the period after (and including) the Settlement Date shall be for the account of the Buyer.
- b. *Non-recurring fees:* Unless these Conditions or the Agreed Terms otherwise provide, (save where the transaction is to take effect as a risk participation only) all Non-Recurring Fees attributable to the Traded Portion and paid or capitalised on or after the Trade Date shall be for the account of the Buyer.
- c. *Obligation to pay:* If the Buyer or the Seller receives payment of any Interest, Recurring Fees or Non-Recurring Fees which are for the account of the other pursuant to paragraph (a) or, as the case may be, (b) above, the Buyer or, as the case may be, Seller shall promptly and in any event within two Business Days of receipt of such Interest, Recurring Fees or Non-Recurring Fees (but not earlier than the Settlement Date), pay such amount to the Seller, or as the case may be, the Buyer.
- d. *Clawback by Agent:* If
 - i. the Buyer, or as the case may be, the Seller pays an amount to the other in accordance with paragraph (c) above; and
 - ii. after making such payment, the Agent invokes any right it has under the Credit Agreement to require the Buyer or, as the case may be, Seller to repay, whether directly or through any Successor-in-Title, the whole or any part of such payment made by or through such Agent,

then the Buyer or, as the case may be, Seller shall promptly after demand by the other, repay to the Seller or, as the case may be, the Buyer such amounts.

e. *Non-Cash Distribution*

If the Buyer or the Seller receives a Non-Cash Distribution in respect of any Interest, Recurring Fees or Non-Recurring Fees which are for the account of the other pursuant to paragraph (a) or, as the case may be, (b) above, the Buyer or, as the case may be, Seller shall, as soon as reasonably practicable after receipt of such Non-Cash Distribution (but not earlier than the Settlement Date) and to the extent permitted by the Credit Documentation, procure the transfer of such Non-Cash Distribution to, and registration of such Non-Cash Distribution in the name of, the other party (or such other name or names as the other party may reasonably and lawfully require). Until such transfer and registration, the Buyer or, as the case may be, Seller shall, as soon as reasonably practicable after receipt, pay to the other party an amount equal to any income received or other sums yielded in respect of such Non-Cash Distribution. Any transfer or registration fees payable in connection with the registration of such Non-Cash Distribution shall be for the account of the party entitled to it pursuant to paragraph (a) or, as the case may be, (b) above.

15.10 Payment from obligor to be received first

- a. *Seller's obligation to pay*
 - i. The Seller shall not be obliged to make any payment of Interest, Recurring Fees or Non-Recurring Fees or account for any Non-Cash Distribution to the Buyer under Condition 15.2 (Settled without accrued interest), Condition 15.5 (Trades flat) or Condition 15.9 (Allocation of Interest and Fees) unless and until it has first received payment or such Non-Cash Distribution from the relevant Obligor or, if the Seller is not a lender of record in respect of the Traded Portion, its Predecessor-in- Title; but
 - ii. the Seller shall be obliged to make payment of Interest, Recurring Fees or Non-Recurring Fees and account for any Non-Cash Distributions to the Buyer under Condition 15.2 (Settled without accrued interest), Condition 15.5 (Trades flat) or Condition 15.9 (Allocation of Interest and Fees) in respect of any amounts paid or Non-Cash Distributions issued by the relevant Obligor but not received by the Seller if the cause of non-receipt or any shortfall in receipt by the Seller arises from any limitation in the terms of its Predecessor Transfer Agreement regarding the Seller's entitlement to such sums (including Non-Cash Distributions) which does not form part of the Agreed Terms with the Buyer.
- b. *Seller's obligation to enforce:* The Seller shall enforce its rights against its Predecessor-in-Title and take all steps reasonably available to it to recover any sums (including Non-Cash Distributions) due to the Seller from and unpaid or unissued by its Predecessor-in-Title under its Predecessor Transfer Agreement as if, in spite of the transaction specified in the Agreed Terms, the Seller remained the sole legal and beneficial owner of any Interest, Recurring Fees, Non-Recurring Fees or Non-Cash Distributions payable or due in respect of the Traded Portion.
- c. *Buyer's obligation to pay*
 - i. The Buyer shall not be obliged to make any payment of Interest or Recurring Fees or account for any Non-Cash Distribution to the Seller under Condition 15.2 (Settled without accrued interest) or Condition 15.9 (Allocation of interest and fees) unless and until it has first received payment or such Non-Cash Distribution from the relevant Obligor or, if the Buyer is not a lender of record in respect of the Traded Portion, its Successor-in-Title; but
 - ii. the Buyer shall be obliged to make payment of Interest or Recurring Fees and account for any Non-Cash Distributions to the Seller under Condition 15.2 (Settled without accrued interest) or Condition 15.9 (Allocation of interest and fees) in respect of any amounts paid or Non- Cash Distributions issued by the relevant Obligor but not received by the Buyer if the cause of non-receipt or any shortfall in receipt by the Buyer arises from any limitation in the terms of its Successor Transfer Agreement regarding the Buyer's entitlement to such sums (including
- ii. Non-Cash Distributions) which does not form part of the Agreed Terms with the Seller.
- d. *Buyer's obligation to enforce:* The Buyer shall enforce its rights against its Successor-in-Title and take all steps reasonably available to it to recover any sums (including Non-Cash Distributions) due to the Buyer from and unpaid or unissued by its Successor-in-Title under its Successor Transfer Agreement as if, in spite of the transaction specified in the Agreed Terms, the Buyer was the sole legal and beneficial owner of any Interest, Recurring Fees, Non-Recurring Fees or Non-Cash Distributions payable or due in respect of the Traded Portion.

BREAKFUNDING

- a. Unless paragraph (b) below applies to the transaction, no breakfunding compensation shall be paid for settlement of any transactions.
- b. The following applies if the transaction is a “Par Trade” and the Agreed Terms specify that breakfunding compensation applies:
 - i. the Seller and the Buyer shall agree on the relevant IBOR in relation to each funded portion of the Purchased Assets;
 - ii. if IBOR is higher than the funding rate for any funded portion under the Credit Agreement on the Settlement Date (the “Relevant IBOR Rate”) then the Seller will pay to the Buyer on the Settlement Date the interest on that funded portion at the rate which is the difference between IBOR and the Relevant IBOR Rate for the Relevant Period; and
 - iii. if IBOR is lower than the Relevant IBOR Rate then the Buyer will pay to the Seller on the Settlement Date the interest on that funded portion at the rate which is the difference between IBOR and the Relevant IBOR Rate for the Relevant Period.

AGENT'S EXPENSES

- a. The Seller shall promptly pay any Agent’s Expenses pursuant to the Credit Documentation which are chargeable to:
 - i. the period up to but excluding the Settlement Date; or,
 - ii. if Trades Flat is specified in the Agreed Terms, the Trade Date.
- b. The Seller shall promptly pay on demand such Agent’s Expenses attributable to the Purchased Assets or Purchased Obligations which have accrued but have not yet been billed or invoiced prior to:
 - i. the Settlement Date or;
 - ii. if Trades Flat is specified in the Agreed Terms, the Trade Date.
- c. The Buyer shall be responsible for and shall promptly pay all other Agent’s Expenses.
- d. Any fee or other amount referred to in Condition 18 (Transfer Costs) shall not be included pursuant to paragraphs (a), (b) and (c) above.

TRANSFER COSTS

18.1 Transfer fees

- a. Transfer Fees Split: Unless paragraph (b) or (c) below applies:
 - i. The Buyer and the Seller shall each pay in equal shares any Transfer Fee in connection with the Traded Portion.
 - ii. The Buyer shall only pay one Transfer Fee in respect of the transfer of the Traded Portion and all Seller Related Transactions. Such Transfer Fee shall be equal to one half of the Transfer Fee that would be payable if the transfer to the Buyer of the Traded Portion and the transfers to the Buyer effected under the Seller Related Transactions were from a single entity pursuant to a single LMA trade confirmation.
 - iii. The Seller shall only pay one Transfer Fee in respect of the transfer of the Traded Portion and all Buyer Related Transactions. Such Transfer Fee shall be equal to one half of the Transfer Fee that would be payable if the transfer to the Buyer of the Traded Portion and the transfers to the Buyer effected under the Buyer Related Transactions were to a single entity pursuant to a single LMA trade confirmation.
 - iv. The Seller shall pay its share of the Transfer Fee to the Buyer and the Buyer shall pay the full amount of such Transfer Fee to the Agent on the date upon which such Transfer Fee is payable under the Credit Documentation.
- b. Buyers obligation to pay: If the Agreed Terms provide that all of the Transfer Fee is to be payable by the Buyer, the Buyer shall pay to the Agent an amount equal to the whole of that Transfer Fee on the date upon which such Transfer Fee is due under the Credit Documentation.
- c. Seller's obligation to pay: If the Agreed Terms provide that all of the Transfer Fee is to be payable by the Seller, the Seller shall pay to the Buyer an amount equal to the whole of that Transfer Fee on the Settlement Date and the Buyer shall pay such fee to the Agent on the date upon which such fee is due under the Credit Documentation.

18.2 Stamp taxes / Perfection of Collateral

Any stamp duties, stamp duty reserve tax and any other applicable transfer taxes and duties (excluding notarial fees) attributable to the sale and/or purchase of the Purchased Assets and Purchased Obligations and any costs (excluding notarial costs) attributable to the transfer or perfection of Collateral included in the Purchased Assets are payable by the Buyer.

18.3 Notarial fees

- a. Any notarial fee (other than any Contractual Notarial Fee) attributable to the sale and/or purchase of the Traded Portion, the related Collateral and any other part of the Purchased Assets and Purchased Obligations is payable by the Buyer.
- b. The Buyer and the Seller shall each pay in equal shares any Contractual Notarial Fee.
- c. The Buyer shall pay only one Contractual Notarial Fee in respect of the sale and/or purchase of the Traded Portion and all Seller Related Transactions. Such Contractual Notarial Fee shall be equal to one half of the Contractual Notarial Fee that would be payable if the sale and purchase of the Traded Portion and the sales and purchases pursuant to the Seller Related Transactions were to and from a single entity pursuant to a single LMA Trade Confirmation.
- d. The Seller shall pay only one Contractual Notarial Fee in respect of the sale and/or purchase of the Traded Portion and all Buyer Related Transactions. Such Contractual Notarial Fee shall be equal to one half of the Contractual Notarial Fee that would be payable if the sale and purchase of the Traded Portion and the sales and purchases pursuant to the Buyer Related Transactions were to and from a single entity pursuant to a single LMA Trade Confirmation.

19 COSTS AND EXPENSES

Subject to Condition 18 (*Transfer Costs*):

- a. each of the Buyer and the Seller shall pay its own respective costs and expenses (including legal expenses) in connection with the transaction; and
- b. the Buyer shall be responsible for any costs, fees and expenses in respect of the Purchased Assets and Purchased Obligations that are chargeable under the terms of the Credit Documentation to any period after Settlement Date or, if Trades Flat is specified in the Agreed Terms, the Trade Date.

20 PRINCIPAL/AGENCY STATUS

20.1 Principal or agent

Unless otherwise specified in the Agreed Terms, each of the Buyer and the Seller hereby confirms to the other that it is acting as a “principal” in the transaction.

20.2 Principal

A Buyer or Seller that holds itself out as a “principal” is directly liable for the completion of the transaction.

20.3 Agent

- a. The following applies if the Agreed Terms specify that the Buyer and/or the Seller acts as an “agent” in the transaction:
 - i. such party acts on behalf of one or more principals to the transaction and is not itself a party to the transaction;
 - ii. such party is not liable to its counterparty for the successful completion of the transaction; and
 - iii. such party shall have no liability or obligation to its counterparty in connection with the transaction other than (a) in circumstances where it does not have authority to bind its principal(s) to the transaction, or (b) pursuant to any Confidentiality Agreement.
- b. Notwithstanding the provisions contained in paragraph (a) above, a Buyer or Seller that specifies in the Agreed Terms that it acts as an “agent” in the transaction, represents to its counterparty its authority to bind its principal(s) to the transaction (which principal(s) shall be bound as if it/they were named as “Buyer” or “Seller” as the case may be) and shall provide the counterparty with evidence of that authority if requested to do so.

21 NON-RELIANCE AND INDEPENDENT INVESTIGATION

21.1 Acknowledgement

Each party acknowledges to the other that:

- a. it is a sophisticated Buyer or Seller (as the case may be) with respect to the transaction;
- b. it has such information as it deems appropriate under the circumstances (however obtained), concerning for example the business and financial condition of the Obligor(s) under the Credit Documentation, to make an informed decision regarding the transaction; and
- c. unless otherwise specified in the Form of Purchase, the other party does not act as a trustee, fiduciary, agent or custodian for it.

21.2 Independent investigation

Each of the Buyer and the Seller hereby agrees that it has made its own independent analysis and decision to enter into the transaction, based on such information as it has deemed appropriate under the circumstances, and without reliance on the other party (except for reliance on any express representation made by the other party in the Agreed Terms, pursuant to these Conditions or in the Form of Purchase).

21.3 Exclusion of liability

Except as specified in Condition 22 (Representations and Undertakings) or expressly set out in the Form of Purchase, the Seller does not make, and the Buyer does not rely

upon, any representation, warranty or condition (express or implied) about, and the Seller shall have no liability or responsibility to the Buyer for:

- a. the effectiveness, validity or enforceability of the Credit Documentation (other than against the Seller by reason of any lack of authority or capacity of, or due execution by, the Seller), or other documentation delivered by the Seller to the Buyer or any of the terms, covenants or conditions contained in the Credit Documentation or other documentation; or
- b. any non-performance by any party to the Credit Documentation (other than the Seller) or other documentation; or
- c. the financial condition, status or nature of any Obligor under the Credit Documentation.

21.4 No Obligation to repurchase

The Seller and the Buyer agree that:

- a. the Seller shall have no obligation to repurchase or reacquire all or any part of the Purchased Assets or Purchased Obligations from the Buyer or to support any losses directly or indirectly sustained or incurred by the Buyer for any reason whatsoever, including the non-performance by any Obligor of its obligations under the Credit Documentation; and
- b. any rescheduling or renegotiation of the Purchased Assets or Purchased Obligations that occurs on or after the Trade Date shall be for the account of, and the responsibility of, the Buyer, who will be subject to the rescheduled or renegotiated terms and subject to, in the case of any Binding Amendment and Debt Restructuring, Condition 26 (Binding Amendment and Debt Restructuring); and
- c. paragraph (a) above is without prejudice to the Buyer's rights under Condition 23.1 (Seller's Indemnity) or under any indemnity given by the Seller to the Buyer in the Transaction Documentation.

21.5 Material information

Each of the Buyer and Seller acknowledges and agrees that:

- a. the other may possess material information not known to it; and
- b. the other shall have no liability and no action or proceedings may be taken with respect to the non-disclosure of any such information except to the extent that such information renders inaccurate an express representation made pursuant to the Agreed Terms or these Conditions by the party possessing such information.

21.6 No fiduciary duties/Exclusion of liability

- a. Unless otherwise specified in the Form of Purchase, nothing in these Conditions or in any Transaction Document constitutes the Seller or the Buyer as a trustee, fiduciary, agent or custodian of the other party.

Neither the Seller nor the Buyer will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- i. any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Non-Cash Distribution unless directly caused by its gross negligence or wilful misconduct; or
- ii. exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Non-Cash Distribution unless directly caused by its gross negligence or wilful misconduct.

22 REPRESENTATIONS AND UNDERTAKINGS

22.1 Mutual representations

Each of the Buyer and the Seller as of the Trade Date and the Settlement Date represents and undertakes to the other that:

- a. Due incorporation: it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;
- b. Power: it has the power to enter into the transaction and to execute and deliver the Confirmation and the Transaction Documentation;
- c. Binding obligations: its obligations in relation to the transaction constitute legal, valid, binding and enforceable obligations (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application);
- d. Broker fee: no broker, finder or other person acting pursuant to the instructions of one party is entitled to any broker's fee or other commission in connection with the transaction for which the other party may be responsible; and
- e. No Governmental Authority approval: other than as specified in the Agreed Terms, no notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority is or will be required for it to execute, deliver, and perform its obligations under the Agreed Terms.

22.2 Seller's representations – all trades

The Seller represents to the Buyer as of the Seller Representation Date that:

- a. Unencumbered title: it is the sole legal and beneficial owner of, and has good title to, the Purchased Assets and the Purchased Obligations, free and clear of any Encumbrance save for such Encumbrances as may be contained in any of the Credit Documentation and it conveys the Purchased Assets and Purchased Obligations with full title guarantee (but excepting any Encumbrance contained in any of the Credit Documentation) and it has not made any prior sale, transfer or sub-participation of its interest in the Purchased Assets or Purchased Obligations which is subsisting;

when compared to the definition of Ancillary Rights and Claims contained in Condition 1.2 (Interpretation) and either (1) the terms of their assignment under paragraph (a) of Condition 5 (Sale of Ancillary Rights and Claims) as in effect on the Trade Date or (2) if the Seller and the Buyer have agreed in the Agreed Terms to settle the transaction as a Funded Participation or as a Risk Participation, the terms on which the Ancillary Rights and Claims are sub-participated to the Buyer under the terms of the applicable LMA Funded Participation or, as the case may be, under the terms of the LMA Risk Participation (Par), in each case, as in effect on the Trade Date;

22.3 Seller's representations – Par Trades

If this is a Par Trade the Seller represents to the Buyer as of the Seller Representation Date that:

- a. No acceleration or payment default: so far as it is aware, no decision has been taken by the Lenders to accelerate or enforce their rights under the Credit Documentation and no amount of principal or interest is due and unpaid under the Credit Documentation; and
- b. No set-off: the Purchased Assets are free from any rights of set-off in favour of any Obligor.

22.4 Seller's representations – Distressed Trades

if this is a Distressed Trade the Seller represents to the Buyer as of the Seller Representation Date that:

- a. *Provision of Credit Documentation*: except where the parties have agreed in the Agreed Terms that the Buyer will not be provided with the Credit Documentation, it has provided to the Buyer (i) the Credit Agreement and all intercreditor agreements, subordination agreements and material waivers and amendments executed in connection therewith in each case as currently in effect and (ii) any other Credit Documentation reasonably requested by the Buyer;
- b. *No connected parties*: neither it nor any of its Predecessors-in-Title is or has been at any time “connected” with any Obligor as such term is used in the Insolvency Act 1986 (or any similar provision in any relevant jurisdiction);
- c. *No bad acts*: neither it nor any of its Predecessors-in-Title has engaged in any acts or conduct, or made any omissions, independently of the other Lenders (or, if this is a Claims Trade, of other creditors of the Obligors holding claims of a similar nature to the Traded Portion) that would result in the Buyer receiving proportionately less payments or distributions or less favourable treatment in respect of the Purchased Assets or Purchased Obligations than any other Lender holding advances or a participation (of a similar nature to the Traded Portion) and similar claims under the Credit Documentation (or, if this is a Claims Trade, than such other creditors) or result in any Purchased Assets, or any part thereof, being subject to a Claim Impairment and, in particular, neither it nor any of its Predecessors-in-Title has set off any amounts against the Purchased Assets;

- b. *No other documents*: other than the Credit Documentation, there are no other documents executed by it or any of its Predecessors-in-Title which would materially and adversely affect the Purchased Assets or the Purchased Obligations and (other than the documentation contemplated by the Agreed Terms) neither it nor, any of its Predecessors-in-Title has executed any Credit Documentation or documents relating to the Credit Documentation which have not also been executed by or on behalf of the Lenders (of the same class as the Seller and its Predecessors-in-Title) generally;
- c. *No default*: neither it nor any of its Predecessors-in-Title is in default of any of its or their obligations in relation to the Purchased Assets or the Purchased Obligations;
- d. *Alienability*: subject to the obtaining of any necessary consents, licenses and authorisations, all rights and benefits (including proprietary rights under any relevant security documentation) and, where applicable, all obligations under the Credit Documentation which the parties have agreed will be novated, assigned or otherwise effectively transferred or participated to the Buyer pursuant to the transaction are capable of being so novated, assigned or otherwise transferred or participated;
- e. *Pricing Letter and PIK Interest*: the amounts utilised in calculating the Settlement Amount for the Purchased Assets and Purchased Obligations in the Pricing Letter are true and correct as of the date thereof and any PIK Interest that was capitalised to the principal amount of the Purchased Assets on or after the Trade Date but on or prior to the Settlement Date is specified in the Pricing Letter and is a proportionate share of the PIK Interest that was capitalised to its participation under or in respect of the tranche or facility from which the relevant Traded Portion derives;
- f. *Seller ERISA*: either (a) no interest in the Purchased Assets or Purchased Obligations is being sold by or on behalf of a person who is one or more Benefit Plans or, (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers) is applicable with respect to the sale of the Purchased Assets or the Purchased Obligations;
- g. *Ancillary Rights and Claims*: none of the terms of any transfer agreements under which (a) the Seller and (b) any of the Seller's Predecessors-in-Title acquired the Purchased Assets and Purchased Obligations or any part thereof under a Distressed Trade (having a trade date on or after 1 February 2008) or under a Par Trade (having a trade date on or after 25 January 2010) has the effect of limiting the scope of, or otherwise reserving to the Predecessors-in-Title which is selling, any of the Ancillary Rights and Claims assigned by any Predecessor-in-Title to its immediate successor-in-title in any material respect

- d. *No rights of set-off*: no rights of set-off of, or against it or (to the best of its knowledge) its Predecessors-in-Title exist which will permit any set off of, or against it or, (to the best of its knowledge its Predecessors-in-Title) or counterclaim against the Purchased Assets;
- e. *No impairment*: neither it nor, any of its Predecessors-in-Title has received any notice and it is not otherwise to the best of its knowledge aware that the Purchased Assets or Purchased Obligations or any portion thereof or any guarantees or Collateral or any of the Credit Documentation are subject to any Claim Impairment or are invalid or void;
- f. *No funding obligations*: it has no obligations to make loans or advances or other extensions of credit or to provide any other facility or financial accommodation under or in accordance with the Credit Agreement which will be transferred to the Buyer hereunder other than the Purchased Obligations and it has no other liabilities or obligations in respect of the Purchased Assets or Purchased Obligations other than Agent's Expenses; and
- g. *No litigation*: no proceedings of or before any Governmental Authority have been commenced or, to the best of its knowledge, are threatened against it or any of its Predecessors-in-Title which would adversely affect the Purchased Assets, the Purchased Obligations or any of the rights of the Buyer under any of the Transaction Documentation.

22.5 **Buyer's representations and undertaking**

As of the Trade Date and the Settlement Date the Buyer represents and (in the case of paragraph (a) below) undertakes to the Seller that:

- a. Use of information: it will not use any information received by it from the Seller in relation to the Obligors, the Purchased Assets or the Purchased Obligations for any unlawful purpose or in breach of any Confidentiality Agreement; and
- b. Buyer ERISA: either (a) no interest in the Purchased Assets or Purchased Obligations is being acquired by or on behalf of a person who is, or at any time while the Purchased Assets or Purchased Obligations are held thereby will be, one or more Benefit Plans or (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), and PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers) is applicable with respect to the purchase and holding of the Purchased Assets or Purchased Obligations and the exercise of the Buyer's rights thereunder.

22.6 **Additional representations and warranties**

If the Agreed Terms specify that the transaction shall incorporate other additional representations and warranties, such additional representations and warranties shall be annexed to the Confirmation and shall thereby be incorporated in the transaction. All such additional representations and warranties shall be in addition to those set out in this Condition 22 (Representations and Undertakings).

22.7 Survival of representations

All express representations made by the parties pursuant to the Agreed Terms and these Conditions shall survive the execution and delivery of the Transaction Documentation and consummation of the transactions contemplated therein.

23 DEFAULT, INDEMNITIES AND BUY-IN/SELL-OUT

23.1 Seller's Indemnity

The Seller shall indemnify, defend and hold the Buyer and its officers, directors and employees and agents harmless from and against any liability, claim, cost, loss, damage or expense (including, without limitation, reasonable legal fees and disbursements and VAT thereon), or judgments which they (or any of them) incur or suffer as a result of:

- a. the Seller's breach of any of the provisions of the Agreed Terms or the Transaction Documentation unless the Buyer has been compensated pursuant to paragraph (j) of Condition 23.3 (Buy-in/Sell-out) in respect of such breach; or
- b. the breach of any of the Seller Warranties; or
- c. the failure by the Seller to perform any of its obligations under the Credit Documentation during the period prior to the Settlement Date; or
- d. any obligation of the Buyer, in whole or in part, to disgorge or reimburse any party or entity for, payments or property received, effected by or applied by the Buyer or the Seller for the account of the Seller or any of its Predecessors-in- Title under or in connection with the Purchased Assets or Purchased Obligations (save in the case of an obligation of the Buyer, where such obligation arose from a breach of the Buyer Warranties).

23.2 Buyer's Indemnity

The Buyer shall indemnify, defend and hold the Seller and its respective officers, directors, employees and agents harmless from and against any liability, claim, cost, loss, damage or expense (including, without limitation, reasonable legal fees and disbursements and VAT thereon) or judgments which they (or any of them) incur or suffer as a result of:

- a. the Buyer's breach of any of the provisions of the Agreed Terms or the Transaction Documentation unless the Seller has been compensated pursuant to paragraph (k) of Condition 23.3 (Buy-in/Sell-out) in respect of such breach; or
- b. the breach of the Buyer Warranties by the Buyer; or
- c. the failure by the Buyer to perform any of the Purchased Obligations from the Settlement Date; or
- d. any obligation of the Seller, in whole or part, to disgorge or reimburse any party or entity for, payments or property received, effected by or applied by the Seller or the Buyer for the account of the Buyer under or in connection with the Purchased Assets or Purchased Obligations (save in the case of an obligation of the Seller, where such obligation arose from a breach of the warranties of the Seller under the Credit Agreement or the Seller Warranties or from a corresponding breach by any Predecessor-in-Title).

Buy-in/Sell-out

- a. Unless the Agreed Terms specify that Buy-in/Sell-out damages do not apply to this transaction, if this is a Par Trade, this Condition 23.3 shall apply to the transaction.
- b. If the transaction is not settled on or before the date that is 60 Business Days after the Trade Date (the “Trigger Date”) because either party fails to perform its Settlement Delivery Obligations to the other party on or before the Trigger Date, subject to paragraph (i)(i) of this Condition 23.3, the other party (the “non-defaulting party”) may, at any time thereafter, give written notice (the “Buy in/Sell out Notice”) to that party (the “defaulting party”) of its intention to terminate its obligations in respect of the transaction and to effect a Substitute Transaction in respect of the Traded Portion. The Buy-in/Sell-out Notice shall be substantially in the form published by the LMA as at the Trade Date. The defaulting party shall promptly acknowledge receipt of the Buy-in/Sell-out Notice but a failure to do so shall not affect the validity or effectiveness of such Buy-in/Sell-out Notice.
- c. If, within 15 Business Days of the date that delivery of the Buy-in/Sell-out Notice becomes effective (the “Cure Period”) the defaulting party has performed its Settlement Delivery Obligations or, if the Seller is the defaulting party, the defaulting party has performed its Upstream Obligations, the Buy- in/Sell-out Notice shall be automatically cancelled and of no further effect.
- d. If the defaulting party has not performed its Settlement Delivery Obligations, or, if applicable, its Upstream Obligations on or before the last day of the Cure Period:
 - i. the non-defaulting party shall use reasonable endeavours to identify a substitute counterparty to enter into a Substitute Transaction; and
 - ii. if the non-defaulting party identifies a substitute counterparty acceptable to the non-defaulting party in its sole discretion, the Substitute Transaction shall be entered into with such counterparty on the Substitute Trade Date.
- e. The non-defaulting party shall send to the defaulting party not later than the first Business Day after the date of signing of the Substitute Confirmation by the

parties to it, notice (the “Purchase Price Notice”) of the purchase price payable under the Substitute Transaction.

- f. If the Substitute Confirmation has not been signed by the parties thereto on or before the fifteenth Business Day following the end of the Cure Period:
 - i. the non-defaulting party may not send any further Buy-in/Sell-out Notices or effect any further Substitute Transaction in connection with the transaction without the defaulting party’s prior written consent;
 - ii. the non-defaulting party shall promptly give notice to the defaulting party that the Substitute Confirmation has not been signed by the parties thereto within the period referred to in this paragraph (f); and
 - iii. the Seller and the Buyer shall consider in good faith whether or not there is a means, acceptable to both parties, of implementing the transaction.
- g. The Seller shall not exercise any rights of a non-defaulting party under this Condition 23.3 (Buy-in/Sell-out) unless on the date that delivery by the Seller of a Buy-in/Sell-out Notice becomes effective, the Seller owns beneficially all of the Purchased Assets on such date.
- h. If the Buyer as non-defaulting party serves a Buy-in/Sell-out Notice on the Seller, and as at the date on which delivery of such Buy-in/Sell-out Notice becomes effective, the Seller does not own beneficially all of the Purchased Assets, then, subject to paragraph (i)(iii) of this Condition 23.3 (Buy-in/Sell-out), the Buyer as non-defaulting party shall not be entitled to exercise any further rights under this Condition 23.3 (Buy-in/Sell-out) if the Seller:
 - i. delivers to the Buyer within the Cure Period either:
 - A. a copy of a trade confirmation or trade confirmations (with the identity of its counterparty, purchase rate and other pricing arrangements erased) executed by the Seller and its counterparty or counterparties evidencing an Upstream Trade; or
 - B. other evidence which reasonably demonstrates that the Seller has entered into an Upstream Trade

(in each case, the “Upstream Evidence”);

- ii. certifies in writing to the Buyer at the same time as delivery of the Upstream Evidence that:
 - A. to the extent of the Purchased Assets, evidence of the Upstream Trade has not been delivered and will not be delivered to satisfy its obligations analogous to its Upstream Obligations under another transaction;
 - B. it has performed or will perform by the time required under the Upstream Trade all obligations thereunder equivalent to its Settlement Delivery Obligations;

- i. A. it has delivered or will deliver to its counterparty or, as the case may be, counterparties under the Upstream Trade within the Cure Period a notice equivalent to the Buy-in/Sell-out Notice in order to commence against such counterparty or, as the case may be, counterparties the exercise of rights as a non-defaulting party equivalent to those under this Condition 23.3 (Buy-in/Sell-out);
 - ii. uses its reasonable endeavours to exercise its rights as a non-defaulting party promptly under the terms of the Upstream Trade prior to the end of the period analogous to the Cure Period hereunder in respect of that Upstream Trade; and
 - iii. promptly after a request from the Buyer, provides written certification or other evidence that it has performed its obligations under paragraph (h) of this Condition 23.3 and has exercised its rights analogous to those contained in this Condition 23.3 (Buy-in/Sell-out) as a non-defaulting party under the Upstream Trade.
-
- i. There shall be no failure by either party to perform its Settlement Delivery Obligations if the transaction settles on the basis of an alternative structure or arrangement mutually acceptable to the Seller and the Buyer that provides the Seller and the Buyer with the economic equivalent of the agreed-upon trade (including, for the avoidance of doubt, cash settlement) pursuant to Condition 6 (Mandatory settlement obligations).
 - ii. If the party responsible for preparing the Form of Purchase pursuant to the Agreed Terms fails to do so on or before the date falling 2 Business Days before the Trigger Date, and after such date but before the Trigger Date the other party has sent written notice to such party that it is ready, willing and able to sign the Form of Purchase for the purposes of settling the transaction, then the party serving such written notice shall be deemed to be a non-defaulting party for the purposes of this Condition 23.3 (Buy-in/Sell-out) and to have satisfied its Settlement Delivery Obligations and entitled to exercise its rights as a non-defaulting party under this Condition 23.3 (Buy-in/Sell-out).
 - iii. No exercise of rights under this Condition 23.3 (Buy-in/Sell-out) shall preclude the exercise of any other right or remedy provided by law or hereunder until completion of the Substitute Transaction or other settlement of the transaction in a manner acceptable to the Buyer and the Seller.
 - iv. The non-defaulting party may exercise, but shall be under no obligation to exercise, its rights under this Condition 23.3 (Buy-in/Sell-out), and in so exercising such rights the non-defaulting party need not establish that it acted in good faith or engaged in commercially reasonable behaviour prior to its performing its Settlement Delivery Obligations in the time and manner described above. The exercise of any rights by the non-

- i. i. defaulting party under this Condition 23.3 (Buy-in/Sell-out) shall not be subject to any defense of the defaulting party having acted in good faith or having engaged in commercially reasonable behaviour provided the non-defaulting party has performed its Settlement Delivery Obligations in the time and manner described above.
- ii. If neither party performs its Settlement Delivery Obligations in the time and manner described above then there is no “non-defaulting party”.
- j. If the Seller is the defaulting party, the Seller shall pay to the Buyer on the Substitute Settlement Date the amount (if any) by which the price in respect of the Buy-in Transaction exceeds the original price for the Traded Portion provided that if the calculation results in a negative amount, the Buyer shall pay to the Seller the absolute value of that amount. The Seller shall in addition pay an amount equal to:
 - a. Buy-in Compensation for each day from (and including) the date that delivery of the Buy-in/Sell-out Notice becomes effective to (but excluding) the earlier of:
 - i. actual settlement of the Buy-in Transaction; and
 - ii. 10 Business Days following the Substitute Trade Date; and
 - b. If PIK Interest applies to all or any part of the Purchased Assets under the Credit Agreement during the period referred to above and the Sell-out Costs of Carry calculation for that period results in a negative amount, the absolute value of that amount.
- k. If the Buyer is the defaulting party, the Buyer shall pay to the Seller on the Substitute Settlement Date the amount (if any) by which the price in respect of the Sell-out Transaction is less than the original price for the Traded Portion provided that if the calculation results in a negative amount, the Seller shall pay to the Buyer the absolute value of that amount. If PIK Interest applies to all or any part of the Purchased Assets under the Credit Agreement during the period referred to below, then in such case the Buyer shall in addition pay an amount equal to Sell-out Costs of Carry (if any) for each day from (and including) the date that delivery of the Buy-in/Sell-out Notice becomes effective to (but excluding) the earlier of:
 - i. actual settlement of the Sell-in Transaction; and
 - ii. 10 Business Days following the Substitute Trade Date.
- l. The obligations of the parties in respect of the transaction shall be terminated once all amounts have been paid under paragraph (j) or, as the case may be, (k) of this Condition 23.3 (*Buy-in/Sell-out*).

CONTINUING OBLIGATION

- a. Each indemnity in the Agreed Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the transaction and it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreed Terms.
- b. No party to the Agreed Terms shall be obliged to indemnify any other party to the Agreed Terms if the loss of the indemnified party is due to the negligence or wilful misconduct of such other party

CONFIDENTIALITY

- a. Both parties shall maintain the confidentiality of the terms of the transaction and the Transaction Documentation unless otherwise required by law or regulation. Each of the Seller and the Buyer shall be permitted to make any necessary disclosures:
 - i. to members of its respective Group;
 - ii. to its or their professional advisers and auditors regarding the terms of the transaction;
 - iii. in connection with the perfection or enforcement of a party's rights and obligations under the Agreed Terms and the Transaction Documentation; and
 - iv. to any person appointed by that party to provide administration or settlement services in respect of the Agreed Terms, any Transaction Document or the transaction,

subject, in each case, to the same confidentiality constraints.

- b. The Buyer shall additionally be permitted to make any necessary disclosures to prospective purchasers from the Buyer regarding the terms of the transaction (other than the identity of the counterparty, Purchase Rate or other pricing arrangements) subject to the requirements of law or regulation or of the Credit Documentation and to the same confidentiality constraints set out in this Condition 25.
- c. If there is any inconsistency between this Condition and any Confidentiality Agreement, the terms of that Confidentiality Agreement shall prevail.

26 BINDING AMENDMENT AND DEBT RESTRUCTURING

26.1 Risk

The Buyer will bear the risk of any Binding Amendment and Debt Restructuring in relation to the Purchased Assets and Purchased Obligations.

26.2 Blocked Payments

The Seller shall not be obliged to make any payment to the Buyer under the Agreed Terms in respect of any sum which is required to be used for a specific purpose pursuant to a Binding Amendment and Debt Restructuring.

26.3

Other Instruments

The Seller may, in connection with any Binding Amendment and Debt Restructuring, apply for or accept any Non-Cash Distributions issued or proposed to be issued by an Obligor or any other person.

26.4 Rescheduling Agreement

Subject as provided herein, the Seller may participate in any agreement in connection with a Binding Amendment and Debt Restructuring and which relates to any payment in respect of the Traded Portion or any part thereof. The Seller shall give to the Buyer the benefit of the agreement on the same terms (*mutatis mutandis*) as the Agreed Terms to the extent that such agreement in the Seller's reasonable opinion, relates to the Traded Portion.

SET-OFF

Either party may (but is not obliged to) set off any amount due and payable by the other party under the transaction against any such amounts due and payable by it to the other party thereunder. If the obligations are in different currencies, the party exercising its rights under this provision may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.

FURTHER ASSURANCE

Each of the parties agrees, at its own expense, to take any further action and to execute any further documents and/or instruments as the other may reasonably request to give effect to the transaction.

TAX AND WITHHOLDING**Tax**

The Buyer acknowledges that it is responsible for making its own independent tax analysis of the Credit Documentation and the transaction.

Free and clear payments

Subject to Condition 29.3 (Net payments) and Condition 29.4 (FATCA withholding) and unless otherwise agreed in any Transaction Document, all payments made under these Conditions and the Transaction Documentation shall be made free and clear of any deduction or withholding save for such deduction or withholding as may be required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is made or is required to be made, the payer shall increase the amount to be paid to the payee to ensure that the payee receives and retains a sum equal

to the sum which it would have received and retained had no such deduction or withholding been made or required to be made.

Net payments

Unless otherwise agreed in any Transaction Document, all payments of or in respect of interest or fees received under the Credit Documentation (or of amounts equal to such interest or fees) made under these Conditions and the Transaction Documentation shall be made net of any deduction or withholding required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is required to be made, the payer shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and then deliver to the payee within thirty days after it has made such payment to the applicable authority, an original receipt (or certified copy thereof) issued by such authority evidencing the payment to such authority of all amounts required to be deducted or withheld in respect of such payment. The payee shall bear the risk of such deduction or withholding and the obligation of the payer to pay an amount net of such deduction or withholding and to account to the relevant taxation or other authority for the amount of such deduction or withholding shall satisfy the payer's obligation to make the original payment to the payee.

29.4 FATCA withholding

- a. Condition 29.2 does not apply to any FATCA Deduction.
- b. 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 neither 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.
- c. 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 other party.

29.5 FATCA Information

- a. Subject to paragraph (d) below, each party shall, within ten Business Days of a reasonable request by the other 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. Subject to paragraph (d) below, the Seller shall use its reasonable endeavours to obtain, and provide to the Buyer, such forms, documentation and other information relating to an Obligor's status under FATCA as the Buyer reasonably requests.
- c. If a party confirms to the other party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it will not (or is not), or will cease (or has ceased) to be, a FATCA Exempt Party, that party shall notify that other party reasonably promptly.
- d. Paragraphs (a) and (b) above shall not oblige a 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;
 - iii. any duty of confidentiality; or
 - iv. the Credit Documentation.
- e. If a party fails to confirm whether it is (and/or remains) 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 (d) above applies), then such party shall be treated for the purposes of the transaction as if it is not a FATCA Exempt Party.

30 ASSIGNMENT

30.1 Restriction on assignment

Subject to Condition 30.2 (*Assignment of Early Termination Payment Amounts*), neither the Seller nor the Buyer may assign the benefit of all or any part of its rights against the other party pursuant to the Agreed Terms or the Transaction Documentation in respect of the transaction without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

30.2 Assignment of Early Termination Payment Amounts

A Non-Insolvent Party may assign the benefit of all or any part of its rights in respect of its interest in any Early Termination Payment Amount payable to it by an Insolvent Party together with any amounts payable on or with respect to that interest and any other rights associated with that interest.

31 THIRD PARTY RIGHTS

A person who is not a party to the Agreed Terms or other Transaction Document has no rights under the Contracts (Rights of Third Parties) Act 1999 (the “Third Parties Act”) to enforce or to enjoy the benefit of any term of the Agreed Terms or other Transaction Document.

32 NOTICES

32.1 Communications in writing

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

32.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Seller and the Buyer for any communication or document to be made or delivered under or in connection with the Agreed Terms is that identified by the Seller and the Buyer in the Agreed Terms or any substitute address or fax number or department or officer as the Seller or the Buyer may notify to the other by not less than five Business Days’ notice.

32.3 Delivery

- a. Any communication or document made or delivered by one person to another under or in connection with the Agreed Terms 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 Condition 32.2 (Addresses), if addressed to that department or officer.

- b. Any communication or document which becomes effective, in accordance with paragraph (a) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

32.4 **Electronic communication**

- a. Any communication to be made between the Seller and the Buyer under or in connection with the Agreed Terms may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website), if the Seller and the Buyer:
 - 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
 - i. 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 the Seller and the Buyer may only be made in that way to the extent that the 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 (a) above made between the Seller and the Buyer will be effective only when actually received (or made available) in readable form.
- 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 the Agreed Terms shall be deemed only to become effective on the following day.
- e. Any reference in the Agreed Terms to a communication being sent or received shall be construed to include that communication is being made available in accordance with this Condition 32.4 (Electronic communication).

32.5 **English language**

Any notice given pursuant to or in connection with the Agreed Terms must be in English.

32.6 **Exclusions**

The requirements of Condition 32.2 (*Addresses*) to Condition 32.4 (*Electronic communication*) shall not apply to any notification referred to in paragraph (c) of Condition 3 (*Termination*) which is given before the Trade Date.

32.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Seller and the Buyer for any communication or document to be made or delivered under or in connection with the Agreed Terms is that identified by the Seller and the Buyer in the Agreed Terms or any substitute address or fax number or department or officer as the Seller or the Buyer may notify to the other by not less than five Business Days' notice.

33 **GOVERNING LAW AND JURISDICTION**

33.1 Governing law

The transaction, the Agreed Terms, these Conditions and any non-contractual obligations arising out of or in connection with any of them are governed by English law.

33.2 Jurisdiction

- a. The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with the transaction, the Agreed Terms and these Conditions (including a dispute relating to the existence, validity or termination of the transaction, the Agreed Terms and these Conditions or any non- contractual obligation arising out of or in connection with the transaction, the Agreed Terms and these Conditions) (a “**Dispute**”).
- b. The Seller and the Buyer agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly neither the Seller nor the Buyer will argue to the contrary.

33.3 Service of process

Without prejudice to any other method of service allowed under any relevant law, the Seller and the Buyer each irrevocably appoints the person described as its process agent (if any) in the Agreed Terms to receive on its behalf service of any action, suit or other proceedings before the English courts in connection with the transaction, the Agreed Terms, these Conditions, or the Transaction Documentation. If any person appointed as process agent ceases to act for any reason the appointing party shall notify the other party and shall promptly appoint another person incorporated within England and Wales to act as its process agent.

34 COUNTERPARTS

Without prejudice to any other method of service allowed under any relevant law, the Seller and the Buyer each irrevocably appoints the person described as its process agent (if any) in the Agreed Terms to receive on its behalf service of any action, suit or other proceedings before the English courts in connection with the transaction, the Agreed Terms, these Conditions, or the Transaction Documentation. If any person appointed as process agent ceases to act for any reason the appointing party shall notify the other party and shall promptly appoint another person incorporated within England and Wales to act as its process agent.

34.1 Counterparts

- a. Any Confirmation, Confidentiality Agreement or other Transaction 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 Confirmation, Confidentiality Agreement or other Transaction Document.
- b. After delivery by fax, electronic mail or other electronic means of a copy counterpart of the Transaction Documents, the Buyer and the Seller shall, upon the request of either party, promptly deliver to each other an original counterpart of the Transaction Documents (and the Confirmation, Confidentiality Agreement or any other document), provided that such request is made within five Business Days of the Settlement Date.

ELECTRONIC SIGNATURES

Any Confirmation, Confidentiality Agreement or other Transaction Document may be signed by electronic signature (as defined in the Electronic Communications Act 2000) and such Confirmation, Confidentiality Agreement or other Transaction Document shall have the same legal effect, validity and enforceability as if signed by handwritten signature to the extent and as provided for in any applicable law (including the Electronic Communications Act 2000).