



## GENERAL TERMS AND CONDITIONS (VERSION 6)

These General Terms and Conditions, version 6 (**General Terms**) form part of the contract between you as the **“Borrower”** and us LSC Finance Ltd as the **“Lender”**. These General Terms are in addition to the Specific Terms (as defined below). The Specific Terms together with these General Terms form the **Agreement** between us as the Lender and you as the Borrower. The General Terms apply to all borrowers and the Specific Terms apply to you as Borrower. If any Specific Term is inconsistent with any General Term, the Specific Term shall apply.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, unless the context requires otherwise, the following definitions apply:

<b>Appointment:</b>	a contract pursuant to which a member of the Professional Team is engaged to perform professional services in connection with the Development and <b>Appointments</b> shall be construed as the context permits or dictates;
<b>Agreed Plans:</b>	the detailed architect's drawings and specifications for the Development in form and content acceptable to and approved by or on behalf of the Lender (as may be updated or varied from time to time with the approval of the Lender);
<b>Authorisation:</b>	an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
<b>Available Commitment:</b>	the Commitment minus the aggregate of: <ul style="list-style-type: none"><li>(a) the amount of outstanding Loans; and</li><li>(b) in relation to any proposed Drawdown, the amount of any Loan that are due to be made on the proposed Drawdown Date;</li></ul>
<b>Availability Period:</b>	the period from and including the date of the Agreement to and including the date falling one month prior to the Repayment Date;
<b>Borrower</b>	shall be as set out under the Specific Terms;
<b>Borrower's Contribution:</b>	the amount paid or committed at the date of the Agreement to be paid by the Borrower towards the Development Costs and being the difference between the Development Costs and the Commitment or such other sum as the Borrower agrees with the Lender;
<b>Broker Fee:</b>	shall be, if relevant, as specified in the Specific Terms;
<b>Building Contract:</b>	a fixed price Joint Contracts Tribunal standard form of building contract with the Building Contractor (or such other building contract in form and substance acceptable to the Lender) for the completion of the Development in accordance with the Agreed Plans

	and each and any contract in respect of an Appointment and/or any collateral warranties given by the Building Contractor and/or any sub-contractors;
<b>Building Contractor:</b>	such building contractor as the Lender may approve, engaged by the Borrower to carry out the Development pursuant to the Building Contract;
<b>Business Day:</b>	a day (other than a Saturday or Sunday) on which banks in London are open for general business;
<b>Commitment:</b>	means the maximum aggregate amount of all monies available to the Borrower for draw down under the Agreement as specified in the Specific Terms to the extent not cancelled, reduced or transferred by the Lender pursuant to the Agreement;
<b>Construction Documents:</b>	the Building Contract, the Appointments and any sub-contracts, in each case in a form and substance acceptable to and approved by the Lender;
<b>Cost Overrun:</b>	<p>(a) any actual or forecast increase in any item of cost in respect of the Development Budget;</p> <p>(b) any cost of the Development not included in the Development Budget; and</p> <p>(c) any significant adverse variation from the cashflow contained in the Development Budget,</p> <p>in each case as determined by the Monitoring Surveyor;</p>
<b>Debenture:</b>	a debenture in favour of the Lender creating fixed and floating charges over all the assets and undertaking of an Obligor;
<b>Delegate:</b>	any delegate, agent, attorney or co-trustee appointed by or on behalf of the Lender;
<b>Development:</b>	the development of the relevant Property as more particularly described in the Agreed Plans, the Construction Documents and the Development Planning Permission;
<b>Development Budget:</b>	the written statement delivered to the Lender as a condition precedent to a Drawdown relating to the

Development showing at the date of its delivery to the Lender the anticipated Development Costs and comprising a budget and month by month cash flow forecast for the Development (including a timetable for the application of the Borrower's Contribution) prepared by the Borrower and approved by the Lender (as may be updated or varied from time to time in accordance with the Agreement);

**Development Costs:**

all costs which in the opinion of the Lender after consultation with the Monitoring Surveyor have been or are to be incurred in the undertaking of the Development including (without limitation) capitalisation of interest, construction costs, professional fees, void costs, VAT and financing costs up to the relevant Repayment Date but excluding costs incurred in the purchase / refinance of the relevant Property;

**Development Planning Permission:**

the planning permission relating to the Development delivered to the Lender as a condition precedent to a drawdown relating to the Development;

**Document and Processing Fee:**

the document and processing fee in respect of the production of the Finance Documents as specified in the Specific Terms and any other due diligence as required by the Lender;

**Drawdown:**

a drawdown of a Loan under the Facility;

**Drawdown Date:**

the date of a Drawdown;

**Drawdown Request:**

a notice substantially in the form annexed to the Specific Terms (Form of Drawdown Request);

**Environment:**

- (a) humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media;
- (b) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (c) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains

and sewers); and

- (d) and (including, without limitation, land under water;

**Environmental Claim:** any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**Environmental Law:** any applicable law, regulation, common law, statutes, directive or bye-law which relates to:

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

**Environmental Permits:** any permit and / or other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Obligor conducted on or from the properties owned or used by any Obligor;

**Event of Default:** any event or circumstance specified as such in Clause 18 (Events of Default);

**Extension Fee:** shall be, if relevant, as specified in the Specific Terms;

**Exit Strategy:** means a statement from the Borrower (or on the Borrower's behalf) or the Borrower's legal representative, in form and substance acceptable to the Lender and delivered to the Lender prior to Initial Drawdown, outlining the Borrower's strategy to ensure that the Liabilities owing to the Lender are unconditionally and irrevocably repaid on or prior to the Repayment Date.

**Exit Strategy Date:** means the date falling no later than 2 months prior to the Repayment Date;

**Facility:** the sterling term loan facility made available under

the Agreement as described in Clause 2 (the Facility);

**Facility Fee:**

has the meaning set out under the Specific Terms;

**Finance Document:**

the Agreement, the Security Documents and any other document designated as such by the Lender;

**Financial Indebtedness:**

any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting practices and principles in the United Kingdom, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the market to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or

documentary letter of credit or any other instrument issued by a bank or financial institution; and

- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs a) to h) above;

**Guarantee:** each guarantee and indemnity if requested under the Specific Terms granted by a Guarantor in favour of the Lender and **Guarantees** shall be construed accordingly;

**Guarantor:** each provider of a Guarantee as specified under the Specific Terms;

**Initial Drawdown:** the first Drawdown;

**Insurances:** any contract of insurance required under Clause 16 (Insurance undertakings);

**Interest Rate:** shall be as specified under the Specific Terms;

**Lease:** any lease, underlease, tenancy, licence or other right of occupation to which a Property is from time to time subject together with any agreement to grant any such interest or right and any related guarantee or other Security for the performance of the licences and / or the lessee's obligations as the case may be;

**Legal Charge:** the first ranking legal charge granted or to be granted by an Obligor to the Lender over the relevant Property and/ or any other freehold or leasehold land and buildings to secure the Liabilities owing to the Lender;

**Liabilities:** all sums due to the Lender from any Obligor in connection with the Finance Documents on any account whatsoever, whether actual or contingent, present or future, alone or with any other person together with all costs, charges, default interest and expenses incurred by the Lender in connection with the preservation, protection and/or enforcement of the Lender's rights under any Finance Document;

<b>Loan:</b>	a loan made or to be made under the Facility or the principal amount outstanding for the time being under the Facility;
<b>Material Adverse Effect:</b>	a material adverse effect on: <ul style="list-style-type: none"> <li>(a) the business, operations, property, condition (financial or otherwise) or prospects of an Obligor;</li> <li>(b) the ability of an Obligor to perform its obligations under the Finance Documents;</li> <li>(c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; and</li> <li>(d) the rights or remedies of the Lender under any of the Finance Documents;</li> </ul>
<b>Monitoring Surveyor:</b>	the Lender's monitoring surveyor in relation to the Development from time to time appointed by and / or approved by the Lender;
<b>Monitoring Surveyor's Report:</b>	a report issued by the Monitoring Surveyor to the Lender confirming that: <ul style="list-style-type: none"> <li>(a) the Development Costs are properly incurred and in accordance with the Development Budget and the Agreed Plans and supported by invoices;</li> <li>(b) the part of the Facility remaining undrawn after the relevant Drawdown is (subject to payment of the balance of the Borrower's Contribution) sufficient to meet the remaining Development Costs; and</li> <li>(c) the Development is progressing in accordance with the Agreed Plans and Development Budget;</li> </ul>
<b>Non Utilisation Fee:</b>	shall be, if relevant, as specified in the Specific Terms;
<b>Obligor:</b>	the Borrower, each Guarantor and any other guarantor or surety of any Liabilities;
<b>Party:</b>	a party to this Agreement and / or any other

	Finance Document as the context permits or dictates;
<b>Potential Event of Default:</b>	any event or circumstance specified in Clause 18 (Events of Default) which might reasonably be expected to, with the expiry of a grace period, the giving of notice, the making of any determination under a Finance Document or any combination of any of the foregoing, be an Event of Default;
<b>Practical Completion:</b>	the date of practical completion of the Development in accordance with the Agreed Plans and Construction Documents as certified by the Monitoring Surveyor;
<b>Professional Team:</b>	the architect, quantity surveyor, structural and other engineers, cost consultants and such other professional persons employed from time to time in connection with carrying out the Development;
<b>Property:</b>	shall have the meaning as set out under the Specific Terms as does the term <b>Properties</b> ;
<b>Property Report:</b>	any certificate of or report on title supplied to the Lender in respect of a Property;
<b>Receiver:</b>	a receiver or receiver and manager, administrative receiver or administrator (as the case may be) of the whole or any part of the assets and undertaking subject to the Transaction Security;
<b>Redemption Fee:</b>	means the fee as specified under the Specific Terms and payable in accordance with the Facility Agreement;
<b>Repayment Date:</b>	the date by which all Liabilities must be irrevocably and unconditionally discharged in full and as specified in the Specific Terms or if relevant, on demand; .
<b>Security:</b>	a mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
<b>Security Documents:</b>	means: <ul style="list-style-type: none"> <li>(a) if required under the Specific Terms, each</li> </ul>

	<p>Debenture;</p> <p>(b) if required under the Specific Terms, each Guarantee;</p> <p>(c) if required under the Specific Terms, each Legal Charge;</p> <p>(d) any other document evidencing or creating Security over any asset to secure any Liabilities; and</p> <p>(e) any other document designated as such by the Lender;</p>
<b>Specific Terms:</b>	the specific terms and conditions accepted by the Borrower which together with these General Terms form the Agreement;
<b>Sterling and £:</b>	the lawful currency of the UK.
<b>Tax:</b>	any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
<b>Tax Deduction:</b>	a deduction or withholding for or on account of Tax from a payment under a Finance Document;
<b>Transaction Security:</b>	the Security created or evidenced or expressed to be created or evidenced under the Security Documents;
<b>Valuation:</b>	a valuation of a Property and/ or any other asset of any Obligor by the Valuer, supplied at the request of the Lender, addressed to the Lender and prepared on the basis of its market value as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors;
<b>Valuer:</b>	any surveyor or valuer appointed by or chosen by the Lender in each case in the Lender's absolute discretion;
<b>VAT:</b>	(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added

tax (EC Directive 2006/112); and

- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph a) above, or imposed elsewhere.

1.2 Unless a contrary indication appears, a reference in the Agreement to:

- (a) the **Borrower**, the **Lender**, any **Obligor**, any **Party** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (b) any warranty, representation, undertaking or negative pledge given by the Borrower under the Agreement is given in respect of itself as well as on behalf of each Obligor;
- (c) **assets** includes present and future properties, revenues and rights of every description;
- (d) **disposal** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal (whether voluntary or involuntary) and “dispose” will be construed accordingly;
- (e) words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (f) a **Finance Document** or **Transaction Document** or any other agreement or instrument is a reference to that Finance Document, Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (g) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (h) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (i) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (j) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (k) a provision of law is a reference to that provision as amended or re-enacted;
- (l) a time of day is a reference to London time; and
- (m) a reference to writing or written includes fax and e-mail.

1.3 Section, Clause and Schedule headings are for ease of reference only.

- 1.4 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in the Agreement.
- 1.5 A default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default or a Potential Event of Default is “**continuing**” if it has not been waived.
- 1.6 **£, GBP** and **sterling** denote the lawful currency of the United Kingdom.
- 1.7 The terms of the other Finance Documents and of any other agreement, document or side letter between the Lender and any Obligor are incorporated into each Finance Document to the extent required for any purported disposition of a Property or any part thereof and any other relevant charged asset contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.8 Third party rights:
- (a) unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of the Agreement; and
  - (b) notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary the Agreement at any time.

## **2. THE FACILITY**

Subject to the terms of the Agreement, the Lender makes available to the Borrower a secured Sterling term loan facility in an amount up to and including the Commitment.

## **3. PURPOSE**

- 3.1 The Borrower shall use the Loan in accordance with the purpose specified in the Specific Terms and for the payment of fees, costs and expenses payable in accordance with the Agreement.
- 3.2 The Lender is not obliged to monitor or verify how any Loan is used.

## **4. DRAWDOWN**

- 4.1 The Borrower shall deliver a Drawdown Request to the Lender at least two Business Days' prior to the proposed Drawdown Date unless the Lender agrees to waive this requirement. The Specific Terms will set out whether multiple or single Drawdown is permitted, in each case in accordance with the terms of the Agreement.
- 4.2 A Drawdown Request is irrevocable.
- 4.3 If the conditions set out in the Agreement have been met, the Borrower may utilise the Facility on any Business Day during the Availability Period.

- 4.4 The aggregate amount of all Loans drawn down must be an amount which is not more than the Commitment.
- 4.5 The Available Commitment will be automatically cancelled on the last day of the Availability Period.
- 4.6 Where the Facility is to be drawn down for the purposes of a Development the amount of any proposed Drawdown must be an amount which is equal to or lower than:
- (a) the Available Commitment;
  - (b) the amount of the Development Costs incurred as at the date of the relevant Drawdown and confirmed by the Monitoring Surveyor in the Monitoring Surveyor's Report (if applicable); and
  - (c) the maximum amount as shall ensure that following the Drawdown there will be sufficient Available Commitment to meet such of the Development Costs as will remain unpaid

## **5. CONDITIONS PRECEDENT**

- 5.1 The Borrower may not serve a Drawdown Request on the Lender:
- (a) in respect of the Initial Drawdown unless the Lender has received all the documents and evidence specified in the conditions precedents to the Initial Drawdown under the Specific Terms in form and substance satisfactory to the Lender; and
  - (b) in respect of a subsequent Drawdown unless the Lender has received all the documents and evidence specified in the conditions precedent to a subsequent Drawdown under the Specific Terms in form and substance satisfactory to the Lender.
- 5.2 The Lender will only be obliged to fund a proposed Loan if on the date of the Drawdown Request and the proposed Drawdown Date:
- (a) the representations and warranties in Clause 12 are true and correct and will be true and correct immediately after the Lender has made the proposed Loan; and
  - (b) no Event of Default or Potential Event of Default is continuing or is reasonably likely to result from the proposed Loan; and
  - (c) the aggregate of all Loans drawn down and the proposed Loan exceeds the Available Commitment and / or the Availability Period.

## **6. INTEREST**

- 6.1 The Borrower shall pay interest on the Loans at the Interest Rate.
- 6.2 Interest shall accrue daily at the Interest Rate and shall be payable in accordance with the Specific Terms.

- 6.3 For the purposes of calculating interest, where a Drawdown occurs other than on the first Business Day of a particular calendar month or the Repayment Date occurs other than on the last Business Day of a particular calendar month, interest shall have accrued and be calculated as if the Loan were drawn down on the first Business Day of that calendar month and the Loan repaid as if the Repayment Date had occurred on the last Business Day of that calendar month irrespective of the actual date of Drawdown or repayment of the Loan as the case may be.
- 6.4 If the Borrower fails to make any payment due under a Finance Document on its due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment), at 3% above the Interest Rate. Any interest accruing under this Clause 6.4 shall be immediately payable by the Borrower on demand by the Lender. If interest arising on an overdue amount is unpaid, it will be compounded with the overdue amount in accordance with the Lender's usual practice but will remain immediately due and payable.
- 6.5 If the cost to the Lender of funding the Loan from whatever source it may reasonably select increases then the rate of interest on the Loan shall be the rate notified to the Borrower by the Lender (as soon as reasonably practicable) to be the aggregate of the Interest Rate and the amount that reflects the increased costs to the Lender.

## 7. FEES

- 7.1 If any amount payable under any Finance Document is not paid when due the Borrower agrees to pay:
- (a) a missed payment administration fee of £400 which shall be payable on demand by the Lender where the Borrower and / or other Obligor has not made a payment under the relevant Finance Document on its due date for payment;
  - (b) a missed payment letter/email fee of £175.00 for each letter and/or email which the Lender sends requesting payment of the due but unpaid sum up until the date that such sum is paid to the Lender. Such missed payment letter/email fee shall be payable by the Borrower on demand by the Lender;
  - (c) a fee of £35 for each Drawdown of £99,999 or below and £60 in respect of each Drawdown over £100,000 on the Drawdown Date (such fee to be deducted from the amount drawn down);
  - (d) a fee of £75 for each redemption statement requested by an Obligor other than the first statement which the Lender agrees will be provided free of charge. Such redemption statement fee to be payable by the Borrower on demand by the Lender;
  - (e) a security release fee of £250 in respect of each release of any asset the subject of a Security Document will be added to the Loan and payable by the Borrower on the Repayment Date;
  - (f) a formal demand letter fee of £250 which is payable by the Borrower on demand by the Lender for the repayment of the Liabilities by the Borrower or other Obligor. Such fee will form part of the Liabilities; and
  - (g) a loan repayment administration fee of £250 will be added to the Loan and payable by the Borrower on the Repayment Date.

## **8. COSTS AND EXPENSES AND ADDITIONAL FEES**

- 8.1** The Borrower shall pay, on demand, on a full indemnity basis, all costs and expenses that the Lender incurs in connection with the negotiation and preparation, execution, perfection, amendment, extension, alteration, preservation and enforcement of each and any of the Finance Documents.
- 8.2** The Borrower agrees to pay:
- (a) to the Lender the Facility Fee on the date of the Agreement and the Borrower further agrees to such Facility Fee being deducted from the Initial Drawdown or paid directly to the Lender upon demand by the Lender whichever is the earlier;
  - (b) to the Lender the Document and Processing Fee on the date of the Agreement and the Borrower further agrees to such Document Fee being deducted from the Initial Drawdown or paid directly to the Lender upon demand by the Lender whichever is the earlier;
  - (c) the Broker Fee (if applicable), the Non Utilisation Fee (if applicable) and Extension Fee in accordance with the Specific Terms; and
  - (d) the Redemption Fee payable on the Repayment Date or if earlier the date upon which the Lender confirms to the Borrower all Liabilities except such Redemption Fee have been irrevocably and unconditionally discharged in full.

## **9. INDEMNITIES**

- 9.1** If the Lender is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable or deemed to be received or receivable under a Finance Document then the Borrower must pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered.
- 9.2** Clause 9.1 shall not apply:
- (a) with respect to any Tax assessed on the Lender if that Tax is imposed on or calculated by reference to the net income received or receivable by it; or
  - (b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 19.3.
- 9.3** The Borrower shall pay any stamp, documentary and other similar duties and taxes to which the Finance Documents may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission by the Borrower in paying any such duties or taxes.
- 9.4** The Borrower must, within 3 Business Days of demand by the Lender, pay to the Lender the amount of any:
- (a) reduction in the rate of return from the Facility or on the Lender's overall capital;
  - (b) additional or increased cost; or
  - (c) reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender to the extent that it is attributable to the Lender having entered into the Agreement or funding or performing its obligations under any Finance Document and which is incurred by the Lender 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 the Agreement.

- 9.5 Clause 9.4 does not apply to the extent any such amount is:
- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (b) compensated for by Clause 9.1 or would have been compensated for but was not solely because of the application of the exclusions in Clause 9.2; or
  - (c) attributable to the wilful breach by the Lender of any law or regulation.
- 9.6 All amounts payable under a Finance Document by the Borrower to the Lender shall be deemed to be exclusive of any VAT, and, accordingly, if VAT is chargeable, the Borrower must pay to the Lender (in addition to and at the same time as paying the relevant amount) an amount equal to the amount of the VAT.
- 9.7 The Borrower must, within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability (including legal fees) incurred by it as a result of:
- (a) obtaining any Valuation required by the Lender as a condition precedent to the relevant Drawdown or as a result of the operation of any other term of the Agreement;
  - (b) the occurrence of any Event of Default or Potential Event of Default;
  - (c) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
  - (d) funding, or making arrangements to fund, a Loan requested by the Borrower but not made by reason of the operation of any one or more of the provisions of the Agreement (other than by reason of wilful default or gross negligence by the Lender alone);
  - (e) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
  - (f) investigating any event which it reasonably believes is a Potential Event of Default (including without limitation obtaining a Valuation pursuant to Clause 13.3);
  - (g) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (h) the enforcement of, or the preservation of any rights under any Finance Document and with any proceedings instituted by or against the Lender as a consequence of it entering into a Finance Document, taking of and holding the Security Documents, or enforcing or preserving any of its rights under each and any of the Finance Documents.

## **10. REPAYMENT**

- 10.1 The Borrower shall repay the Loan, all accrued interest and any other Liabilities in full on the Repayment Date unless otherwise prepaid in accordance with the terms of the Agreement.

- 10.2 No amount of the Loan which is repaid or prepaid may be reborrowed.
- 10.3 If a Property or any part of a Property is sold or leased then the Borrower shall use such sale or lease proceeds in and towards the permanent reduction of the Loan in inverse order of maturity.
- 10.4 No amount of the Commitment which is cancelled can be subsequently reinstated.

## **11. PREPAYMENT**

- 11.1 The Borrower may, if it gives the Lender not less than 2 Business Days' notice, prepay the Loan in part or in full and any accrued interest.
- 11.2 If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by the Agreement or to fund or maintain any Loan or any part of any Loan:
- (a) the Lender will promptly notify the Borrower upon becoming aware of that event and the Commitments will be immediately cancelled; and
  - (b) the Borrower must repay or discharge the Liabilities in full on the date specified by the Lender in the notification being no earlier than the first to occur of the Repayment Date and the last day of any applicable grace period permitted by law.
- 11.3 Subject as follows, the Borrower must, if the Lender so requires, apply the proceeds of any Insurances in prepayment of the Loans promptly following receipt. To the extent required by the basis of settlement under any Insurances, the Borrower must apply moneys received under any Insurances in respect of a Property towards replacing, restoring or reinstating that Property. Moneys received under liability policies held by the Borrower which are required by the Borrower to satisfy established liabilities of the Borrower to third parties must be used to satisfy those liabilities.
- 11.4 Any notice of prepayment given under this Clause 11 (Prepayment) shall be irrevocable.
- 11.5 Any prepayment under the Agreement shall be made together with accrued interest on the amount prepaid. The Borrower must in addition pay the Redemption Fee due pursuant to Clause 8.2(c) in the event that the Loan is repaid in full.
- 11.6 The Borrower may not repay or prepay all or any part of any Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in the Agreement.
- 11.7 If all or part of the Loan is repaid or prepaid, an amount of the Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of the repayment or prepayment.
- 11.8 No amount of the Commitment cancelled under the Agreement may be subsequently reinstated.
- 11.9 Upon the disposal of the whole or any part of a Property the net proceeds of the disposal will be applied in prepayment of the Loan.

## **12. REPRESENTATIONS AND WARRANTIES**

The Borrower on behalf of itself and each other Obligor represents and warrants to the Lender on the date of the Agreement and / or on such other dates specified under this clause 12 that :

- 12.1** if it is a corporate entity that it is a limited liability company or a limited liability partnership (as the case may be), duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- 12.2** if it is a corporate entity, it has the power to own its assets and carry on its business as it is being conducted;
- 12.3** if it is a corporate entity, there is no limit on its powers that will be exceeded as a result of the borrowing or grant of Security contemplated by the Finance Documents;
- 12.4** its obligations under the Finance Documents are legal, valid, binding and enforceable in accordance with their terms;
- 12.5** the entry into and performance by it of, and the transactions contemplated by, the Finance Documents, do not and will not contravene or conflict with:
- (a) any law or regulation or judicial or official order, applicable to it,
  - (b) its constitutional documents; or
  - (c) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- 12.6** it has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them;
- 12.7** all Authorisations required or desirable:
- (a) to enable it to lawfully enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and
  - (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation (and England and Wales),
- have been obtained or effected and are in full force and effect;
- 12.8** the choice of governing law specified in each Finance Document will be recognised and enforced in each Obligor's jurisdiction of incorporation;
- 12.9** any judgment obtained in England in relation to a Finance Document (or in the jurisdiction of the governing law of that Finance Document) will be recognised and enforced in the relevant Obligor's jurisdiction of incorporation and, in relation to a Finance Document governed by a law other than English law, in the jurisdiction of the governing law of that Finance Document;

- 12.10 it is not necessary to file, record or enrol any Finance Document with any court or other authority or pay any stamp, registration or similar taxes relating to any Finance Document or the transactions contemplated by any Finance Document other than the registration of the relevant Security Documents under the Companies Act 2006 and, in the case of Security over real property, registration at the H. M. Land Registry;
- 12.11 no Event of Default or Potential Event of Default has occurred or is continuing, or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by any Finance Documents;
- 12.12 no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Borrower or to which any of its assets is subject which has or is reasonably likely to have a Material Adverse Effect on it;
- 12.13 the information, in written or electronic format, supplied by, or on its behalf, to the Lender in connection with the Facility and the Finance Documents was, at the time it was supplied or at the date it was stated to be given (as the case may be):
- (a) if it was factual information, complete, true and accurate in all material respects;
  - (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and made on reasonable grounds; and
  - (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
  - (d) not misleading in any material respect, nor rendered misleading by a failure to disclose other information,
- except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the relevant Obligor to the Lender and acknowledged by the lender in writing or by email;
- 12.14 its most recent financial statements have been prepared in accordance with consistently applied accounting principles, standards and practices generally accepted in the UK and present a true and fair view of (if audited) or fairly represent (if audited) its financial condition and operations during the relevant accounting period and were approved by its directors in compliance with section 393 of the Companies Act 2006;
- 12.15 if an an individual, sole trader or partnership, the asset and liability statement of that Obligor delivered to the Lender represents a fair view of its financial position;
- 12.16 its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally;

- 12.17 no litigation, arbitration or administrative proceedings (or bankruptcy proceedings in respect of an individual) are taking place, pending or, to the relevant Obligor's knowledge, threatened against it, any of its directors (in the case of a corporate entity) or any of its assets, which, in the Lender's opinion, might reasonably be expected to have a Material Adverse Effect on it;
- 12.18 all information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given. It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation;
- 12.19 it has a good and marketable title to the relevant Property and is the legal and beneficial owner of the relevant Property in each case free from Security (other than those created by or pursuant to the Security Documents) and restrictions and onerous covenants (other than those set out in the Property Report);
- 12.20 from the Date of the Initial Drawdown, except as disclosed in the Property Report or other document delivered to the Lender by an Obligor or on the Obligors' behalf:
- (a) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of each Property and / or any other assets or undertaking subject of a Security Document;
  - (b) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting any Property and / or any other assets or undertaking subject of a Security Document;
  - (c) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over any Property;
  - (d) all facilities necessary for the enjoyment and use of a Property (including those necessary for the carrying on of its business at the relevant Property) are enjoyed by each Property;
  - (e) none of the facilities referred to in Clause 12.20(d) above are enjoyed on terms:
    - (i) entitling any person to terminate or curtail its use of a Property; or
    - (ii) which conflict with or restrict its use of a Property;
  - (f) it has not received any notice of any adverse claim by any person in respect of the ownership of a Property and / or any other assets or undertaking subject of a Security Document or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of a Property and / or any other assets or undertaking subject of a Security Document; and
  - (g) each Property is held by the relevant Obligor free from any lease or licence (other than those entered into in accordance with the Agreement);
- 12.21 all deeds and documents necessary to show good and marketable title to the relevant Obligor's interests in a Property will from the date of the Initial Drawdown be:

- (a) in the possession of the Lender;
  - (b) held at the applicable Land Registry to the order of the Lender; or
  - (c) held to the order of the Lender by a firm of solicitors approved by the Lender for that purpose;
- 12.22 the information supplied by it or on its behalf to the lawyers who prepared any Property Report for the purpose of that Property Report was true and accurate as at the date of the Property Report or (if appropriate) as at the date (if any) at which it is stated to be given. That information was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect;
- 12.23 as at the date of the Initial Drawdown, nothing has occurred since the date of any information referred to in Clause 12.22 above which, if disclosed, would make that information untrue or misleading in any material respect;
- 12.24 for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (**Regulation**), the Borrower's "centre of main interest" (as that term is used in article 3(1) of the Regulation) is situated in England and Wales and it has no "establishment" (as that term is used in article 2(h) of the Regulation) in any other jurisdiction;
- 12.25 the Security conferred by each Security Document constitutes a first priority security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or pari passu Security; and
- 12.26 each of the representations and warranties in this Clause 12 (Representations and Warranties) is deemed to be repeated by the Borrower on:
  - (a) the date of any Drawdown;
  - (b) the date of any Drawdown pursuant to a Drawdown Request; and
  - (c) each date that interest is payable or capitalised under the Agreement in accordance with Clause 6,

by reference to the facts and circumstances existing on each such date.

### **13. INFORMATION UNDERTAKINGS**

- 13.1 The Borrower covenants with the Lender that, as from the date of the Agreement until the Liabilities have been irrevocably discharged in full, it will deliver to the Lender:
  - (a) within 180 days after the end of each of its financial years, its annual accounts (if a corporate entity);
  - (b) within 10 days after the end of each month, its monthly management accounts and bank account statements;
  - (c) promptly, all notices or other documents dispatched by the Borrower to its shareholders or members (or any class of them) or to its creditors generally;

- (d) promptly upon becoming aware of them, the details of any claim, litigation, arbitration or administrative proceedings (including bankruptcy in respect of an individual) which are current, threatened or pending against any Obligor, which might reasonably be expected, if adversely determined, have a Material Adverse Effect; and
  - (e) promptly such financial or other information as the Lender may, from time to time, reasonably request relating to any Obligor or its business assets or undertaking.
- 13.2 The Borrower will notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.
- 13.3 The Borrower must supply to the Lender a Valuation on the Lender's request if the Lender believes that a Default is continuing. The Borrower must provide all reasonable assistance to the Lender and the relevant Valuer in obtaining any Valuation. The cost and expense of any such Valuation will be borne in accordance with Clause 9.7. The Borrower must supply a copy of any other valuation of a Property and / or any other asset obtained by any Obligor in respect of that Property or any other asset as the case may be within 2 Business Days of such valuation.
- 13.4 If the Lender is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower will, promptly on the request of the Lender, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for the Lender to be able to carry out, and be satisfied that it has complied with, all necessary "know your customer" in respect of any Obligor or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- 14. GENERAL UNDERTAKINGS**
- 14.1 The Borrower will promptly obtain or procure the obtaining of all Authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform each Obligor's obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in the relevant jurisdiction of incorporation for each Obligor.
- 14.2 The Borrower will comply and will procure compliance in respect of each Obligor in all respect, with all laws, agreements, deeds and contracts, if failure to do so has or is likely to have a Material Adverse Effect.
- 14.3 The Borrower will not create and will procure that no Obligor will create, or permit to subsist, any Security on or over any of their respective assets including for the avoidance of doubt any Property, other than Security created pursuant to the Security Documents;
- 14.4 The Borrower will not and will procure that no Obligor will shall:
  - (a) sell, transfer or otherwise dispose of any of its assets on terms whereby such assets are or may be leased to or re-acquired or acquired by an Obligor or any other person (other than in the ordinary course of trade) and for full market value; or

- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms; or
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- 14.5 The Borrower will not and shall procure that no other Obligor will enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, assign, lease, transfer or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, its assets other than:
- (a) a Property or any part of it, with the prior written consent of the Lender and subject to any conditions attached to the Lender's consent;
  - (b) trading stock in the ordinary course of its business; and
  - (c) assets exchanged for other assets comparable or superior as to type, value and quality.
- 14.6 The Borrower will not and shall procure that no other Obligor will incur or permit to subsist, any obligation for Financial Indebtedness other than Financial Indebtedness arising under any Finance Document or arising in the ordinary course of its business.
- 14.7 The Borrower will not be and shall procure that no other Obligor will be the creditor in respect of any loan or any form of credit to any person.
- 14.8 The Borrower will not and shall procure that no other Obligor will give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which an Obligor assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.
- 14.9 The Borrower will and will procure each other Obligor will carry on and conduct its business in a proper and efficient manner and will not make any change to the general nature or scope of its business as carried on at the date of the Agreement.
- 14.10 The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment and shall procure the same in respect of each other Obligor.
- 14.11 The Borrower shall and shall procure that each other Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
- (a) to perfect the Transaction Security (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law; and

- (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- 14.12 The Borrower shall and shall procure that each other Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents.
- 14.13 The Borrower undertakes to procure that the Loan to market value of the Properties (or relevant Property) as set out in the Valuation (or such Valuation as updated from time to time or any other valuation of the Properties or relevant Property undertaken by a Valuer) shall not exceed 70% of the Liabilities.
- 15. PROPERTY UNDERTAKINGS**
- 15.1 The Borrower and if relevant shall procure that each other Obligor must exercise its rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting a Property.
- 15.2 The Borrower and if relevant shall procure that each other Obligor may not agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting a Property.
- 15.3 The Borrower and if relevant shall procure that each other Obligor must promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at the applicable Land Registry.
- 15.4 The Borrower and if relevant shall procure that each other Obligor must comply in all respects with all planning laws, permissions, agreements and conditions to which a Property may be subject.
- 15.5 The Borrower must and if relevant shall procure that each other Obligor within 14 days after the receipt by the relevant Obligor of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to a Property (or any part of it) and / or the Development supply to the Lender a copy of such application, request, order or notice and ensure that the terms of the same are complied with.
- 15.6 The Borrower must grant the Lender or its lawyers on request all facilities within the power of the Borrower to enable the Lender or its lawyers to conduct and investigation into the title of the Property and / or any matter relating to it and / or the Development.
- 15.7 If any Obligor fails to perform any obligations under the Finance Documents affecting a Property and / or the Development, the Borrower must allow the Lender or its agents, contractors or any other Delegate:
- (a) make such enquiries in relation to any part of a Property as a prudent mortgagee might carry out;
  - (b) to enter any part of a Property;

- (c) to comply with or object to any notice served on an Obligor in respect of a Property and / or the Development; and
  - (d) to take any action that the Lender may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.
  
- 15.8 The Borrower must immediately on request by the Lender pay the costs and expenses of the Lender or its agents, contractors and other Delegate incurred in connection with any action taken by it under Clause 15.7. The Lender shall not be obliged to account as mortgagee in possession as a result of any action taken under Clause 15.7.
  
- 15.9 The Borrower must ensure all buildings and erections from time to time upon each Property and all fittings, plant and machinery on each Property are in, and are maintained in:
  - (a) good and substantial repair and condition and, as appropriate, in good working order; and
  - (b) such repair, condition and order as to enable them to be let in accordance with all applicable laws and regulations; for this purpose, a law or regulation will be regarded as applicable if it is either:
    - (i) in force; or
    - (ii) it is expected to come into force and a prudent property owner in the same business as the Borrower would ensure that its buildings, plant and machinery, fixtures and fittings were in such condition, repair and order in anticipation of that law or regulation coming into force,
  
- and when necessary the Borrower shall replace, or procure the replacement of, the same with items of similar quality and value.
  
- 15.10 The Borrower must:
  - (a) comply and ensure that any relevant third party complies with all Environmental Law;
  - (b) obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it and to each Property; and
  - (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it and to each Property,  
where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.
  
- 15.11 The Borrower must, promptly upon becoming aware, notify the Lender of:
  - (a) any Environmental Claim started, or to its knowledge, threatened;
  - (b) any circumstances reasonably likely to result in an Environmental Claim; or
  - (c) any suspension, revocation or notification of any Environmental Permit.
  
- 15.12 The Borrower must indemnify the Lender against any loss or liability which:

- (a) the Lender incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
- (b) would not have arisen if a Finance Document had not been entered into unless it is caused by the Lender's gross negligence or wilful misconduct.

## **16. INSURANCE UNDERTAKINGS**

**16.1** The Borrower must ensure and shall procure each other Obligor ensures that at all times it benefits from insurance against third party and public liability risks.

**16.2** At all times prior to Practical Completion, the Borrower must ensure that all construction works and materials to be incorporated therein are insured on terms equivalent to a "contractors all risks" policy with adequate provision also being made for the cost of clearing the site and architects', engineers', surveyors' and other professional fees incidental thereto (together with provision for future inflation) in accordance with the Building Contract.

**16.3** Subject to Clause 16.2, the Borrower must ensure that at all times the buildings standing on a Property are insured against:

- (a) loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft (other than hostile aircraft) and other aerial devices and articles dropped from them, riot, terrorism, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, and subsidence; and
- (b) such other risks and contingencies as are insured against in accordance with sound commercial practice or which the Lender may direct from time to time,

to the full reinstatement value thereof with adequate provision also being made for:

- (a) the cost of clearing the site and architects', engineers', surveyors' and other professional fees incidental thereto (together with provision for future inflation); and
- (b) (where relevant) the loss of rents or prospective rents for a period of not less than three years or such other period as the Lender may direct and having regard to any potential increases in rent as a result of reviews.

**16.4** The Borrower must ensure that at all times all insurance policies effected pursuant to Clauses 16.2 and 16.3:

- (a) name the Lender as a co-insured party and, in respect of any monies paid out in excess of ten thousand pounds (£10,000), as first loss payee;
- (b) contain a mortgagee clause whereby such insurance policy will not be vitiated or avoided as against a mortgagee or security holder in the event of or as a result of any misrepresentation, act or neglect or failure to make disclosure on the part of an insured party;
- (c) contain a "tenant's clause" in the following or similar terms:

"The insurance hereby effected shall not be prejudiced by any act or omission unknown to or beyond the control of the insured on the part of any tenant occupying or using the premises, provided that the insured immediately on becoming aware thereof shall give notice to the insurers and pay an additional premium if required".

- 16.5** The Borrower must ensure that at all times all insurance policies:
- (a) contain terms providing that the policies will not be invalidated so far as the Lender is concerned for failure to pay any premium due without the insurer first giving to the Lender not less than 28 days' written notice;
  - (b) contain terms providing that the Lender shall have no duty of disclosure to the insurance company or underwriters and have no liability to pay any unpaid premium;
  - (c) are in an amount and form acceptable to the Lender; and
  - (d) are with an insurance company or underwriters acceptable to the Lender.
- 16.6** If the Lender requests, the Borrower must promptly provide a copy of each insurance policy together with evidence of payment of the premiums and such other information in connection with the insurance policies as the Lender requests.
- 16.7** If the Lender considers that the amount insured, or the risks covered, by any insurance policy is/are inadequate, the Borrower must increase or procure the increase in the amount insured and/or require the category of risks covered to be amended to such extent and in such manner as the Lender considers appropriate.
- 16.8** The Borrower must:
- (a) ensure that all things necessary to keep all the insurance policies in force are done promptly including the punctual payment of premiums; and
  - (b) notify the Lender of premiums paid, renewals made, material variations and cancellations of insurance policies made or, to the knowledge of the insured, threatened or pending.
- 16.9** The Borrower must not allow anything to occur which may make any insurance policy void or voidable.
- 16.10** If the Borrower does not comply with the requirements of this Clause 16 (Insurance Undertakings), the Lender may (without any obligation to do so) effect or renew any such insurance policy either in its own name, or together with the Borrower and / or any other Obligor in such sum and on such terms as the Lender may reasonably think expedient and all monies expended by the Lender will be deemed to be properly paid by the relevant person and shall be reimbursed by the Borrower on demand.

## **17. DEVELOPMENT UNDERTAKINGS**

- 17.1** Where the Facility is to be drawn down by the Borrower in respect of a Development the Borrower will procure that the Development is carried out:
- (a) diligently, in a good and workmanlike manner and in accordance with good building practice and in any event to comply with the Construction (Design and Management) Regulations

2015 and current British Standards and Codes of Practice (so far as they may be applicable to the Development);

- (b) in accordance with , the Agreed Plans, Requisite Consents, Development Planning Permission, Development Budget and Construction Documents;
  - (c) without abandonment, cancellation, suspension or interruption; and
  - (d) without any infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on it.
- 17.2 The Borrower shall procure there shall not be used on or in connection with the Development any materials or substances which at the time of specification are not approved or not recommended by the current British Standards and Codes of Practice (so far as they may be applicable to the Development) as being of deleterious, unsatisfactory or unsuitable quality or do not accord with the guidelines contained in the edition of the publication "Good Practice in Selection of Construction Materials (British Council for Offices (BCO))" current at the date of specification or use.
- 17.3 The Borrower will procure that at Practical Completion each Property shall be left in full repair and in good and clean condition cleared of all unused building materials, plant and equipment used in the Development and temporary structures.
- 17.4 The Borrower must not make and shall procure no other person shall make any press or other media communication in relation to the funding of the Development without the prior written approval of the Lender.
- 17.5 The Borrower must promptly, in such manner as the Lender may require, pay or procure the payment of all Cost Overruns as they occur, ensuring that the funds used for this are:
- (a) from sources other than the Facility; and
  - (b) fully subordinated to the Liabilities in such form and manner as the Lender shall require.
- 17.6 The Borrower must make provision in a manner satisfactory to the Lender for the payment and discharge (to the extent not funded out of the Facilities) of all the costs, expenses and other sums required to carry out and complete the Development.
- 17.7 The Borrower shall obtain the prior written consent of the Lender to the appointment (and terms of appointment) of the Building Contractor, members of the Professional Team, any sub-contractors and any other persons in relation to the Development.
- 17.8 The Borrower will require as a condition of the employment of the Building Contractor that:
- (a) the Building Contract is executed as a deed;
  - (b) at all times during the execution of the Development it will be registered for gross payment pursuant to section 63 of the Finance Act 2004;
  - (c) it maintains professional indemnity cover with a reputable insurer for each claim that may be made for breach of the terms of the Building Contract; and

- (d) within 7 days of its employment the Building Contractor shall execute a collateral warranty in favour of the Lender in form and substance approved by the Lender.
- 17.9 The Borrower will, or shall procure that the Building Contractor will, require as a condition of each Appointment and appointment of a sub-contractor that
  - (a) any Appointment and appointment of a sub-contractor is made by deed;
  - (b) the appointee maintains professional indemnity cover with a reputable insurer in an amount approved by the Lender for each claim that may be made for breach of the terms of the relevant Appointment or sub-contractor appointment; and
  - (c) within 7 days of its appointment the appointee shall execute a collateral warranty in favour of the Lender in terms approved by the Lender.
- 17.10 The Lender will not accept collateral warranties which do not provide for full step-in rights or which provide for (a) limited liability;(b) a net contribution clause: (c) for the warrantor to raise equivalent rights in defence of liability as it would have had against its employer, unless such term also excludes the right of set-off or counterclaim.
- 17.11 The Borrower will (or where relevant, shall procure that the Building Contractor will):
  - (a) diligently take all steps necessary or effectual to procure the due performance and observance of the obligations and duties of the Building Contractor, each member of the Professional Team and each sub-contractor;
  - (b) not waive, release, vary nor stop itself from enforcing or seeking redress for any such obligation or duty without the prior written consent of the Lender;
  - (c) not do nor omit to do any act or thing which would entitle the Building Contractor, a member of the Professional Team or a sub-contractor to treat a Construction Document as terminated by breach; and
  - (d) on request by the Lender:
    - (i) terminate the appointment of the Building Contractor, any sub-contractor or any member of the Professional Team if such contractor breaches a Construction Document in any material respect and such breach entitles the employer to terminate their appointment; and
    - (ii) replace the relevant party with a person approved by the Lender on terms approved by the Lender.
- 17.12 The Borrower may not make or procure the making of a variation to the Construction Documents without the prior written consent of the Lender.
- 17.13 The Borrower may not make or procure the making of any variation to the Agreed Plans (that is to say, any alteration or addition to or omission of anything from the Agreed Plans nor the use of any materials in substitution for those specified in the Agreed Plans) or the Development Budget without the prior written consent of the Lender unless:

- (a) in the case of such a variation involving substitution of materials the materials substituted are of equivalent or superior standard;
  - (b) the relevant variation does not materially increase the projected Development Costs;
  - (c) the relevant variation is treated as a Cost Overrun to the extent that it results in increased costs beyond those stated in the Development Budget delivered to the Lender as a condition to Drawdown of the relevant Loan;
  - (d) the relevant variation does not reduce the quality or value of the Development;
  - (e) the relevant variation is not reasonably expected to have a material adverse effect on the timing of the Development or the timing of the grant or the rent commencement date of a lease pursuant to any Agreement for Lease; and
  - (f) the Borrower notifies the Lender of the variations in advance.
- 17.14** The Borrower must keep the Lender furnished with a complete set of the Agreed Plans as amended and revised from time to time in accordance with Clauses 17.12 and 17.13, and will within a reasonable time after Practical Completion deliver to the Lender two complete sets of the plans and specifications of the Development as finally built.
- 17.15** The Borrower will promptly after Practical Completion either:
- (a) procure the assignment absolutely to the Lender of the full copyright of the Agreed Plans; or
  - (b) take such other steps effectually to procure for the Lender the full right and entitlement to use the Agreed Plans on licence without further payment or liability for further payment;
- and will at its own cost execute all such deeds and documents as the Lender may reasonably require effectually to vest such rights in the Lender;
- 17.16** The Borrower shall, as and when each are required for the purposes of the Development:
- (a) promptly obtain and renew all Authorisations;
  - (b) promptly notify the Lender of the grant of all Authorisations;
  - (c) deliver copies of all Authorisations to the Lender; and
  - (d) deliver the originals of all Authorisations to the Lender on request.
- 17.17** The Borrower shall observe and perform the terms of the Authorisations and do anything necessary to preserve and maintain in full force and effect the Authorisations.
- 17.18** The Borrower must not amend or vary or procure the amendment or variation of the Development Planning Permission or apply for any such amendment or variation without the prior written consent of the Lender.
- 17.19** The Borrower will, if required by the Lender, negotiate the terms of planning or other obligations with the local planning or other authority (under section 106 of the Town and Country Planning Act 1990, section 38 or section 278 of the Highways Act 1980, section 104 of the Water Industry Act 1991 or

other statutory provisions requiring undertakings from the Borrower) but may not settle the terms of any such document without the approval of the Lender.

- 17.20 If an Authorisation is refused, the Borrower will appeal against the refusal or take such other appropriate action in order to proceed with the Development as the Lender may approve or require (in each case acting reasonably).
- 17.21 Unless otherwise agreed with the Lender, the Borrower will negotiate the terms of agreements with the owners and occupiers of neighbouring property for the release of rights of way, light and air or otherwise and the extinguishment of interests in or with respect to the relevant Property to the extent that such rights and interests would be infringed by the Development or would prevent or impede the carrying out or progress of the Development or its use and enjoyment, but may not settle the terms without the approval of the Lender and where the release or modification of any restrictive covenant cannot be negotiated the Borrower will take such action for its discharge or modification as may be practicable under section 84 of the Law of Property Act 1925.
- 17.22 The Borrower will grant the Lender and its advisers access to the relevant Property in order to inspect and view the state and progress of the Development and the materials used at all reasonable times whilst the Liabilities remain outstanding provided that
- the Lender and its advisers in doing so may not impede or obstruct the progress of the Development nor issue any instructions to the Building Contractor or any workmen employed in carrying out the Development or the Professional Team, but will address any requirement, comment or complaint only to the Borrower.
- 17.23 The Borrower will hold project meetings on a regular basis and the Lender and its professional advisers are entitled to attend at and participate in such meetings and the Borrower will give them copies of the minutes of all meetings, including any which they do not attend.
- 17.24 The Borrower will pay due regard to requirements of the Lender or its professional advisers which are consistent with the terms of this Agreement and to any other comments, observations and representations of the Lender or its professional advisers.
- 17.25 The following provisions shall apply to Practical Completion pursuant to the Building Contract:
- (a) the Borrower will give notice (and use its reasonable endeavours to give at least 21 days' notice) to the Lender of the pending issue of the certificate of Practical Completion in order to allow the Lender and the Monitoring Surveyor the opportunity to inspect the Development and consider whether the Development has been completed in accordance with the Borrower's obligations under this Agreement;
  - (b) the person or firm (**Employer's Agent**) having the responsibility of issuing the certificate of Practical Completion under the Building Contract shall not be fettered from issuing any such certificate at such time as in his opinion he thinks fit;
  - (c) the Lender may make representations to the Employer's Agent as to whether such certificate of Practical Completion should be issued at a particular time or what qualifications should be made to such certificate of Practical Completion upon its issue;

- (d) if the Lender is of the opinion that such certificate of practical completion should not have been issued or that the certificate as issued has not been properly qualified, the Lender may notify the Borrower within a reasonable time giving details of the Lender's objections and the Borrower and the Lender will endeavour to resolve what, if any, action should be taken but if they cannot or do not do so objections not so resolved are to be determined as the Lender requires;
- (e) the Borrower will take whatever action may be required in consequence of the resolution of the objections of the Lender; and
- (f) the issue of a certificate of Practical Completion under the Building Contract shall in no way fetter the discretion of the Monitoring Surveyor in deciding when or whether to issue any certificate of Practical Completion.

**17.26** The Borrower will enforce the defects liability provisions in the Building Contract.

**17.27** The Borrower will inspect or procure the inspection of the Development and prepare a schedule of defects itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract or to frost occurring before practical completion and will:

- (a) deliver a copy to the Lender in time for the Lender to consider it and notify additions to the Borrower; and
- (b) then deliver the schedule (with any additions notified to the Borrower by the Lender) to the Building Contractor within the appropriate time limits for doing so under the Building Contract.

**17.28** The Borrower must include in any schedule of defects, any defects notified to it by the Lender or the Monitoring Surveyor within the appropriate time limits under the Building Contract without obliging the Lender or Monitoring Surveyor to prepare any such schedule of defects.

**17.29** The Borrower will diligently prosecute claims and seek redress (so far as may be practicable and prudent) for the consequences of failure on the part of the Professional Team or the Building Contractor to observe and perform their respective obligations in relation to the Development.

**17.30** The Borrower will pay due regard to the requirements of the Lender both in relation to the prosecution of claims and the conduct of proceedings, but the prosecution of claims is to be carried out at the Borrower's expense.

## **18. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 18 (other than Clause 18.30) is an Event of Default.

**18.1** An Obligor fails to pay on the due date any sum payable by it under any Finance Document, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date.

- 18.2 There is a breach of Clause 13 (Information undertakings), Clause 14 (General undertakings), Clause 15 (Property Undertakings) or Clause 16 (Insurance undertakings) or if applicable Clause 17 (Development Undertakings).
- 18.3 An Obligor fails to comply with any provision of any Finance Document (other than those referred to in Clauses 18.1 and 18.2), and (if the Lender considers that the default is capable of remedy), such default is not remedied within 10 Business Days of the earlier of:
- (a) the Lender notifying the Borrower (or the relevant Obligor) of the default and the remedy required;
  - (b) the Borrower (or the relevant Obligor) becoming aware of the default.
- 18.4 Any representation, warranty or statement made, repeated or deemed made by an Obligor in, or pursuant to, any Finance Document is (or proves to have been) untrue, incorrect or misleading in any material respect when made, repeated or deemed made.
- 18.5 If:
- (a) any Financial Indebtedness of an Obligor is not paid when due or within any originally applicable grace period; or
  - (b) any Financial Indebtedness of an Obligor becomes due, or capable or being declared due and payable prior to its stated maturity by reason of an event of default (howsoever described);
  - (c) any commitment for Financial Indebtedness of an Obligor is cancelled or suspended by a creditor of an Obligor by reason of an event of default (howsoever described); or
  - (d) any creditor of an Obligor becomes entitled to declare any Financial Indebtedness owed by an Obligor due and payable prior to its stated maturity by reason of an event of default (howsoever described).
- 18.6 An Obligor stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
- 18.7 The value of an Obligor's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 18.8 A moratorium is declared in respect of any indebtedness of an Obligor.
- 18.9 Any action, proceedings, procedure or step is taken for:
- (a) the suspension of payments, a moratorium of any Financial Indebtedness, winding up, dissolution, administration, bankruptcy or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of an Obligor; or
  - (b) the composition, compromise, assignment or arrangement with any creditor of an Obligor; or
  - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of an Obligor or any of its assets; or

- (d) the enforcement of any Security over any asset of an Obligor.
- 18.10 An Obligor commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness (because of actual or anticipated financial difficulties).
- 18.11 Any event occurs in relation to an Obligor similar to those in Clause 18.6 to Clause 18.10 (inclusive) under the laws of any applicable jurisdiction.
- 18.12 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, an Obligor's assets and is not discharged or stayed within 21 days.
- 18.13 Any provision of any Finance Document is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 18.14 An Obligor repudiates or evidences an intention to repudiate any Finance Document.
- 18.15 An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business.
- 18.16 Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against any Obligor or its assets which in the opinion of the Lender has or is reasonably likely to have a Material Adverse Effect.
- 18.17 An Obligor dies, becomes bankrupt or by reason of illness or incapacity (whether mental or physical) becomes incapable of managing his or her own affairs.
- 18.18 Any person who has provided a guarantee of the Liabilities seeks to determine their liability under any guarantee or repudiates or purports to repudiate any such guarantee.
- 18.19 All or a material part of a Property is destroyed or materially damaged (other than where necessary as part of any Development) where, in the opinion of the Lender:
- (a) any insurance proceeds will be insufficient to make good the destruction or damage;
  - (b) repair or restoration is likely to take longer than two years to be completed; or
  - (c) an Obligor's business is likely to be materially adversely affected.
- 18.20 The Building Contractor abandons all or a significant part of the Development for a period exceeding 28 days.
- 18.21 The Development is not progressed to the satisfaction of the Lender acting reasonably) within 3 months from the date of the Agreement. Any Delegate engaged by the Lender (including any Monitoring Surveyor) to assess the progress of the Development shall be paid for by the Borrower on demand by the Lender and such failure to pay shall also constitute an Event of Default.

- 18.22 On or at any time after the Exit Strategy Date, the Lender, acting reasonably, believes that the Exit Strategy can no longer be complied with by the Borrower..
- 18.23 In the opinion of the Lender, at any time on or after the date of the Agreement there is a risk of material liability accruing to it under Environmental Law because it has taken Security or provided the Facility.
- 18.24 All or any substantial part of a Property is compulsorily purchased or is subject to an order for compulsory purchase.
- 18.25 Any of the events referred to in Clause 18.6 to Clause 18.10 occurs in respect of the Building Contractor and, in the opinion of the Lender, this will have or is reasonably likely to have a Material Adverse Effect.
- 18.26 If a limited liability company, the current shareholders of the relevant Obligor (or in respect of a limited liability partnership its members) cease together to control the relevant Obligor or be the beneficial owners of the entire issued share capital of the relevant Obligor (or membership in respect of a limited liability partnership) in the proportions existing at the date of the Agreement. For the purposes of this Clause 18.26, "control" means directly or indirectly having the power (whether by way of ownership of the shares, proxy, contract, agency or otherwise) to (i) cast, or control the casting of, more than 75% of the maximum number of votes that might be cast at a general meeting of the relevant Obligor, (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the relevant Obligor, and (iii) give directions with respect to the operating and financial policies of the relevant Obligor with which the directors or other equivalent officers of the parent are obliged to comply.
- 18.27 Any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to have a Material Adverse Effect.
- 18.28 The Loan to market value of the relevant Property (or Properties as the case may be) as set out in the Valuation (as updated from time to time or any other valuation of the relevant Property (or Properties as the case may be) undertaken by a Valuer) exceeds 70% of the Liabilities.
- 18.29 Any event or circumstance which in the opinion of the Lender after consultation with the Monitoring Surveyor will cause a Cost Overrun and / or a delay to Practical Completion and / or a delay in repayment of all Liabilities on the Repayment Date.
- 18.30 At any time after an Event of Default has occurred, the Lender may, by notice to the Borrower:
- (a) cancel all outstanding obligations of the Lender under the Agreement whereupon they shall immediately be cancelled; and/or
  - (b) declare that the Loan (and all accrued interest and all other amounts outstanding under the Finance Documents) is immediately due and payable, whereupon they shall become immediately due and payable; and/or
  - (c) declare that the Loan be payable on demand, whereupon it shall become immediately payable on demand by the Lender; and/or
  - (d) declare the Security Documents to be enforceable;

- (e) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents; and/or
- (f) apply the interest rate under Clause 6 to the Loan or any part of it as if it were due but unpaid.

## **19. PAYMENTS**

- 19.1** All payments made by the Borrower under the Finance Documents shall be in Sterling and in immediately available cleared funds to the Lender at its account specified in the Specific Terms or such other account as the Lender may notify the Borrower from time to time.
- 19.2** If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.
- 19.3** All payments made by the Borrower under the Finance Documents shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall:
- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
  - (b) pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;
  - (c) furnish to the Lender, within the period for payment permitted by the relevant law, either:
    - (i) an official receipt of the relevant taxation authorities concerned on payment to them of amounts so deducted or withheld; or
    - (ii) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and
  - (d) pay to the Lender such additional amount as is necessary to ensure that the net amount received by the Lender after the required deduction or withholding is equal to the amount that the Lender would have received had no such deduction or withholding been made.
- 19.4** The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable and the Borrower must indemnify the Lender against any cost, loss or liability arising out of or as a result of any currency conversion.
- 19.5** If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses owing to the Lender, any Receiver or any Delegate (including for the avoidance of doubt all in-house legal fees) under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid under the Agreement;
- (c) **thirdly**, in or towards payment pro rata of any principal due but unpaid under the Agreement; and
- (d) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

This Clause will override any appropriation made by an Obligor.

## **20. APPLICATION OF PROCEEDS**

**20.1** Subject to Clause 20.2, all amounts from time to time received or recovered by the Lender pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 20, the **Recoveries**) shall be held by the Lender on trust to apply them at any time as the Lender (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 20), in the following order:

- (a) in payment of all costs and expenses incurred by the Lender, any Receiver or any Delegate (including for the avoidance of doubt in-house legal fees) in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of the Agreement; and
- (b) for application in accordance with Clause 19.5.

**20.2** Following acceleration the Lender may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Lender with such financial institution and for so long as the Lender shall think fit (any interest being credited to the relevant account) for later application under Clause 19.5 in respect of any sum to the Lender, any Receiver or any Delegate and any part of the Secured Liabilities, that the Lender reasonably considers, in each case, might become due or owing at any time in the future.

## **21. SET-OFF**

**21.1** The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under any Finance Document. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this Clause 21.1 shall not limit or affect any other rights or remedies available to it under the Finance Documents or otherwise.

**21.2** The Lender is not obliged to exercise any of its rights under Clause 21.1, but if the rights are exercised, the Lender shall promptly notify the Borrower of the set-off that has been made.

## **22. CHANGES TO THE PARTIES**

22.1 The Lender may assign any of its rights under the Finance Documents or transfer by novation any of its rights or obligations under the Finance Documents.

22.2 The Borrower may not assign any of its rights or transfer any of its rights or obligations under any Finance Document.

## **23. NOTICES**

23.1 Any notice or other communication given to a party under or in connection with, any Finance Document shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
  - (i) the Borrower at its registered office address marked for the attention of the directors; and
  - (ii) the Lender at:

Units 1-7, Fallbarn Road, Rawtenstall, Rossendale, Lancashire, BB4 7NT
  - (iii) Fax: 01706 222237

marked for the attention of Mr S Morley,

or to any other address, fax number or officer as one party to the Agreement may notify to the other by not less than five Business Days' notice.

23.2 Any notice or other communication that the Lender gives to the Borrower under or in connection with any Finance Document shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax, when received in legible form.

23.3 A notice or other communication which becomes effective in accordance with Clause 23.2 on a day that is not a Business Day, or after normal business hours in the place it is received, shall be deemed to have been received on the next Business Day.

23.4 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

## **24. CALCULATIONS, ACCOUNTS AND CERTIFICATES**

- 24.1 Any interest, commission or fee under any Finance Document shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of 365 days.
- 24.2 The Lender shall maintain accounts evidencing the Liabilities, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Liabilities.
- 24.3 If the Lender issues any certificate, determination or notification of a rate or any amount payable under a Finance Document, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

## **25. PARTIAL INVALIDITY**

If any provision (or part of a provision) of any Finance Document is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this Clause shall not affect the legality, validity and enforceability of the rest of the Finance Documents.

## **26. AMENDMENTS, WAIVERS AND CONSENTS AND REMEDIES**

- 26.1 No amendment of any Finance Document shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).
- 26.2 A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 26.3 A failure or delay by a party to exercise any right or remedy provided under any Finance Document or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by the Lender shall be effective unless it is in writing.
- 26.4 The rights and remedies provided under the Finance Documents are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.
- 26.5 The Borrower hereby consents and authorises the Lender (or if relevant has obtained the explicit consent and authority of the relevant person) to access, process and keep any personal information that the Borrower provides to the Lender. The provisions of this clause will not affect any right or remedy of the Borrower and / or the Lender under data protection legislation. The Borrower can withdraw this consent and authority by unconditionally and irrevocably discharging the Liabilities in full.

**27. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

**28. GOVERNING LAW AND JURISDICTION**

28.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of, or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.