

One Belt One Road – outline of bilateral loan agreement

This outline of a bilateral loan agreement is presented to members of the HKTDC by The Hongkong and Shanghai Banking Corporation Limited (“HSBC”), the Asia Pacific Loan Market Association (“APLMA”) and the Hong Kong Trade Development Council (“HKTDC”).

The OBOR initiative will bring potential opportunities to fund projects and investments through, amongst others, bilateral loan agreements.

In this document we provide for your reference an overview of common provisions found in a bilateral loan agreement, with sample clauses taken from or based on¹ the APLMA documentation set out in the text boxes below. Many participants in loan markets in the Asia Pacific region are familiar with the form of the APLMA documentation for syndicated and club loans. The loan documentation as developed by the APLMA is a non-binding, recommended form only, intended to be used as a starting point for negotiation.

The actual form and contents of a bilateral loan agreement for any transaction will always vary depending on the circumstances of the transaction. We will highlight some of the factors that will impact the contents of a bilateral loan agreement and the terms that a lender may require.

Furthermore, this guide is based on a Hong Kong law model for an investment grade borrower and the market practice in Asia Pacific as at the date of this guide. Local laws and market practice in the place where the loan is being made available should be taken into account when preparing any loan documentation.

Please note that the descriptions set out herein do not necessarily reflect a comprehensive commentary of a clause or any principle described, nor does this document display an exhaustive list of all clauses that appear or may appear in a bilateral loan agreement.

The contents of this document are intended to provide some general guidance to the subject matter and are for reference purposes only. They do not constitute any recommendation or advice and should not be relied on as such. They should not be treated as a substitute for specific advice concerning individual transactions.

Whilst this document has been prepared with care by HSBC with support from APLMA and HKTDC, it is provided “as is” without warranties of any kind, whether express or implied, and neither HSBC nor APLMA nor HKTDC assume any responsibility for the contents hereof. In particular, no warranty about the accuracy or fitness for a purpose is given in connection with this document. For enquiries about bilateral loan agreements or for further advice on anything set out in this document, you should consult your own legal (or, as the case may be, tax) adviser.

December 2016

¹ Please note that the APLMA loan documentation is based on a syndicated loan with multiple lenders. Appropriate changes to the APLMA sample wordings have been made in this guide to reflect a bilateral loan position.

Outline of a basic bilateral loan agreement

A bilateral loan agreement in its most simple form is an agreement between a lender and a borrower, setting out the terms and conditions of the loan and the rights and obligations of each party. Depending on the transaction at hand, there could be a single borrower or multiple borrowers, and if guaranteed, there could be a single guarantor or multiple guarantors. Together the borrower(s) and guarantor(s) are typically referred to as the “Obligors”. “Group” usually includes the Obligors and their respective direct and indirect subsidiaries and could include also their direct and/or indirect holding companies depending on the Group structure and the transaction.

Often there are also other agreements entered into in connection with the facility (for example the fee letter referred to in paragraph 3.3, or if applicable, any security documents). The bilateral loan agreement together with such other documents entered into in connection with the facility are typically referred to as the “Finance Documents”.

The below outline is on the basis of a single currency (Hong Kong dollar) committed term loan to a single corporate borrower which is supported by a corporate guarantee of a single guarantor and assumes that the bilateral loan agreement is governed by Hong Kong law.

1. The lender’s agreement to lend

A bilateral loan agreement contains a provision that the lender will make available the loan up to the agreed amount and subject to the terms and conditions as set out in the bilateral loan agreement. Typically, the terms and conditions on which the lender is willing to make the funds available are set out under a section called “conditions precedent”. The lender is not obliged to lend unless it is satisfied that the conditions precedent are satisfied.

<i>Subject to the terms of this Agreement, the Lender makes available a [Hong Kong dollar or insert relevant currency] term loan in an aggregate amount equal to the Total Commitments.</i>

1.1 Initial Conditions Precedent

Examples of typical conditions precedent include: certified copies of constitutional documents and corporate authorisation of the borrower to sign and enter into the bilateral loan agreement and the related transaction documents, executed copy of the bilateral loan agreement and any other transaction documents (for example, security documents), evidence of official consents and approvals having been obtained (for example, governmental approvals), evidence that all fees payable by the borrower to the lender have been or will be paid and legal opinions of legal counsel to the lender in the relevant jurisdictions. The lender is also likely to add other conditions precedent depending on the nature of the business, the purpose of the financing or to address any issues that arose out of any due diligence.

A sample list of conditions precedent has been set out in paragraph 18.

1.2 Further Conditions Precedent

Furthermore, the lender has no obligation to fund if any of the representations and warranties are incorrect or untrue on the date of the draw down request or the proposed date of funding, or an event of default has occurred or would result from making the proposed loan.

The Lender will only be obliged to make each Loan available by the Utilisation Date through its Facility Office if:

- (i) in relation to any Utilisation on or before the Utilisation Date for that Utilisation, the lender has received all of the documents and other evidence list in Schedule [X] (Conditions Precedent) in form and substance satisfactory to the Lender;*
- (ii) on the date of the Utilisation Request and on the Proposed Utilisation Date, no Default is continuing or would result from the proposed Utilisation; and*
- (iii) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause [x], or in relation to any other Utilisation, the Repeating Representations to be made by the Borrower are true [in all material respects].*

1.3 Availability Period

The obligation to fund is typically stated to be for a limited period only ('availability period'). The reason is that with a long period of time passing, the credit standing of the borrower may change, the market conditions may change or there could be other reasons why the lender would no longer be willing to provide the facility on the terms as originally proposed. If any limit is undrawn at the end of the availability period, this will be cancelled at the end of the availability period.

The Commitments which, at that time, are unutilised shall be immediately cancelled at 5 p.m.² on the last day of the Availability Period.

During the availability period, commitment fees will apply over the undrawn amount of the facility. For more on this, see paragraph 3.2.

2. Purpose of the loan

It is important to the lender that the purpose of the loan is stated, even though it is added that the lender has no obligation to monitor that the borrower actually so applied the proceeds of the loan. The lender will want to be assured that the borrower applies the money for the intended purpose and that this purpose is not an unlawful one.

The Borrower shall apply all amounts borrowed by it under the Facility towards [insert purpose(s)].

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

3. Pricing and fees

The agreed pricing of the loan will be documented in the bilateral loan agreement.

3.1 Interest

Interest will consist of a reference base rate, for a certain currency (for example HIBOR for Hong Kong dollar loans or LIBOR for US dollar loans) and for a certain period, plus a margin. The reference base rate is taken by reference from the relevant publisher's screen (for example, Reuters). In the unforeseen circumstance that the screen rate is not available, there are back up provisions to determine what alternative reference base rate should be applied to the proposed loan. Usually, the fallback position for determining the reference base rate will be to use an interpolated rate (if available), use the rates

² The bilateral loan agreement shall specify to which time references are made, for example, for a Lender based in Hong Kong this will be Hong Kong time.

quoted by reference banks and/or rely on costs of funds of the lender from a source it reasonably may select.

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable: (a) Margin; and (b) [HIBOR/LIBOR].

"[HIBOR/LIBOR]" means, in relation to any Loan:

- (a) the applicable Screen Rate; [or]*
 - (b) [(if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or]*
 - (c) if:*
 - (i) no Screen Rate is available for the currency of that Loan; or*
 - (ii) no Screen Rate is available for the Interest Period of that Loan [and it is not possible to calculate an Interpolated Screen Rate for that Loan],*
- the Reference Bank Rate,*
as of[, in the case of paragraph[s] (a) [and (c)] above,] the Specified Time on the Quotation Day for Hong Kong dollars and for a period equal in length to the Interest Period of that Loan and, if any such rate is below zero, HIBOR will be deemed to be zero.]

3.2 Commitment fee

As mentioned in paragraph 1.3, commitment fees are to apply to the undrawn portion of the facility during the availability period.

The Borrower shall pay to the Lender a fee computed at the rate of [x] per cent. per annum on the Lender's Available Commitment under the Facility for the Availability Period.

The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and on the cancelled amount of the Lender's Commitment at the time the cancellation is effective.

3.3 Arrangement fees

Furthermore, it may be agreed that a one-off flat fee by way of arrangement fee shall apply, which would either be documented in the bilateral loan agreement or in a separate fee letter.

The Borrower shall pay to the Lender an arrangement fee in the amount and at the times agreed in a Fee Letter.

4. Repayment and prepayment – rights of the lender

The times and manner for repayment are agreed at the outset in the bilateral loan agreement. Often repayment of the loan takes place either in the form of a 'bullet' repayment, which means that repayment shall be made in full at the final maturity date of the loan, or by reference to a repayment schedule with the final repayment instalment to be made on the final maturity date.

The lender will be able to demand early repayment of the loan in certain circumstances, such as:

4.1 Illegality

When it becomes unlawful for the lender to perform its obligations under the agreement or to fund, issue or maintain the facility, the lender will need to stop this situation and therefore require a right to exit the loan.

If, at any time, it is or will become unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan [or it is or will become unlawful for any Affiliate of the Lender for the Lender to do so]:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;*
- (b) upon such notification, the Commitment of the Lender will be immediately cancelled; and*
- (c) the Borrower shall repay the Loans on the last day of the Interest Period for each Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).*

4.2 *Change of control*

This clause provides that if the person controlling the borrower ceases to do so, or if others gain control of the borrower, the lender may require prepayment of the loan. The change of control clause can also be included as an event of default instead.³

- (a) If [[] ceases to control the Borrower]/[any person or group of persons acting in concert gains control of the Borrower]:*
 - (i) the Borrower shall promptly notify the Lender upon becoming aware of that event; and*
 - (ii) [the Lender shall not be obliged to fund a Utilisation;]*
 - (iii) if the Lender so requires, the Lender shall, by not less than [] days notice to the Borrower, cancel the Total Commitment] and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the [Total Commitments / Commitment of the Lender] will be cancelled and all such outstanding amounts will become immediately due and payable.*
- (b) For the purpose of paragraph (a) above "control" means [].*
- (c) [For the purpose of paragraph (a) above "acting in concert" means [].]*

4.3 *Other mandatory prepayments*

There could be circumstances in which the lender requires certain proceeds to be used for repayment of the facility. For example, if the borrower makes certain disposals of its business, the lender may require that all or part of those proceeds are to be applied to prepay the loans.

4.4 *Events of default*

Upon the occurrence of certain events, an event of default will occur. On and after an event of default is occurring, the lender will be entitled to accelerate the facility and demand repayment in full. Below sets out the list of events of default as set out in the standard APLMA documentation, however, if there are transaction specific circumstances, the borrower should expect the lender to require other specific events of default. The acceleration clause is set out at the end of this list.

Each of the events or circumstances set out in the following sub-clauses of this Clause [] (other than Clause 16 (Acceleration)) is an Event of Default.

1 Non-payment

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

- (a) its failure to pay is caused by:*
 - (i) administrative or technical error; or*
 - (ii) a Disruption Event; and*

³ See paragraph 4.4

- (b) [payment is made within:
(i) (in the case of paragraph (a)(i) above) [] Business Days of its due date; or
(ii) (in the case of paragraph (a)(ii) above) [] Business Days of its due date.] /

OR

[payment is made within [] Business Days of its due date.]

2 *Financial covenants*

Any requirement of Clause [] (Financial covenants) is not satisfied.

3 *Other obligations*

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 1 (Non-payment) [and Clause 2 (Financial covenants)]).
- (b) No Event of Default under paragraph (a) above in relation to Clause [] will occur if the failure to comply is capable of remedy and is remedied within:
(i) (in relation to []) [] Business Days; or
(ii) (in relation to []) [] Business Days,
of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

4 *Misrepresentation*

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

5 *Cross default*

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

6 *Insolvency*

- (a) A member of the Group is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any member of the Group.

7 *Insolvency proceedings*

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not an Obligor;
- (b) a composition or arrangement with any creditor of any member of the Group, or an assignment for the benefit of creditors generally of any member of the Group or a class of such creditors;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrator, administrative receiver, compulsory manager,

provisional supervisor or other similar officer in respect of any member of the Group or any of its assets;
or

- (d) enforcement of any Security over any assets of any member of the Group,
- (e) or any analogous procedure or step is taken in any jurisdiction.

Clause 7(a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [] days of commencement.

8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group [having an aggregate value of []] [and is not discharged within [] days].

9 Ownership of the Obligors

The [Borrower/Guarantor] is not or ceases to be a Subsidiary of the [].

10 Unlawfulness

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

11 Repudiation

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

12 [Moratorium on External Indebtedness]

The government of [insert name of country], central bank of [insert name of country] or any Governmental Agency of [insert name of country] declares a moratorium, standstill or similar suspension of payments in respect of its [External Indebtedness] or the External Indebtedness of any person incorporated, domiciled, resident or situated in [insert name of country].]

13 [Cessation of business]

The [Borrower/Guarantor] suspends or ceases to carry on all or a material part of its business or of the business of the Group taken as a whole.]

14 [Change of control]

- (a) If [[] ceases to control the Borrower]/[any person or group of persons acting in concert gains control of the Borrower].
- (b) For the purpose of paragraph (a) above, "control" means [] [and "acting in concert" means []].⁴

15 Material adverse change

[].

16 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may by notice to the Borrower:

- (a)
 - (i) cancel the Commitments (and reduce them to zero), whereupon they shall immediately be cancelled (and reduced to zero); or
 - (ii) cancel any part of the Commitments (and reduce such Commitments accordingly), whereupon the relevant part shall immediately be cancelled (and the Commitments shall be immediately reduced accordingly); and/or
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

⁴ This is not included as an Event of Default if 'change of control' is already included as a mandatory prepayment and vice versa.

5. Prepayment and cancellation – rights of the borrower

Earlier repayment ('voluntary prepayment') by the borrower may be allowed subject to payment of break costs (if any). A prepayment fee may apply. Similarly, a voluntary cancellation of any outstanding commitment (i.e. cancellation of the undrawn portion of the facility) may be allowed.

1. *Voluntary cancellation*
The Borrower may, if it gives the Lender not less than [] Business Days' (or such shorter period as the Lender may agree) prior notice, reduce the Available Facility to zero or by such amount (being a minimum amount of []) as the Borrower may specify in such notice.
2. *Voluntary prepayment of Loans*
 - (a) *The Borrower may, if it gives the Lender not less than [] Business Days' (or such shorter period as the Lender may agree) prior notice, prepay [on the last day of the Interest Period applicable thereto] the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of []).*
 - (b) *A Loan may be prepaid only after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).*
 - (c) *[Any prepayment under this Clause 2 shall satisfy the obligations under Clause [] (Repayment of Loans) [in inverse chronological order]/[pro rata].*

6. Repayment and prepayment – Break Costs

Break costs may be incurred by a lender whenever a loan is repaid or prepaid other than the last day of an interest period. This is as a result of the lender meeting its matched funding obligations of the loan in the interbank market. As such, making a repayment or prepayment on the last day of an interest period will avoid such costs.

- "Break Costs"** means the amount (if any) by which:
- (a) *the interest which the Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of the principal amount of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;*

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

7. Repayment, prepayment and cancellation – General restrictions

Certain standard terms will apply to repayment, prepayments and cancellation:

- (a) *Any notice of cancellation or prepayment given by any Party under this Clause [] shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.*
- (b) *Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.*
- (c) *The Borrower may not reborrow any part of the Facility which is prepaid.*
- (d) *The Borrower shall not repay or prepay all or any part of any Loan or reduce any Commitment except at the times and in the manner expressly provided for in this Agreement.*

- (e) *If any Commitment is reduced in accordance with this Agreement, the amount of such reduction may not be subsequently reinstated.*
- (f) *If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause [] (Further conditions precedent)), an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.*

8. Representations

Representations and warranties are statements of fact or law, and are important to flush out information at the time the bilateral loan agreement is entered into. A representation/warranty that is incorrect will normally as a minimum have the effect that it triggers and event of default (see paragraph 4.4) and result in one of the conditions precedent for draw down not being met (see paragraph 1.2).

8.1 'Day 1' representations

Each Obligor makes the representations and warranties set out in this Clause [] to the Lender on the date of this Agreement.

1 Status

- (a) *It is a corporation, duly incorporated and validly existing under the laws of [insert jurisdiction of incorporation].*
- (b) *It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.*

2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered in accordance with Clause [] (Conditions of Utilisation), legal, valid, binding and enforceable obligations.

3 Non-conflict with other obligations

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

- (a) *any law or regulation applicable to it;*
- (b) *its [and each of its Subsidiaries'] constitutional documents; or*
- (c) *any agreement or instrument binding upon it [or any of its Subsidiaries] or any of its [or any of its Subsidiaries'] assets.*

4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) *to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;*
- (b) *to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and*
- (c) *for it [and its Subsidiaries] to carry on [their]/[its] business, and which are material,*
- (d) *have been obtained or effected and are in full force and effect.*

6 Governing law and enforcement

- (a) *The choice of Hong Kong law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.*
- (b) *Any judgment obtained in Hong Kong in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.*

7 *Deduction of Tax*

It is not required under the law applicable where it is incorporated or resident or at the address specified in this Agreement to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

8 *No filing or stamp taxes*

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

9 *No default*

- (a) *No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.*
- (b) *No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it [or any of its Subsidiaries] or to which its [(or any of its Subsidiaries')] assets are subject which might have a Material Adverse Effect.*

10 *No misleading information*

- (a) *[Any factual information contained in or provided by any member of the Group for the purposes of [the Information Memorandum][specify other relevant material] was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.*
- (b) *Any financial projections contained in [the Information Memorandum][specify other relevant material] have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.*
- (c) *Nothing has occurred or been omitted from [the Information Memorandum][specify other relevant material] and no information has been given or withheld that results in the information contained in [the Information Memorandum][specify other relevant material] being untrue or misleading in any material respect.]*
- (d) *All information [(other than [the Information Memorandum][specify other relevant material])] supplied by any member of the Group was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect.*

11. *Financial statements*

- (a) *Its financial statements most recently supplied to the Lender (which, at the date of this Agreement, are the Original Financial Statements) were prepared in accordance with [insert relevant accounting principles] consistently applied save to the extent expressly disclosed in such financial statements.*
- (b) *Its [consolidated] financial statements most recently supplied to the Lender (which, at the date of this Agreement, are the Original Financial Statements) give a true and fair view and represent its financial condition and operations during the relevant financial year save to the extent expressly disclosed in such financial statements.*
- (c) *There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group) since [].*

12 *Pari passu ranking*

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

13 *No proceedings pending or threatened*

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it [or any of its Subsidiaries].

14 *Authorised Signatures*

Any person specified as its authorised signatory under Schedule [] (Conditions Precedent) or paragraph [] of Clause [] (Information: miscellaneous) is authorised to sign Utilisation Requests and other notices on its behalf."

8.2 Repeating Representations

Certain of the representations and warranties are required to be repeated, usually on the date of each draw down and the first day of each interest period.

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

"Repeating Representations" means each of the representations set out in Clauses [], [] and [].

9. Undertakings/covenants

The undertakings (also known as covenants) are included for monitoring and control purposes.

9.1 Undertakings – general

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

1 Authorisations

Each Obligor shall promptly:

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

any Authorisation required to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

2 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

3 Pari passu ranking

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

4 Negative pledge

In this Clause 4, "Quasi-Security" means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall (and the [Guarantor/Borrower] shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.*
- (b) No Obligor shall (and the [Guarantor/Borrower] shall ensure that no other member of the Group will):*
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor [or any other member of the Group];*
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;*
 - (iii) enter into or permit to subsist any title retention arrangement;*
 - (iv) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or*
 - (v) enter into or permit to subsist any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.*
- (c) Paragraphs (a) and (b) above do not apply to:*
 - (i) any Security or Quasi-Security listed in [Schedule [] (Existing Security)] except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated in that Schedule;*
 - (ii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;*
 - (iii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:*

- (A) *hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or*
- (B) *its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,*
- (C) *excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;*
- (iv) *any lien arising by operation of law and in the ordinary course of trading provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;*
- (v) *any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:*
 - (A) *the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;*
 - (B) *the principal amount secured has not been increased in contemplation of, or since the acquisition of that asset by a member of the Group; and*
 - (C) *the Security or Quasi-Security is removed or discharged within [] months of the date of acquisition of such asset;*
- (vi) *any Security or Quasi-Security over or affecting any asset of any person which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that person becomes a member of the Group, if:*
 - (A) *the Security or Quasi-Security was not created in contemplation of the acquisition of that person;*
 - (B) *the principal amount secured has not increased in contemplation of or since the acquisition of that person; and*
 - (C) *the Security or Quasi-Security is removed or discharged within [] months of that person becoming a member of the Group;*
- (vii) *any Security or Quasi-Security created pursuant to any Finance Document;*
- (viii) *any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;*
- (ix) *[] ; or*
- (x) *any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (i) to (ix) above) does not exceed [] (or its equivalent in another currency or currencies).*

5 *Disposals*

- (a) *No Obligor shall [(and the [Guarantor/Borrower] shall ensure that no other member of the Group will)], enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.*
- (b) *Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:*
 - (i) *made in the ordinary course of trading of the disposing entity;*
 - (ii) *of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose;*
 - (iii) *[] ; or*
 - (iv) *where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal by members of the Group, other than any permitted under paragraphs (i) to [(iii)] above) does not exceed [] (or its equivalent in another currency or currencies) in any financial year.*

6 *Merger*

No Obligor shall (and the [Guarantor/Borrower] shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.

7 *Change of business*

The [Guarantor/Borrower] shall procure that no substantial change is made to the general nature of the business of the Obligors or the Group from that carried on at the date of this Agreement.

8 *[Environmental compliance]*

Each Obligor shall (and the [Borrower/Guarantor] shall ensure that each member of the Group will) comply in all material respects with all Environmental Law, obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under Environmental Law or any Environmental Permits.

9 *Environmental Claims*

Each Obligor shall inform the Lender in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim which has been commenced or (to the best of such Obligor's knowledge and belief) is threatened against any member of the Group, or
- (b) any facts or circumstances which will or might reasonably be expected to result in any Environmental Claim being commenced or threatened against any member of the Group,
- (c) in each case where such Environmental Claim might reasonably be expected, if determined against that member of the Group, to have a Material Adverse Effect.]

10 *[Acquisitions]*

(a) No Obligor shall [(and the [Guarantor/Borrower] shall ensure that no other member of the Group will)] acquire any company, business, assets or undertaking or make any investment.

(b) Paragraph (a) above does not apply to an acquisition or investment:

- (i) [which is in respect of assets or businesses in the same nature and of the same scope as the [Guarantor/Borrower/Group]'s business as conducted on the date of this Agreement; and]
- (ii) (ii) the value of which acquisition or investment (when aggregated with the value of all other acquisitions and investments permitted under this Clause and made in the same financial year) does not exceed [],

provided that such acquisition or investment does not result in a breach of any Authorisation or of any other provision of this Agreement.

11 *[Loans and guarantees]*

(a) No Obligor shall (and the [Borrower/Guarantor] shall ensure that no member of the Group will) make or allow to subsist any loans, grant any credit (save in the ordinary course of business) or give or allow to remain outstanding any guarantee or indemnity (except as required under any of the Finance Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.

(b) [Paragraph (a) above does not apply to: [•].]

12 *[Financial Indebtedness]*

(a) No Obligor shall (and the [Guarantor/Borrower] shall ensure that no other member of the Group will) incur or permit to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to:

- (i) any Financial Indebtedness incurred pursuant to any Finance Documents;
- (ii) []; and
- (iii) any Financial Indebtedness the principal amount of which (when aggregated with the principal amount of any other Financial Indebtedness incurred by any member of the Group except any permitted under paragraph (i) or (ii) above) does not exceed [] (or its equivalent in another currency or currencies).]

9.2 Information undertakings – general

In addition to the undertakings in paragraph 9.1, the lender also requires certain information to be delivered to it to monitor compliance with the bilateral loan agreement and each Obligors' (and the Group's) financial condition.

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

1 Financial statements

The Borrower shall supply to the Lender:

- (a) as soon as the same become available, but in any event within [] days after the end of each of its financial years:
 - (i) its audited [consolidated] financial statements for that financial year; and
 - (ii) the audited [consolidated] financial statements of the Guarantor for that financial year; and
- (b) as soon as the same become available, but in any event within [] days after the end of [each] / [the first] half of each of its financial years:
 - (i) its [consolidated] financial statements for that financial half year[; and
 - (ii) the [consolidated] financial statements of the Guarantor for that financial half year].

2 Compliance Certificate

- (a) The Borrower shall supply to the Lender, with each set of financial statements delivered pursuant to paragraph (a)(i) or (b)[(i)] of Clause 1 (Financial statements), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause [] (Financial covenants) as at the date as at which those financial statements were drawn up.
- (b) [Each Compliance Certificate delivered pursuant to paragraph (a) above shall be [signed by the Borrower's auditors]/[reported on by the Borrower's auditors in the form agreed by the Borrower and the Lender before the date of this Agreement].]

3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 1 (Financial statements) shall be certified by a director of the Borrower as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- (b) [The Borrower shall procure that each set of financial statements delivered pursuant to Clause 1 (Financial statements) is prepared using [insert relevant accounting principles].]
- (c) [The Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 1 (Financial statements) is prepared using [insert relevant accounting principles], accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Lender that there has been a change in [insert relevant accounting principles], the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Lender:
 - (i) a description of any change necessary for those financial statements to reflect the [insert relevant accounting principles], accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether Clause [] (Financial covenants) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.
 - (iii) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.]

4 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly, any announcement, notice or other document relating specifically to the Borrower posted onto any electronic website maintained by any stock exchange on which shares in or other securities of the Borrower are listed or any electronic website required by any such stock exchange to be maintained by or on behalf of the Borrower;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;

- (d) promptly, such further information regarding the financial condition, business and operations of any member of the Group the Lender may reasonably request; and
 - (e) promptly, notice of any change in authorised signatories of any Obligor signed by a director or company secretary of such Obligor accompanied by specimen signatures of any new authorised signatories.
- 5 Notification of default
- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
 - (b) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

9.3 Information undertakings – Know Your Customer

This provision is driven by, amongst others, anti-money laundering laws and regulations, as well as requirements of the regulatory authority whose supervision the lender is subject to.

Each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (including for the Lender on behalf of any prospective new Lender) in order for the Lender or any prospective new Lender to conduct any "know your customer" or other similar procedures under applicable laws and regulations.

10. Financial covenants

Financial covenants are tailored to the relevant borrower, its group, and its business. The financial tests that are most commonly included in a bilateral loan agreement are one or more of the following:

Cashflow cover, Interest cover, Minimum net (or tangible) worth, Leverage ratio and Capital Expenditure.

Financial covenants are specific to the borrower('s group) and should reflect the underlying financial model. Testing of these financial covenants takes place quarterly on a rolling 12-month basis. If financial covenants are breached, this will result in an event of default (see paragraph 4.4, under sub-paragraph 2 in the text box) by reference to the financial statements.

11. Guarantee

If the loan is made available on a guaranteed basis, the guarantee is often documented in the loan agreement, to which the guarantor is also a party as an Obligor. The APLMA form of syndicated/club loan agreement assumes that the guarantee is incorporated in the loan agreement.

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

will not exceed the amount it would have had to pay under this Clause [] if the amount claimed had been recoverable on the basis of a guarantee.

2 Continuing guarantee

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

3 Reinstatement

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

4 Waiver of defences

The obligations of the Guarantor under this Clause [] will not be affected by an act, omission, matter or thing which, but for this Clause 18, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or the Lender) including:

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

5 Immediate recourse

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

6 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause [].

7 Deferral of Guarantor's' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, the Guarantor will not exercise or otherwise enjoy the benefit of any right which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause []:

- (a) to be indemnified by an Obligor;

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

If the Guarantor shall receive any benefit, payment or distribution in relation to any such right it shall hold that benefit, payment or distribution (or so much of it as may be necessary to enable all amounts which may be or become payable to the Lender by the Obligors under or in connection with the Finance Documents to be paid in full) on trust for the Lender, and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause [] (Payment mechanics).

8 Additional security

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

12. Tax

The bilateral loan agreement will contain various provisions to allocate the tax risk between the lender and the Obligors. Generally, the tax risk and increased costs as a result of certain events will be for the account of the Obligors on the basis that the lender funds on a cost-plus basis and will seek yield protection for any additional costs that may be incurred. Cross border tax issues may need to be considered.

12.1 Tax gross up

- (a) All payments to be made by an Obligor to the Lender under the Finance Documents shall be made free and clear of and without any Tax Deduction unless such Obligor is required to make a Tax Deduction, in which case the sum payable by such Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that the Lender receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (d) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.2 Tax indemnity

- (a) Without prejudice to Clause [] (Tax gross-up), if the Lender is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by the Lender whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower shall, within three Business Days of demand of the Lender, promptly indemnify the Lender which suffers a loss or liability as a result against such payment or

liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, provided that this Clause [] shall not apply to:

- (i) any Tax imposed on and calculated by reference to the net income actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which the Lender is incorporated; or*
 - (ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of the Lender actually received or receivable by the Lender (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by the Lender but not actually receivable) by the jurisdiction in which its Facility Office is located.*
- (b) The Lender intending to make a claim under paragraph (a) shall notify the Borrower of the event giving rise to the claim.*

12.3 FATCA

The lender would usually like to include certain FATCA provisions, allocating withholding risk depending on its FATCA status. The APLMA has published riders on its website (accessible to members) with risk allocation to the borrower or the lender, either of which can be used as a starting point.

12.4 Tax credit

Tax credit provisions are often included.

If an Obligor makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and*
- (b) the Lender has obtained and utilised that Tax Credit,*
the Lender shall pay an amount to the Obligor which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Stamp taxes and indirect tax/VAT

1. The Borrower shall:

- (a) pay all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, and*
- (b) within three Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to any stamp duty, registration or other similar Tax paid or payable in respect of any Finance Document.*

2. Indirect Tax

- (a) All amounts set out or expressed in a Finance Document to be payable by any Obligor to the Lender shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by the Lender to any Obligor in connection with a Finance Document, that Obligor shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.*
- (b) Where a Finance Document requires any Obligor to reimburse the Lender for any costs or expenses, that Obligor shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs or expenses to the extent that the Lender reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.*

13 Additional Payment Obligations

13.1 Default interest

If any repayment or payment under the bilateral loan agreement, when due, is not made on its due date, default interest will be payable by the Obligors.

- (a) *If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below, [] per cent. higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligor on demand by the Lender.*
- (b) *If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:*
- (i) *the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and*
- (ii) *the rate of interest applying to the Unpaid Sum during that first Interest Period shall be [] per cent. higher than the rate which would have applied if the Unpaid Sum had not become due.*
- (c) *Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.*

13.2 Increased costs

An increased costs provision is included to protect the lender against any legal and regulatory changes that may result in the rise of the cost of the loan and/or the reduction in the rate of return after the date of the bilateral loan agreement.

- 1 *Increased costs*
- (a) *Subject to Clause [].3 (Exceptions) the Borrower shall, within three Business Days of a demand by the Lender, the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement. The terms "law" and "regulation" in this paragraph (a) shall include, any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.*
- (b) *In this Agreement "Increased Costs" means:*
- (i) *a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital (including, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by the Lender);*
- (ii) *an additional or increased cost; or*
- (iii) *a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the undertaking, funding or performance by the Lender of any of its obligations under any Finance Document or any participation of the Lender in any Loan or Unpaid Sum.*
- 2 *Increased cost claims*
- (a) *The Lender intending to make a claim pursuant to Clause [].1 (Increased costs) shall notify the Borrower of the event giving rise to the claim.*
- (b) *The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.*
- 3 *Exceptions*
- Clause [].1 (Increased costs) does not apply to the extent any Increased Cost is:*
- (i) *attributable to a Tax Deduction required by law to be made by an Obligor;*
- (ii) *compensated for by Clause [] (Tax indemnity) (or would have been compensated for under Clause [] (Tax indemnity) but was not so compensated solely because the exclusion in paragraph (a) of Clause [] (Tax indemnity) applied); or*
- (iii) *attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.*

13.3 Other indemnities

<p>1</p> <p>(a)</p> <p>(i)</p> <p>(ii)</p> <p>2</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p> <p>3</p> <p>(a)</p> <p>(b)</p>	<p><i>Currency indemnity</i></p> <p>If any sum due from an Obligor under the Finance Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:</p> <p>making or filing a claim or proof against that Obligor; or</p> <p>obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,</p> <p>that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.</p> <p>Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.</p> <p><i>Other indemnities</i></p> <p>The Borrower shall (or shall procure that the Guarantor will), within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:</p> <p>the occurrence of any Event of Default;</p> <p>the [Information Memorandum or any other] information produced or approved by any Obligor being or being alleged to be misleading and/or deceptive in any respect;</p> <p>any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under this Agreement;</p> <p>a failure by an Obligor to pay any amount due under a Finance Document on its due date or in the relevant currency;</p> <p>funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or</p> <p>a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower.</p> <p><i>Indemnity to the Lender</i></p> <p>The Borrower shall promptly indemnify the Lender against any cost, loss or liability incurred by the Lender (acting reasonably) as a result of:</p> <p>investigating any event which it reasonably believes is a Default; or</p> <p>acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.</p>
--	--

13.4 Costs and expenses

<p>1</p> <p>(a)</p> <p>(b)</p> <p>2</p> <p>3</p>	<p><i>Transaction expenses</i></p> <p>The Borrower shall, within three Business Days of demand, pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender (and any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:</p> <p>this Agreement and any other documents referred to in this Agreement or in a Transaction Security Document; and</p> <p>any other Finance Documents executed after the date of this Agreement.</p> <p><i>Amendment costs</i></p> <p>If [(a)] an Obligor requests an amendment, waiver or consent [or (b) an amendment is required pursuant to Clause [] (Change of currency)], the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender (and any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.</p> <p><i>Enforcement and preservation costs</i></p>
--	--

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against the Lender as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

13.5 Mitigation by the Lender

The bilateral loan agreement usually contains provisions that the lender shall take certain steps, in consultation with the borrower, to mitigate any circumstances which arise and which would result in triggering certain of the borrower's payment obligations relating to illegality, tax or increased costs.

1	<i>Mitigation</i>
(a)	<i>The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause [] (Illegality), Clause [] (Tax gross up and indemnities) or Clause [] (Increased costs), including:</i>
(i)	<i>[providing such information as the Borrower may reasonably request in order to permit the Company to determine its entitlement to claim any exemption or other relief (whether pursuant to a double taxation treaty or otherwise) from any obligation to make a Tax Deduction; and]</i>
(ii)	<i>in relation to any circumstances which arise following the date of this Agreement, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.</i>
(b)	<i>Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.</i>
2	<i>Limitation of liability</i>
(a)	<i>The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause [].1 (Mitigation).</i>
(b)	<i>The Lender is not obliged to take any steps under Clause [].1 (Mitigation) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.</i>
3	<i>Conduct of business by the Lender</i>
	<i>No provision of this Agreement will:</i>
(a)	<i>interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;</i>
(b)	<i>oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or</i>
(c)	<i>oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.</i>

14. Transferability provisions

It is customary that the lender has the ability to transfer all or part its rights and obligations to another person.

14.1 Transfer and assignment clauses

1	<i>Assignments and transfers by the Lender</i>
	<i>Subject to this Clause [], the Lender (the "Existing Lender") may:</i>
(a)	<i>assign any of its rights; or</i>
(b)	<i>transfer by novation any of its rights and obligations,</i>
	<i>under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "New Lender").</i>
2	<i>Conditions of assignment or transfer</i>

- (a) *The consent of the Obligors, or any of them, is not required for any assignment or transfer by the Lender pursuant to this Clause [].*
- (b) *A transfer will be effective only if the procedure set out in Clause [] (Procedure for transfer) is complied with.*
- (c) *An assignment will be effective only if the procedure and conditions set out in Clause [] (Procedure for assignment) are complied with.*

3 *Limitation of responsibility of Existing Lender*

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

4 *Procedure for transfer*

- (a) *Subject to the conditions set out in Clause [] (Conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Existing Lender and the New Lender execute a duly completed Transfer Certificate.*
- (b) *On the Transfer Date:*
 - (i) *to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another shall be cancelled (being the "Discharged Rights and Obligations");*
 - (ii) *each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender; and*
 - (iii) *the New Lender shall become a Party as a "Lender".*
- (c) *The procedure set out in this Clause [] shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of transfer of such right or obligation or prohibit or restrict any transfer of such right or obligation, unless such prohibition or restriction shall not be applicable to the relevant transfer or each condition of any applicable restriction shall have been satisfied.*

5 *Procedure for assignment*

- (a) *Subject to the conditions set out in paragraph (d) below and in Clause [] (Conditions of assignment or transfer), an assignment may be effected in accordance with paragraph (b) below when the Existing Lender and the New Lender execute a duly completed Assignment Agreement.*

- (b) *On the Transfer Date:*
 - (i) *the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;*
 - (ii) *the Existing Lender will be released by each Obligor from the obligations owed by it (the "Relevant Obligations") and expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and*
 - (iii) *the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.*
- (c) *The Existing Lender may utilise procedures other than those set out in this Clause [] to assign its rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause [] (Procedure for transfer), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lender nor the assumption of equivalent obligations by the New Lender) provided that they comply with the conditions set out in paragraph (d) below.*
- (d) *The procedure set out in this Clause [] shall not apply to any right or obligation under any Finance Document (other than this Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of assignment of such right or release or assumption of such obligation or prohibit or restrict any assignment of such right or release or assumption of such obligation, unless such prohibition or restriction shall not be applicable to the relevant assignment, release or assumption or each condition of any applicable restriction shall have been satisfied.*

24.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

The Existing Lender shall, as soon as reasonably practicable after it and the New Lender have executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

24.8 Existing consents and waivers

The New Lender shall be bound by any consent, waiver, election or decision given or made by the relevant Existing Lender under or pursuant to any Finance Document prior to the coming into effect of the relevant assignment or transfer to such New Lender.

24.11 [Security over Lender's rights

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

- (a) *any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and*
- (b) *in the case of the Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by the Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:*
 - (i) *release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or*
 - (ii) *require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.]*

The standard APLMA wording which the above sample provisions are based on, are actually designed for a syndicated or club loan. In a bilateral context these standard APLMA provisions for transferability of a loan should be supplemented with provisions where it concerns a transfer or assignment of part of the rights and/or obligations of the lender. The reason for this is that a bilateral loan agreement typically does not have the various provisions at the outset to cater for multiple lenders (e.g. for voting by multiple lenders).

14.2 No transfer or assignment by the Obligors

The lender makes the loan available to a specific person with a specific profile in terms of credit risk and other risks (for example in relation to any of the Obligors, its affiliates, the nature or location of the business). Therefore, it will not be acceptable for the lender that an Obligor may transfer its rights and/or obligations to another person without consent.

An Obligor may not assign or transfer any of its rights or obligations under any Finance Document, except with the prior written consent of the Lender.

15. Confidentiality provisions

Confidentiality provisions are included to impose an obligation on the lender to keep information relating to the borrower and the transaction confidential, subject to certain exceptions.

The Lender may disclose:

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

is informed that some or all of such Confidential Information may be price-sensitive information;

(C) *in relation to paragraphs (b)(v), (b)(vi) [and (b)(vii)] above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;*

(c) *to any person appointed by the Lender or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the Lender;*

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

In addition, an ‘entire agreement’ clause is usual, meaning that any previously agreed confidentiality agreements are superseded by the confidentiality provision set out in the bilateral loan agreement. It is also usual to include an expiry period on the contractual confidentiality obligations for when the information is expected to have become stale.

16. ‘Boilerplate’ provisions and operational provisions

The bilateral loan agreement will contain various other standard provisions and operational provisions, including but not limited to provisions in respect of utilisation (requests), communication and notices, defined terms, severability, payment mechanics, set-off by the lender, no set off obligor, calculations, evidence of accounts, no rights of third parties, counterparts, remedies and waivers, language, jurisdiction and governing law and (if applicable) service of process. There will also be various schedules attached to the bilateral loan agreement, for example, for the form of any transfer certificates, the form of utilisation request and a list of conditions precedent.

17. Further requirements

17.1 ABC, Sanctions and AML

Lenders are increasingly concerned about anti-bribery/anti-corruption, sanctions, counter-terrorism financing and anti-money laundering issues and will add specific representations and warranties and undertakings to address this.

17.2 Further covenants, representations and warranties, events of default and conditions precedent

Further covenants, representations and warranties, events of default and conditions precedent can be included depending on the borrower, the business, the transaction and/or if the nature of the business could give rise to specific concerns, for example environmental or pensions concerns.

Whilst the above outline addresses most points for a general working capital loan or loan for general corporate purposes, in the context of leveraged and acquisition finance, ship/aircraft finance, project and export finance and real estate finance, there will be additional covenants and/or events of default.

Other factors that could have an impact on the bilateral loan agreements are the relevant jurisdictions of the transaction, the location of the assets of the Obligor, purpose of the loan, size of the loan and structuring of the transaction.

17.3 Governing law

The bilateral loan agreement will have to comply with the requirements of, and address any risks that arise under, the agreed governing law.

18. Conditions Precedent

See paragraphs 1.1 and 1.2. The same factors described in paragraph 17 may be of relevance for conditions precedent.

- | |
|---|
| <ol style="list-style-type: none">1. <i>Obligors</i><ol style="list-style-type: none">(a) <i>A copy of the constitutional documents of each Obligor.</i>(b) <i>A copy of a resolution of the board of directors of each Obligor:</i><ol style="list-style-type: none">(i) <i>approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;</i>(ii) <i>authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf[; and] / [;]</i>(iii) <i>authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party[.] / [and]</i>(iv) <i>[in the case of the Guarantor, resolving that it is in the best interests of the Guarantor to enter into the transactions contemplated by the Finance Documents to which it is a party, giving reasons.]</i>(c) <i>A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.</i>(d) <i>[A copy of a resolution signed by all the holders of the issued shares in the Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Guarantor is a party.]</i>(e) <i>A certificate from each Obligor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.</i>(f) <i>A certificate of an authorised signatory of the relevant Obligor certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.</i>2. <i>Legal opinions</i><ol style="list-style-type: none">(a) <i>A legal opinion in relation to [governing law of the bilateral loan agreement] from [insert name of law firm] addressed to Lender [, substantially in the form distributed to the Lender prior to the signing of this Agreement].</i>(b) <i>A legal opinion as to [insert law of jurisdiction of incorporation of Obligor, if other than jurisdiction of the Lender] from [insert name of law firm] addressed to the Lender [, substantially in the form distributed to the Lender prior to signing this Agreement].</i>3. <i>Other documents and evidence</i><ol style="list-style-type: none">(a) <i>[Evidence that any process agent referred to in Clause 36.2 (Service of process), has accepted its appointment.]</i>(b) <i>A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into</i> |
|---|

and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

(c) The Original Financial Statements of each Obligor.

(d) [Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause [] (Fees) and Clause [] (Costs and expenses) have been paid or will be paid by the first Utilisation Date.]