

Investec Bank (Channel Islands) Limited Standard Terms and Conditions for Portfolio Loans for Individual Borrowers (First Edition November 2013)

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Standard Terms and Conditions for Portfolio Loans for Individual Borrowers (First Edition November 2013)

1 Applicability, Definitions and Interpretation

1.1 Applicability

These Standard Terms and Conditions apply to a facility letter in respect of which they are expressly incorporated.

1.2 Definitions

For the purpose of interpreting and construing these Standard Terms and Conditions in relation to a facility letter to which they apply (the **"Facility Letter"**) and for the purposes of interpreting and construing the Facility Letter, each of the following terms shall have the meaning given to them as follows:

"Asset and Liability Statement"

means an asset and liability statement delivered to the Bank by the Borrower in accordance with paragraph 4.1 (Initial Conditions Precedent).

"Availability Period"

means the period commencing on the date of satisfaction of the Conditions Precedent under the Facility Letter and ending on the date that the Bank makes demand for repayment of the Facility.

"Available Facility"

means the undrawn amount of the Facility.

"Bank"

means Investec Bank (Channel Islands) Limited, a company incorporated in Guernsey (Registration Number: 5845) whose registered office is at Glategny Court, Glategny Esplanade, GY1 1WR Channel Islands (acting through the Branch Office in respect of any Facility to a Borrower resident in Jersey), and its successors and assignees from time to time.

"Bank's Group"

means the Bank, any subsidiary of the Bank, any holding company of the Bank and any subsidiary of any such holding company.

"Bank's Spot Rate of Exchange"

means the Bank's spot rate of exchange for the purchase of one currency with another in the London foreign exchange market at the time that the Bank obtains the rate on a particular day.

"Break Costs"

means the costs calculated in accordance with paragraph 9.5 (Break Costs).

"Business Day"

means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Guernsey and Jersey.

"Branch Office"

means the branch of the Bank located in Jersey at 4th Floor, Liberation House, Castle Street, St Helier, Jersey, JE2 3BT

"Charged Assets"

has the meaning given to such term in paragraph 15.2 (Security).

"Conditions Precedent"

means the conditions precedent to drawdown under the Facility listed in Box 11 (Conditions for Drawdown) of the Facility Letter.

"Custody Account"

is the account specified in Box 2 (Custody Account) of the Facility Letter.

"Custody Agreement"

means the agreements between the Borrower and Investec Wealth & Investment, incorporating the 'Terms and Conditions for Investment Management & Dealing Services', pursuant to which

Investec Wealth & Investment holds and manages the Portfolio Assets on behalf of the Borrower.

"Custody Moneys"

means all moneys in any currency from time to time deposited in or standing to the credit of the Custody Account (including all moneys in any currency representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such moneys, all or any moneys payable or repayable pursuant to such deposits or in respect of the Custody Account and in each case the debts represented thereby.

"Default Rate"

means the rate of interest applicable under paragraph 9.3 (Default Interest).

"Delegate"

means a delegate or sub-delegate appointed under paragraph 18.2 (Delegation).

"Dispute"

has the meaning given to that term in paragraph 19 (Governing Law and Enforcement).

"Drawdown Date"

means each date on which the Borrower makes a drawdown under the Facility.

"Drawdown Request"

means a drawdown request substantially in the form set out in Schedule 1 (Form of Drawdown Request) of the Facility Letter.

"Facility"

has the meaning given to that term in the first paragraph of the Facility Letter.

"Facility Limit"

is the amount specified in Box 3 (Facility Limit) of the Facility Letter.

"Finance Document"

means the Facility Letter, these Standard Terms and Conditions, each Drawdown Request, each Supplemental Document and any other document designated as a Finance Document by the Bank and the Borrower.

"Financial Covenants"

means the financial covenants set out in paragraph 13 (Financial Covenants) as supplemented by Box 10 (Covenants) of the Facility Letter and Box 12 (Special Conditions) of the Facility Letter.

"GFSC"

means the Guernsey Financial Services Commission.

"Increased Cost"

means:

- (a) an additional or increased cost incurred by the Bank as a result of it having entered into, or performing, maintaining or funding its obligations under the Facility Letter and these Standard Terms and Conditions; or
- (b) that portion of an additional or increased cost incurred by the Bank in making, funding or maintaining all or any advances comprised in a class of advances formed by or including any Loan; or
- (c) a reduction in any amount payable to the Bank or in the effective return to the Bank under the Facility or on its capital; or
- (d) the foregone amount of any payment made or interest or other return on or calculated by reference to any amount received or receivable by the Bank under the Facility,

in each case arising as a result of any change, introduction, interpretation or administration of any law or regulation after the date of the Facility Letter or any compliance after the date of the Facility Letter with any law or regulation relating to reserve assets, special deposits, cash ratios, liquidity or capital adequacy requirements or any other form of banking or monetary control (including controls and requirements of the Bank of England, the Prudential Regulation Authority, the Financial Conduct Authority,

the European Central Bank, the GFSC, the JFSC or any other governmental or regulatory authority) or the introduction of, changeover to or operation of a single or unified European currency or a credit ratings downgrade or increased weighting attaching to the Borrower or otherwise.

“Insolvency Act”

means the Insolvency Act 1986.

“Interest Rate”

means the rate set out in Box 7 (**Interest Rate**) of the Facility Letter or such other rate as may be advised to the Borrower by the Bank on 30 days’ prior written notice.

“Investec Wealth & Investment”

means Investec Wealth & Investment Limited, a company incorporated in England and Wales (Company Number: 2122340) whose registered office is at 2 Gresham Street, London EC2V 7QP, United Kingdom, and its successors and assignees from time to time.

“IWIN Pledge Letter”

means the letter from Investec Wealth & Investment to the Bank dated on or around the date of the Facility Letter relating to the Portfolio Assets.

“JFSC”

means the Jersey Financial Services Commission.

“LIBOR”

means:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for Sterling for a three month period) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Bank at its request quoted by the Reference Banks to lending banks in the London Interbank Market,

as at 11.00 am on the Quotation Day for the offering of deposits in Sterling for a three month period.

“Loan”

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

“Loan to Value Ratio”

means the ratio of the total amount outstanding and owed to the Bank under the Finance Documents (whether principal, interest, fees or otherwise) to the Portfolio Value from time to time, the total amount outstanding being expressed as a percentage of the Portfolio Value.

“Loan to Value Ratio Covenant”

means the Financial Covenant set out in paragraph 13.1 (**Loan to Value Ratio Covenant**) as supplemented by Box 10 (**Covenants**) of the Facility Letter.

“Mandatory Costs”

means the costs (expressed as an annual percentage at a rate rounded up to the nearest one eighth per cent) calculated by the Bank in accordance with its usual practice of complying with any reserve asset and/or special deposit and/or cash ratio and/or liquidity and/or capital adequacy and/or banking control or similar requirements of the Bank of England, the Prudential Regulation Authority, the Financial Conduct Authority, the European Central Bank, the GFSC, the JFSC or any other governmental or regulatory authority.

“Margin Call Ratio”

means the ratio of the total amount outstanding and owed to the Bank under the Finance Documents (whether principal, interest, fees or otherwise) to the Portfolio Value from time to time, the total amount outstanding being expressed as a percentage of the Portfolio Value.

“Margin Call Ratio Covenant”

means the Financial Covenant set out in paragraph 13.1 (**Margin Call Ratio Covenant**) as supplemented by Box 10 (**Covenants**) of the Facility Letter.

“Market Disruption Event”

means:

- (a) on or before 11.00 am on the Quotation Date for the Interest Period in question, the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Bank to determine LIBOR for Sterling for a three month period; or
- (b) before close of business in London on the Quotation Day for the Interest Period in question, the Bank determines that the cost to it of obtaining matching deposits in the London Interbank Market would be in excess of LIBOR.

“Market Value”

means, on any day:

- (a) in the case of cash, its principal amount; and
- (b) in the case of securities, the amount confirmed by Investec Wealth & Investment in accordance with section 16 (Portfolio valuations) of the Custody Agreement.

“Minimum Cancellation Amount”

means the amount specified as such in Box 4 (**Minimum Cancellation Amount**) of the Facility Letter.

“Minimum Drawdown Amount”

means the amount specified as such in Box 5 (**Minimum Drawdown Amount**) of the Facility Letter.

“Minimum Prepayment Amount”

means the amount set out in Box 6 (**Minimum Prepayment Amount**) of the Facility Letter.

“Party”

means a party to the Facility Letter.

“Portfolio Assets”

means:

- (a) all present and future securities or other assets or instruments (including any equity or debt instruments and any warrants, options, repurchase agreements or other rights or agreements to subscribe for, purchase or otherwise acquire any such securities or other assets or instruments) held by Investec Wealth & Investment in or pursuant to the Custody Account;
- (b) all Related Rights relating to any of the securities described in paragraph (a) above which are deposited with, or registered in the name of, any depository, custodian, nominee, clearing, transfer or settlement house or system, investment manager, charge or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person); and
- (c) any Custody Moneys and any Related Rights, in each case now or in the future owned by the Borrower or (to the extent of the Borrower’s interest) to which it now or in the future has an interest.

“Portfolio Value”

means the Market Value of the Portfolio Assets as evidenced in a Valuation.

“Quotation Day”

means in relation to any Interest Period the first day of that Interest Period.

“Receiver”

means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver.

“Reference Banks”

means the principal London offices of any three leading banks selected by the Bank at its absolute discretion for the purposes of the Facility Letter and these Standard Terms and Conditions.

“Related Rights”

means, in relation to any Portfolio Asset and any other asset:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any agreement for sale in respect of that asset;

- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, Security Rights, guarantees, indemnities or covenants for title in respect of that asset; and
- (d) all dividends, interest, benefits, property, rights, accretions, moneys, advantages, credits, rebates, refunds (including rebates and refunds in respect of any tax, duties, imposts or charges) and other distributions paid or payable in respect of that asset, whether by way of bonus, capitalisation, conversion, preference, option, substitution, exchange, redemption or otherwise,

including, in each case, all rights against any trustee, nominee, fiduciary or clearing system.

“Screen Rate”

means the British Bankers’ Association Interest Settlement Rate for 3 month sterling displayed on the appropriate page of the Reuters Screen. If the agreed page is replaced or the service ceases to be available, the Bank may specify another page or service displaying the appropriate rate after consultation with the Borrower.

“Secured Obligations”

means all present and future moneys, obligations, debts and liabilities due, owing or incurred by the Borrower to the Bank (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise) together with all interest (including, without limitation, default interest) accruing in respect of such moneys, obligations, debts or liabilities.

“Security Right”

means any mortgage, charge, standard security, right in security, security, pledge, lien, assignment, assignation, guarantee, indemnity, right of set-off, right to retention of title or other encumbrance, whether fixed or floating, over any present or future property, assets or undertaking.

“Sum”

has the meaning given to that term in paragraph 11.5 (Currency indemnity).

“Supplemental Document”

means each document between the Bank and the Borrower from time to time expressed to supplement the Facility Letter or which is designated as a Supplemental Document.

“Tax”

means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or delay in paying any of the same).

“Unpaid Sum”

means any sum due but unpaid by the Borrower under the Finance Documents and any other documents entered into in connection with the Facility Letter.

“Valuation”

means a written valuation of the Portfolio Assets issued by Investec Wealth & Investment to the Bank from time to time, whether in hard copy or in an electronic format provided via any electronic feed in place between Investec Wealth & Investment and the Bank from time to time.

1.3 Interpretation

In the interpretation and construction of the Facility Letter and these Standard Terms and Conditions:

- 1.3.1 any reference to statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation;
- 1.3.2 any reference to a **“regulation”** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law)

of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

1.3.3 any reference to the Facility Letter shall be construed as a reference to the Facility Letter read in conjunction with and incorporating these Standard Terms and Conditions;

1.3.4 any reference to words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.3.5 any reference to the Facility Letter and/or these Standard Terms and Conditions and/or to any provisions of the Facility Letter and/or these Standard Terms and Conditions shall be construed as references to such document or provisions in the form in force for the time being and as amended, varied, supplemented, restated, substituted or novated from time to time by agreement between the Bank and the Borrower including, for the avoidance of doubt and without prejudice to the generality of the foregoing, any amendment, variation, supplement, restatement or substitution that increases the amount of the Facility made available under the Facility Letter and these Standard Terms and Conditions or increases the amount of any interest, fees, costs or expenses or any other sums due or to become due under the Finance Documents or postpones the date for full and final repayment of the Facility made available under the Facility Letter and these Standard Terms and Conditions;

1.3.6 any reference to a **“person”** is to be construed to include references to a natural person, corporation, firm, company, partnership, limited partnership, limited liability partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;

1.3.7 any reference to any person is to be construed to include that person’s assignees or transferees or successors in title, whether direct or indirect;

1.3.8 any reference to any word or phrase includes all derivations thereof;

1.3.9 any reference to **“assets”** includes present and future properties, revenues and rights of every description;

1.3.10 any reference to **“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;

1.3.11 any reference to **“indebtedness”** or **“borrowings”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.3.12 any reference to a time of day is a reference to London time;

1.3.13 references to **“determines”** or **“determined”** means a determination made in the absolute discretion of the person making the determination;

- 1.3.14 references to "Boxes" are references to the boxes of the Facility Letter and paragraph references are references to paragraphs of these Standard Terms and Conditions; and
- 1.3.15 paragraph and Box headings are for ease of reference only and shall not affect the interpretation of the Facility Letter and/or these Standard Terms and Conditions.

2 Amount

Subject to the terms of the Facility Letter and these Standard Terms and Conditions, the Bank makes the Facility available to the Borrower in an aggregate principal amount not exceeding the Facility Limit.

3 Purpose and Monitoring

The Borrower may utilise the Facility for any lawful purpose.

4 Conditions of Drawdown

4.1 Initial Conditions Precedent

The Borrower may not deliver a Drawdown Request to the Bank unless the Bank has received all of the documents and other evidence set out in Box 11 (Conditions to Drawdown) of the Facility Letter, in each case in a form and substance satisfactory to the Bank.

4.2 Further Conditions Precedent

The Bank will only be obliged to permit the Facility to be drawn down if on the date of the Drawdown Request in question and on the proposed Drawdown Date the most recent Valuation delivered to the Bank demonstrates to the satisfaction of the Bank that each requirement of paragraph 13 (Financial Covenants) is satisfied.

5 Uncommitted

Nothing in the Facility Letter and/or these Standard Terms and Conditions shall commit the Bank to make the Loan available to the Borrower. The Bank shall be entitled to make or decline to make a Loan available to the Borrower in its sole and absolute discretion. The Bank shall inform the Borrower as soon as practicable after it has determined that it is to decline or has declined to make a Loan available to the Borrower. The main reason for the Bank's decision to decline shall be made available at the Borrower's request. The Bank shall incur no liability to the Borrower or any other person for any failure by it to give such notification to the Borrower.

6 Drawdown

6.1 Multiple Drawdowns

The Borrower may make multiple drawdowns under this Facility.

6.2 Delivery of a Drawdown Request

The Borrower may drawdown the Facility up to the Facility Limit in accordance with Box 3 (Facility Limit) of the Facility Letter and this paragraph 5 (Drawdown) by delivery to the Bank of a Drawdown Request not later than 11am on the date occurring 2 Business Days before the proposed Drawdown Date.

6.3 Completion of a Drawdown Request

Subject to paragraph 4 (Conditions of Drawdown), each Drawdown Request is irrevocable and will not be regarded as having been duly completed unless the proposed Drawdown Date is a Business Day within the Availability Period.

6.4 Currency and Amount

A Loan may only be drawn in Sterling. The amount proposed to be drawn down at any one time must be an amount which is (a) no more than the Available Facility and (b) no less than the minimum amount specified in Box 5 (Minimum Drawdown Amount) of the Facility Letter.

6.5 Consolidation

On each Drawdown Date in respect of a Loan, the amount drawn down shall be consolidated with any amounts previously drawn down under that Loan and the aggregate amount drawn down in respect of that Loan shall be treated as a single Loan.

7 Repayment

7.1 Repayment of Loan

Notwithstanding any other provision of the Facility Letter or these Standard Terms and Conditions, the Borrower shall repay the Loan in full immediately upon demand by the Bank together with payment of all interest accrued thereon and any other monies due under the Finance Documents.

7.2 Administration Fee

In the event of a late or returned payment, the Bank reserves the right to charge an administration fee which may be added to the amount to be repaid under this paragraph 7 (Repayment). Such a fee will only be applied if the Borrower is in arrears and will be at the sole discretion of the Bank.

8 Prepayment and Cancellation

8.1 Voluntary prepayment

The Borrower may, if it gives the Bank not less than 5 Business Days' (or such shorter period as the Bank may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan in question by not less than the Minimum Prepayment Amount).

8.2 Cancellation

- 8.2.1 The Bank may cancel any Available Facility:
- 8.2.1.1 automatically in the event of a deterioration of the Borrower's creditworthiness, whereupon the Bank shall immediately inform the Borrower; and otherwise
- 8.2.1.2 upon reasonable notice, except where legal or regulatory requirements prevent this.
- 8.2.2 A demand for repayment shall also constitute notice of cancellation of any Available Facility.
- 8.2.3 The Borrower may, if it gives the Bank not less than 5 Business Days' (or such shorter period as the Bank may agree) prior notice, cancel the whole or any part (being not less than the Minimum Cancellation Amount) of the Available Facility.
- 8.2.4 If the terms of the Facility Letter and/or these Standard Terms and Conditions are changed by the Bank to the detriment of the Borrower (other than in relation to paragraph 9.1.2 (Interest Rate)), the Borrower shall be given 30 days' written notice before such change takes effect. Within 60 days of such notification the Borrower may cancel the whole of the Available Facility without notice or penalty.

8.3 Restrictions

- 8.3.1 Any notice of cancellation or prepayment given by any Party under this paragraph 8 (Prepayment and Cancellation) shall be irrevocable and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- 8.3.2 Any prepayment shall be made together with any Break Costs.
- 8.3.3 Any prepayment shall be made together with accrued interest on the amount prepaid and any fees payable under the terms of the Facility Letter and these Standard Terms and Conditions, and otherwise without premium or penalty.
- 8.3.4 The Borrower shall not repay or prepay all or any part of the Loan except at the times and in the manner expressly provided for in the Facility Letter and these Standard Terms and Conditions.

9 Interest

9.1 Interest Rate

- 9.1.1 Interest shall accrue on the Loan during each Interest Period at the percentage rate per annum which is equal to the sum of (1) the Interest Rate and (2) the Mandatory Cost (if any).
- 9.1.2 The Interest Rate may be changed by the Bank at any time, provided that the Bank shall give the Borrower 30 days' written notice before such change takes effect. In the event that such Interest Rate is increased, the Borrower may cancel the whole of the Available Facility and/or prepay all Loans without notice or penalty within 60 days of such notification.

9.2 Interest Periods

- 9.2.1 The term of the Loan shall be divided into Interest Periods determined in accordance with this paragraph 9.2 (Interest Periods).
- 9.2.2 Subject to the other provisions of this paragraph 9.2 (Interest Periods), the Interest Period in respect of the Loan will be for the duration of three months.
- 9.2.3 An Interest Period for the Loan which would otherwise extend beyond the final repayment date of the Facility shall instead end on the final repayment date of the Facility.
- 9.2.4 Each Interest Period in respect of the Loan shall start on the first drawdown date or, if the Loan has already been drawn down, on the last day of its preceding Interest Period.
- 9.2.5 The Interest Period in respect of an Unpaid Sum shall start on the date on which the sum is not paid and end on the last day of the Interest Period relating to the Loan in which the Unpaid Sum was not paid. If the Unpaid Sum remains unpaid it will be consolidated with the Loan at the start of the next Interest Period.
- 9.2.6 If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day.

9.3 Default Interest

- 9.3.1 If the Borrower is in breach of any of its material obligations to the Bank under a Finance Document, interest shall accrue on the Loan and all other amounts owing under the Finance Documents from the date of default up to the date of remedy (or in the case of a payment default, up to the date of actual payment (both before and after judgment) at a rate which is 2.00% per annum higher than the rate which would have been payable if there were no default. Any interest accruing under this paragraph 9.3 (Default Interest) shall be immediately payable by the Borrower on demand by the Bank.
- 9.3.2 Default interest accrued (if unpaid) will be compounded with the outstanding Loan on each Interest Payment Date.

9.4 Changes to the calculation of interest

- 9.4.1 Subject to paragraph 9.4.2 below, if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a rate before 11am on the Quotation Day which will apply in relation to the proposed Drawdown Date, LIBOR shall be determined on the basis of the rates supplied by the remaining Reference Banks.
- 9.4.2 If a Market Disruption Event occurs in relation to a Loan in respect of any Interest Period, then the rate of interest on the Loan for the Interest Period in question shall be the percentage rate per annum which is the sum of:
 - 9.4.2.1 the Interest Rate (excluding LIBOR);
 - 9.4.2.2 the rate notified to the Borrower by the Bank as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Bank of funding that Loan from whatever source it may reasonably select; and
 - 9.4.2.3 the Mandatory Cost, if any.

9.5 Break Costs

- 9.5.1 The Borrower shall, immediately upon demand by the Bank, pay to the Bank its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.
- 9.5.2 The Break Costs shall be the amount (if any) by which:
 - 9.5.2.1 the interest which the Bank should have received for the period from the date of receipt of all or any part of the Loan or Unpaid Sum to the last day of the then current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period; exceeds:
 - 9.5.2.2 the amount which the Bank would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the then current Interest Period.

10 Arrangement Fee

The Borrower shall pay an arrangement fee to the Bank in the amount and at the times specified in Box 9 (Arrangement Fee) of the Facility Letter. In the event that an arrangement fee is not paid by its due date, the Available Facility shall be immediately cancelled.

11 Tax gross-up, Increased Costs, etc

11.1 Tax gross-up

All payments by the Borrower to the Bank under the Finance Documents shall be free from and without deduction of Tax unless the Borrower is required by law to make a payment subject to deduction or withholding in respect of Tax, in which case the amount payable by the Borrower will be increased to ensure that the Bank receives and retains a net sum equal to that which it would have received and retained were no deduction or withholding made.

11.2 Increased Costs

If the Bank incurs an Increased Cost then the Borrower will promptly pay to the Bank the amount that the Bank reasonably certifies as payable in respect of such Increased Cost. The Bank will disclose, in reasonable detail, the basis of its calculation but not any matter which it considers confidential.

11.3 Tax

The Borrower shall immediately on demand pay to the Bank an amount equal to the loss, liability or cost which the Bank determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Bank in respect of a Finance Document and will pay to the Bank the amount of all liabilities, costs, claims and expenses reasonably incurred by the Bank resulting from any omission to pay or from any delay in paying any such duty or such Taxes.

11.4 Stamp taxes

The Borrower shall pay immediately on demand to the Bank the amount of all cost, loss or liability that the Bank incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

11.5 Currency

11.5.1 If any sum due from the Borrower under the Finance Documents, or any order, judgment or award given or made in relation to a Finance Document ("**Sum**"), has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- 11.5.1.1 making or filing a claim or proof against the Borrower; and/or
- 11.5.1.2 obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, the Borrower shall as an independent obligation, immediately on demand pay to the Bank the amount of all cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to the Bank at the time of its receipt of that Sum.

11.5.2 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable in the relevant Finance Document.

11.6 Other

The Borrower shall, immediately on demand, pay to the Bank the amount of any cost, loss or liability reasonably incurred by the Bank as a result of:

- 11.6.1 a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- 11.6.2 funding, or making arrangements to fund, a Loan requested by the Borrower in a Drawdown Request but not made by reason of the operation of any one or more of the provisions of the Facility Letter and/or these Standard Terms and Conditions; and/or
- 11.6.3 the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

12 Costs and Expenses

12.1 Transaction expenses

The Borrower shall, immediately on demand, pay to the Bank the amount of all costs and expenses (including legal fees together with any VAT on them) reasonably incurred by the

Bank in connection with the negotiation, preparation, printing and execution of:

- 12.1.1 the Facility Letter, the Finance Documents and any other documents referred to in the Facility Letter and/or these Standard Terms and Conditions; and
- 12.1.2 any other Finance Documents executed after the date of the Facility Letter.

12.2 Amendment costs

If any amendment, waiver or consent is requested or required by the Borrower or the Bank under the Facility Letter, these Standard Terms and Conditions or any other Finance Document, the Borrower shall immediately on demand, reimburse and pay to the Bank the amount of all costs and expenses (including legal fees together with any VAT on them) reasonably incurred by the Bank in responding to, evaluating, negotiating or complying with that request or requirement.

12.3 Enforcement costs

The Borrower shall, immediately on demand, pay to the Bank the amount of all costs and expenses (including legal fees) incurred by the Bank in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

12.4 General

Other taxes and costs may exist that are not paid via the Bank or imposed by the Bank. The Borrower will be liable for the payment of any such taxes or costs.

13 Financial Covenants

The covenants contained in this paragraph 13 (**Financial Covenants**) remain in force from the date of the Facility Letter for so long as any amount is outstanding under the Finance Documents or the Facility is available to the Borrower on an uncommitted basis.

13.1 Loan to Value Ratio Covenant

- 13.1.1 The Borrower undertakes to the Bank that the Loan to Value Ratio shall not at any time be more than the percentage notified by the Bank to the Borrower from time to time as being the Maximum Loan to Value Ratio, which shall initially be the percentage specified in Box 10 (**Covenants**) of the Facility Letter opposite Maximum Loan to Value Ratio.
- 13.1.2 The Financial Covenant set out in paragraph 13.1.1 above shall be tested by the Bank by reference to the most recent Valuation received by the Bank.

13.2 Maintenance of Loan to Value Ratio Covenant

Without prejudice to paragraph 7.1 (**Repayment**), if the Bank determines at any time that the Loan to Value Ratio Covenant has been breached, the Borrower shall, immediately upon demand, make a prepayment of the Loan in an amount sufficient (in the opinion of the Bank) to ensure compliance with the Loan to Value Ratio Covenant.

13.3 Margin Call Ratio Covenant

- 13.3.1 The Borrower undertakes to the Bank that the Loan to Value Ratio shall not at any time be more than the percentage notified by the Bank to the Borrower from time to time as being the Margin Call Ratio, which shall initially be the percentage specified in Box 10 (**Covenants**) of the Facility Letter opposite Margin Call Ratio.
- 13.3.2 The Financial Covenant set out in paragraph 13.3.1 above shall be tested by the Bank by reference to the most recent Valuation received by the Bank.

13.4 Maintenance of Margin Call Covenant

Without prejudice to paragraph 7.1 (**Repayment**), if the Bank determines at any time that the Margin Call Ratio Covenant has been breached, the Borrower shall, immediately upon demand, make a prepayment of the Loan in an amount sufficient (in the opinion of the Bank) to ensure compliance with the Margin Call Ratio Covenant.

14 Covenants

The Borrower enters into the covenants and undertakings set out in this paragraph 14 (Covenants) and such covenants and undertakings shall remain in force from the date of the Facility Letter for so long as any amount is outstanding under the Finance Documents.

14.1 Custody Agreement and IWIN Pledge Letter

- 14.1.1 The Borrower shall enter into and maintain the Custody Agreement with Investec Wealth & Investment.
- 14.1.2 The Borrower shall not amend, terminate or grant any consent or waiver under the Custody Agreement or any investment mandate with Investec Wealth & Investment without the prior written consent of the Bank.
- 14.1.3 The Borrower shall remain liable to perform all its obligations under the Custody Agreement. Neither the Bank nor any Delegate shall be under any obligations or liability to the Borrower or to Investec Wealth & Investment under or in respect of the Custody Agreement.
- 14.1.4 The Borrower shall notify the Bank of:
- 14.1.4.1 any breach of, default under or cancellation of the Custody Agreement by it or any other party;
- 14.1.4.2 any breach of the IWIN Pledge Letter by Investec Wealth & Investment;
- 14.1.4.3 any exercise by Investec Wealth & Investment of its powers or rights pursuant to section 23 (Right to retain your funds) of the Custody Agreement, section 24 (Power to sell or close out) of the Custody Agreement or any right of set-off arising under the Custody Agreement or otherwise by operation of law;
- 14.1.4.4 any right of it or any other party arising to rescind, cancel or terminate the Custody Agreement or any actual notice of the same; and
- 14.1.4.5 any claim made or to be made by it or any other party under or in connection with the Custody Agreement, promptly on becoming aware of the same. The Borrower shall provide the Bank with reasonable details of any such breach, default, right or claim and its progress and notify the Bank as soon as practicable upon that breach, default, right or claim being resolved.

14.2 Custody Account

The Borrower shall maintain the Custody Account with Investec Wealth & Investment and shall operate the Custody Account in accordance with the terms of the Facility Letter and the IWIN Pledge Letter.

14.3 Negative Pledge

Other than pursuant to paragraph 15.2 (Security), the Borrower shall not create or permit to subsist any Security Right over any of the Charged Assets.

14.4 Information

The Borrower shall promptly supply the Bank with such information regarding the Charged Assets, the Custody Account and the Custody Agreement as the Bank requires.

14.5 Data Protection

The Borrower confirms that no disclosure of any information by Investec Wealth & Investment to the Bank in connection with the Custody Account shall at any time constitute a breach of section 47 (Data Protection Act) of the Custody Agreement.

14.6 Securities lending transactions

The Borrower shall not (nor agree or attempt to) enter into any securities lending transaction in respect of any Collateral Asset.

15 Security Interest

15.1 Covenant to Pay

The Borrower covenants with, and undertakes to, the Bank that it will, on demand, duly, unconditionally and punctually pay or discharge, without deduction, set-off or counterclaim, all of its Secured Obligations when due in accordance with their terms or, if they do not specify a time for payment, immediately on demand by the Bank.

15.2 Security

As a continuing security for the payment and discharge of all Secured Obligations, the Borrower, with full title guarantee:

- 15.2.1 charges by way of a first fixed charge in favour of the Bank:
- 15.2.1.1 all its present and future right, title and interest in or to all Portfolio Assets and any other securities or assets of any kind now or in the future held in, or pursuant to, the Custody Account;
- 15.2.1.2 all assets and property hereafter belonging to the Borrower and deriving from the assets described in sub-paragraph 15.2.1.1 above or the rights attaching thereto;
- 15.2.2 subject to paragraph 15.2.3, assigns by way of security to the Bank:
- 15.2.2.1 all its present and future right, title and interest in or to the Custody Account, the Custody Agreement and the Custody Moneys;
- 15.2.2.2 all present and future right, title and interest under or by virtue of the Custody Agreement with respect to the Portfolio Assets including all monies payable to the Borrower, and any claims, awards or judgements in favour of the Borrower, under or by virtue of the Custody Agreement with respect to the Portfolio Assets.

The assets described in paragraphs 15.2.1 to 15.2.2 above are together referred to as the "Charged Assets".

- 15.2.3 The provisions of paragraph 15.2.2 shall not apply to any Charged Assets to the extent that the Charged Assets are, at the date of this agreement, validly held within an Individual Savings Account in accordance with the tax laws and regulations of England.

15.3 Further assurance

The Borrower shall promptly (and at its own expense) do whatever the Bank may require in its absolute discretion at any time:

- 15.3.1 to perfect or protect the Security Rights created pursuant to this paragraph 15 (Security Rights) or the priority of such Security Rights; or
- 15.3.2 to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Bank or any receiver or delegate,

including, without limitation, executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Bank or its nominees or otherwise), making any registration and giving any notice, order or direction.

15.4 Enforcement

(i) If the Borrower does not pay on the due date any amount payable pursuant to a Finance Document or does not comply with any other provision of the Finance Documents, and/or (ii) Investec Wealth & Investment does not comply with any provision of the IWIN Pledge Letter or the Custody Agreement, and/or (iii) upon the death, bankruptcy or mental incapacity of the Borrower:

- 15.4.1 the Security Rights created pursuant to this paragraph 15 (Security Rights) shall be immediately enforceable; and
- 15.4.2 the Bank may exercise the power to sell all or any part of the Charged Assets and may apply the proceeds of such sale in paying the costs of such sale and in or towards satisfaction of the Secured Obligations;
- 15.4.3 the Bank may notify Investec Wealth & Investment that such event has occurred;
- 15.4.4 the Borrower shall not withdraw or substitute any Portfolio Assets without the Bank's consent.

15.5 Power of sale

The statutory power of sale and the power to appoint a receiver and the other statutory powers conferred on mortgagees by Section 101 of the Law of Property Act 1925 as varied and extended by the Facility Letter shall arise on the date of the Facility Letter.

15.6 Section 93 and 103 Law of Property Act 1925

Section 93 and 103 of the Law of Property Act 1925 shall not apply to the Facility Letter.

15.7 Financial Collateral Arrangement

15.7.1 To the extent that this paragraph 15 (Security Interest) constitutes a "security financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "Regulations")) and the Borrower is "non-natural person" for the purposes of the Regulations, the Bank shall have the right, at any time after the Security Rights created pursuant to this paragraph 15 (Security Rights) become enforceable, to appropriate with immediate effect any Charged Asset which constitutes "financial collateral" (within the meaning of the Regulations) and apply it in or towards satisfaction of the Secured Obligations then due in accordance with the Regulations in such order as the Bank in its absolute discretion may from time to time determine.

15.7.2 The value of any Charged Assets appropriated pursuant to paragraph 15.7.1 above shall be:

- 15.7.2.1 in the case of cash, its face value at the time of appropriation; and
- 15.7.2.2 in the case of securities, the sale price for those securities at the time of appropriation, as determined after appropriation by the Bank on the basis of the sale prices obtained from an applicable generally recognised source selected by the Bank (converted, where necessary, by the Bank into the currency of the Loan, at a market rate of exchange prevailing at the time of appropriation).

The Borrower agrees that the method of valuation provided for in this paragraph 15.7.2 is commercially reasonable for the purposes of the Regulations.

15.7.3 The Bank will account to the Borrower for any amount by which the value of the appropriated Portfolio Assets exceeds the amount of the Secured Obligations then due. The Borrower shall remain liable to the Bank for any amount by which the value of the appropriated Portfolio Assets is less than the Secured Obligations then due.

15.8 Sale of Charged Assets

The Borrower acknowledges and agrees that the Charged Assets may fluctuate speedily in value and are of a type customarily sold on a recognised market and the Bank or any Receiver is not required to send any prior notice of its intention to sell or otherwise dispose of any Charged Assets. At any time after the Security Rights created pursuant to this paragraph 15 (Security Rights) become enforceable, the Bank may, in its sole and absolute discretion, sell Charged Assets by means of a market transaction or a private sale in such manner and under such circumstances as the Bank may deem necessary or advisable at such time. The Bank shall have no liability to any person in respect of any such disposal nor shall it have any liability if it refrains from making any such disposal. The Bank may appoint a Receiver pursuant to paragraph 17 (Appointment and Rights of Receivers) in relation to any such sale and shall incur no liability in connection therewith.

15.9 Final redemption

If the Bank is satisfied that all the Secured Obligations have been irrevocably paid and discharged in full and that all facilities which might give rise to Secured Obligations have terminated, the Bank shall at the request and cost of the Borrower promptly release, reassign or discharge (as appropriate) the Charged Assets from the Security Rights created pursuant to this paragraph 15 (Security Rights).

15.10 Release of Security

If any Charged Assets are transferred or released from the Custody Account in accordance with the Finance Documents, those Charged Assets shall be released from the Security Rights created pursuant to this paragraph 15 (Security Rights) on such transfer or release and without any further release being required from the Bank but the Security Rights created pursuant to this paragraph 15 (Security Rights) over all other Charged Assets shall continue in full force and effect.

16 Liability of the Bank, Receiver and Delegates

Neither the Bank nor any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Borrower, the Bank or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission, delay or misconduct of the Bank, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with the Finance Documents.

17 Appointment and Rights of Receivers

17.1 Appointment of Receivers

If:

- 17.1.1 requested by the Borrower; or
- 17.1.2 the Security Rights created pursuant to paragraph 15 (Security Rights) become enforceable (whether or not the Bank has taken possession of the Charged Assets),

without any notice or further notice, the Bank may, by deed, or otherwise in writing signed by any officer or manager of the Bank or any person authorised for this purpose by the Bank, appoint one or more persons to be a Receiver. The Bank may similarly remove any Receiver and appoint any person instead of any Receiver. If the Bank appoints more than one person as Receiver, the Bank may give those persons power to act either jointly or severally.

17.2 Scope of appointment

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in Schedule 1 (Rights and powers of the Receiver and the Bank) shall have effect as though every reference in that Schedule to any Charged Assets were a reference to the part of those assets so specified or any part of those assets.

17.3 Rights and powers of Receivers

Any Receiver appointed pursuant to this paragraph 17 (Appointment and Rights of Receivers) shall have the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative or other receivers duly appointed under the Insolvency Act, and shall also have the rights set out in Schedule 1 (Rights and powers of the Receiver and the Bank).

17.4 Agent of Borrower

Any Receiver shall be the agent of the Borrower for all purposes. The Borrower alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver.

17.5 Remuneration

The Bank may determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Borrower alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

18 Bank's Rights

18.1 Rights of Bank

Any rights conferred by any Finance Document upon a Receiver may be exercised by the Bank, or to the extent permitted by law, an administrator appointed under Schedule B1 to the Insolvency Act after the Security Rights created pursuant to paragraph 15 (Security Rights) become enforceable, whether or not the Bank shall have taken possession or appointed a Receiver of the Charged Assets.

18.2 Delegation

The Bank may delegate in any manner to any person any rights exercisable by the Bank under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Bank thinks fit.

18.3 Appointment

The Borrower by way of security irrevocably appoints the Bank, every Receiver and every Delegate severally as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

18.3.1 to do anything which the Borrower is obliged to do under this Deed including (but not limited to) executing charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets; and

18.3.2 to exercise any of the rights conferred on the Bank, any Receiver or any Delegate in relation to the Charged Assets or under any Finance Document, the LPA or the Insolvency Act.

18.4 Ratification

The Borrower ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in paragraph 17.3 (Appointment).

18.5 Continuing Security

The Security Rights created pursuant to paragraph 15 (Security Rights) are continuing Security Rights and will extend to the ultimate balance, performance or discharge of

the Secured Obligations, regardless of any intermediate payment or discharge in whole or in part.

19 Payment, Set Off and Interest Calculations

19.1 Payments

19.1.1 All payments of principal, interest or commission will be paid to the Bank at the Borrower's branch unless the Bank otherwise directs and shall be in cleared funds in Sterling.

19.1.2 If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable under the Finance Documents, the Bank shall apply that payment towards the obligations of the Borrower under the Finance Documents in such order as the Bank considers appropriate and any such appropriation shall override any instructions by any Borrower.

19.2 No set-off

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

19.3 Day count convention

All sums of interest, fee or commission accruing under a Finance Document will accrue on a daily basis and be calculated on the basis of a year of 365 days. Interest shall continue to accrue on sums due following decree or judgement as well as before it, and at the same rate.

19.4 Determinations conclusive

Any determination by the Bank of any amount of principal, interest, commission or charges or an applicable interest rate shall, in the absence of obvious error, be conclusive and binding on the Borrower.

19.5 Business Day convention

Save where the Facility Letter or these Standard Terms and Conditions provides for the contrary, where the due date for payment of any amount under any Finance Document is not a Business Day then (without affecting subsequent payment dates) actual payment will be required on the next Business Day.

19.6 Bank's right of set-off

19.6.1 The Borrower agrees that any monies from time to time standing to its credit on any account (whether current, deposit, loan or of any other nature whatsoever) with the Bank [or any member of the Bank's Group] may be retained as cover for and/or applied by the Bank at any time and without notice to the Borrower (whether on or before or after the expiry of any fixed or minimum period for which such monies may have been deposited) in or towards payment or satisfaction of any monies or liabilities due, owing or incurred by the Borrower to the Bank in any manner, whether present or future, actual or contingent, joint or several, whether incurred as principal or surety (or guarantor or cautioner) or in any other way whatsoever.

19.6.2 If the Bank exercises any rights in respect of any monies as referred to in paragraph 19.6.1 (including, without limitation, any rights of set-off, accounting, retention or similar rights) in relation to any liability of the Borrower and that liability or any part of it is in a different currency from any credit balance against which the Bank seeks to exercise its rights, the Bank may use the currency of the credit balance to purchase an amount in the currency of the liability at the Bank's Spot Rate of Exchange and pay out of the credit balance all costs, charges and expenses incurred by the Bank in connection with that purchase.

19.6.3 The Borrower hereby irrevocably authorises the relevant Bank's Group company to comply with any request by the Bank to give effect to the set-off rights contained in paragraph 19.6.1 above.

19.7 Bank not liable for loss of interest

The Bank shall not be liable for any loss of interest caused by the determination before maturity of any deposits or any loss caused by the fluctuation in any exchange rate at which any currency may be bought or sold by the Bank.

19.8 Loan account(s)

The Bank will maintain loan account(s) evidencing the amounts from time to time lent by, owing to and paid to it by the Borrower under the Facility Letter and these Standard Terms and Conditions. The balance and entries on the loan account(s) shall (save in the case of manifest error) be conclusive evidence of the amounts from time to time owing to the Bank by the Borrower under the Finance Documents.

19.9 Market conventions

In the event that (1) any currency in which any of the obligations under the Finance Documents are denominated from time to time is changed or replaced at any time after the date of this letter (whether as a result of the introduction of, changeover to or operation of a single or unified European currency or otherwise) and/or (2) any market conventions relating to the fixing and/or calculation of interest are changed or replaced, the Finance Documents will be amended to the extent that the Bank reasonably considers to be required in order to reflect those circumstances.

20 Assignment, Transfer and Securitisation

20.1 Benefit of Facility Letter

The Facility Letter and these Standard Terms and Conditions are for the benefit of the Borrower and the Bank and their successors and permitted assignees and transferees.

20.2 Borrower may not transfer

The Borrower may not assign or transfer all or any of its rights, obligations or benefits under the Facility Letter and/or these Standard Terms and Conditions and/or any of the Finance Documents.

20.3 Bank's right to transfer

The Bank will be entitled to (1) assign any of its rights and/or (2) transfer by novation any of its rights, benefits and obligations, in each case under the Finance Documents to any other person or entity. The Borrower undertakes to execute all documents the Bank may reasonably require to give effect to any such assignment, novation or transfer.

20.4 Sub-participations, etc.

The Bank will be entitled to enter into any sub-participation, or any trust or contractual arrangement (or any other transaction under which payments are to be made by reference to the Finance Documents or the Borrower) with any person or entity in relation to the Finance Documents and (subject to paragraph 20.5 (Disclosures) below) to provide information in relation to the Borrower to such persons for such purpose.

20.5 Disclosures

The Bank will be entitled to disclose to its advisers and to any prospective or actual assignee, transferee or participant, any party to a securitisation, any other member of the Bank's Group, its auditors, their advisers or applicable regulatory authority, any rating agency, or any other person or entity who enters or proposes to enter into any transaction as referred to in paragraph 20.4 (Sub-participations, etc.) above with the Bank in relation to the Finance Documents (in each case, together with their professional advisers) all information, including any confidential information, financial information and any other information given to the Bank in relation to the Finance Documents.

21 Notices

21.1 Communications in writing

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

21.2 Addresses

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

21.2.1 as regards the Bank, the postal address and email address specified at the beginning of the Facility Letter; and

21.2.2 as regards the Borrower, the postal address and email address specified at the beginning of the Facility Letter,

or any substitute postal address, email address, fax number or department or officer as may be notified to the other party by not less than five Business Days' written notice.

21.3 Delivery

21.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

21.3.1.1 if by way of fax, when received in legible form; or

21.3.1.2 if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or

21.3.1.3 if by email, when actually received in readable form (and if received after 5.00 pm in the place of receipt) shall be deemed only to become effective on the following date

19.6 and, if a particular department or officer is specified as part of its address details provided under paragraph 21.2 (Addresses), if addressed to that department or officer.

21.3.2 Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank and then only if it is expressly marked for the attention of the department or officer (if any) identified at the beginning of the Facility Letter (or any substitute department or officer the Bank shall specify for this purpose).

22 Miscellaneous

22.1 Whole agreement

The Finance Documents and each other document between the Bank and the Borrower delivered to the Bank as a condition precedent under the Facility Letter and these Standard Terms and Conditions contain the entire agreement between the Bank and the Borrower in relation to the matters contemplated therein and supersede any previous agreements, representations or discussions between the Bank and the Borrower.

22.2 Waivers and remedies

22.2.1 No failure or delay on the part of the Bank to exercise any power, right or remedy under the Facility Letter and/or these Standard Terms and Conditions shall operate as a waiver thereof nor shall any single or partial exercise by the Bank of any power, right or remedy preclude any or further exercise thereof or the exercise of any other power, right or remedy.

22.2.2 The rights and remedies provided in the Facility Letter and/or these Standard Terms and Conditions are cumulative and are not exclusive of any rights or remedies provided by law.

22.3 Severance

22.3.1 If at any time any of the provisions of the Facility Letter and/or these Standard Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Facility Letter and/or these Standard Terms and Conditions under that jurisdiction nor the legality, validity or enforceability of those provisions under the law of any other jurisdiction shall be in any way affected or impaired as a result.

22.3.2 If any provision of the Facility Letter and/or these Standard Terms and Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

22.3.3 The Parties agree, in the circumstances referred to in paragraph 22.3.1, and if paragraph 22.3.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

22.4 Joint and several liability

If there are two or more persons named as the Borrower under the Facility Letter and/or these Standard Terms and Conditions, the liability of each of those persons to pay all amounts due under the Facility Letter will be joint and several. This means that the Bank can ask any one of those persons to pay any or all sums due under the Facility Letter in full.

22.5 Third parties

Save to the extent expressly provided to the contrary in the Facility Letter, a person who is not a party to the Facility Letter may not enforce any of its terms and/or the terms of these Standard Terms and Conditions under the Contracts (Rights of Third Parties) Act 1999.

22.6 Advertising

The Bank shall be entitled to publish details, in a form and content acceptable to the Bank, of its involvement with the transaction in respect of which the Facility has been made available in any reputable newspaper, magazine or other publication.

22.7 Counterparts

Any Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of that Finance Document.

23 Service Agent

23.1 Appointment

If the Borrower is not domiciled and/or ordinarily resident in England and Wales, it irrevocably appoints the person specified in Box 13 (**Service Agent**) of the Facility Letter as its agent for service of process in relation to any proceedings before the English courts in connection with the Facility Letter or any Finance Document and agrees that failure by an agent for service of process to notify the Borrower of the process will not invalidate the proceedings concerned.

23.2 Replacement service agent

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Bank.

24 Governing Law and Enforcement

24.1 The Facility Letter, these Standard Terms and Conditions and any non-contractual obligations arising out of or in connection with it are governed by English law.

24.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the Facility Letter and/or these Standard Terms and Conditions (including a dispute relating to the existence, validity or termination of the Facility Letter and/or these Standard Terms and Conditions or any non-contractual obligation arising out of or in connection with the Facility Letter and/or these Standard Terms and Conditions) (a "**Dispute**").

24.3 The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary and, further, it agrees that it will not be entitled to raise proceedings of any sort relating to a Dispute in any jurisdiction but England.

24.4 This paragraph 24 (**Governing Law and Enforcement**) is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other court or courts which have jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

25 Complaints

Details of the Bank's complaint process are available on request. To make a complaint, the Borrower must notify the Bank providing full details of the complaint.

26 Language

The Facility Letter and these Standard Terms and Conditions are in English and the Bank will communicate with the Borrower in English. The Borrower must communicate with the Bank in English.

Schedule

Rights and powers of the Receiver and the Bank

Any Receiver appointed pursuant to paragraph 17 (Appointment and Rights of Receivers) and the Bank shall have the right, either in its own name or in the name of the Borrower or otherwise and in such manner and upon such terms and conditions as the Receiver or the Bank thinks fit, and either alone or jointly with any other person:

- 1 Take possession**
to take possession of, get in and collect the Charged Assets, require payment to it of all Related Rights or the credit balance of the Custody Account;
- 2 Deal with Charged Assets**
to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender, private contract or placement and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);
- 3 Performance of Secured Obligations**
to transfer any Charged Assets to the Bank by way of performance in part or whole of the Secured Obligations;
- 4 Act as broker, agent, dealer or otherwise**
to act, or to appoint any person (including any affiliate or related person) to act on its behalf, as broker, agent, dealer or otherwise to assist with or implement any Disposal of the Charged Assets, and to transfer the Charged Assets into the name of any such person in order to facilitate such Disposal;
- 5 Borrow money**
to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Security Rights created pursuant to paragraph 15 (Security Interest) or otherwise);
- 6 Rights of ownership**
to manage and use the Charged Assets and to exercise and do (or permit the Borrower or any nominee of it to exercise and do) all such rights and things as the Bank would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets;
- 7 Claims**
to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;
- 8 Legal actions**
to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets;
- 9 Redemption of Security**
to redeem any Security Rights over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets;
- 10 Insolvency Act**
to exercise all powers set out in Schedule 1 or Schedule B1 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) (with all references to the property of the company to be read as references to the Charged Assets) and any powers added to Schedule 1 after the date of the Facility Letter;
- 11 Instructions to the Custodian**
to give instructions to Investec Wealth & Investment in respect of the Charged Assets in respect of or to exercise any of the rights described above; and
- 12 Other powers**
to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver or the Bank under any Finance Document, the Law of Property Act 1925 or the Insolvency Act.

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