

EXECUTION VERSION

PROJECTS/AXJC

Loan Agreement

between

National Employment Savings Trust Corporation
as Borrower

and

Secretary Of State For Work And Pensions
acting through
The Department for Work and Pensions
as Lender

relating to

the funding of the
National Employment Savings Trust Corporation

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THIS AGREEMENT is dated

and made

BETWEEN:

- (1) **NATIONAL EMPLOYMENT SAVINGS TRUST CORPORATION**, a non-departmental public body whose principal office is at St Dunstons House, 201-211 Borough High Street, London, SE1 1JA (the "**Borrower**"); and
- (2) **SECRETARY OF STATE FOR WORK AND PENSIONS ACTING THROUGH THE DEPARTMENT FOR WORK AND PENSIONS**, whose principal office is at Caxton House, Tothill Street, London, SW1H 9NA (the "**Lender**")

IT IS AGREED as follows:

PART 1: INTERPRETATION

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement:

"**Abandonment**", in relation to the Scheme Administration, means that it or a material part thereof has been abandoned, cancelled or suspended, and "**Abandoned**" shall be construed accordingly.

"**Actualised Funding Requirements**" has the meaning given to that term at Clause 15.2(C).

"**Actualised Funding Requirements Statement**" has the meaning given to that term at Clause 15.2(C).

"**Additional Repayment Date**" has the meaning given to that term at Clause 6.1 (*Repayment of Loans*).

"**Annual Upper Limit**", in relation to any Calculation Period, means the Annual Upper Limit for that Calculation Period as set forth in Schedule 3 (*Annual Upper Limit*).

"**Applicable Interest Rate**",



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

"Availability Period" the period from and including the date of this Agreement to and including the Final Utilisation Date.

"Available Commitment" means the Commitment, **less**:

- (A) the amount of the Lender's participation in any outstanding Loans; and
- (B) in relation to any proposed Utilisation, the amount of the Lender's participation in any Loans that are due to be made on or before the proposed Utilisation Date,

other than the Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

"Break Costs" means, in relation to the prepayment of any Loan or Unpaid Sum (or part thereof), the amount (if any) by which:

- (A) the aggregate of the net present values (as at the date of prepayment) of all scheduled payments of interest and repayments of principal which the Borrower would have been required to pay in respect of such Loan or Unpaid Sum (or part thereof) in accordance with the terms of this Agreement had such prepayment not been made;

exceeds:

- (B) the amount of such prepayment.

"Breach of Condition" has the meaning given to that term in Clause 19.14 (*Consequences of a Breach of Condition*).

"Break Gains" means, in relation to the prepayment of any Loan or Unpaid Sum (or part thereof), the amount (if any) by which:

- (A) the amount of such prepayment;

exceeds:

- (B) the aggregate of the net present values (as at the date of prepayment) of all scheduled payments of interest and repayments of principal which the Borrower would have been required to pay in respect of such Loan or Unpaid Sum (or part thereof) in accordance with the terms of this Agreement had such prepayment not been made.

"Calculation Date" means each 31 March falling between (and including) 31 March 2010 and 31 March 2060.

"Calculation Period" means, in relation to any Calculation Date, the period from (but excluding) such Calculation Date to (and including) the immediately subsequent Calculation Date falling thereafter.

"Commitment" means £119,957,366 in relation to the first Calculation Period, and thereafter, in relation to each subsequent Calculation Period, shall be equal to the Net Funding Requirements in respect of such Calculation Period under the then current Final Funding Requirements Forecast as determined in accordance with Clause 15 (*Loan Model*), to the extent not cancelled or reduced under this Agreement; provided that the Commitment from time to time shall be deemed to have been increased by an amount

equal to the aggregate amount of any deemed Utilisations made at that time in accordance with Clause 5.4 (*Deemed Utilisation*).

"Competent Authority" means the European Commission, or any department, inspectorate, minister or duly authorised official thereof, or any court of the United Kingdom, or any other jurisdiction (including the European Union) which has jurisdiction over the Borrower or the subject matter of any of the Finance Documents.

"Disruption Event" means either or both of:

- (A) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (B) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other, Party:
 - (1) from performing its payment obligations under the Finance Documents; or
 - (2) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Final Funding Requirements Forecast" means, in relation to any Calculation Period, the Initial Funding Requirements Forecast in respect of such Calculation Period which has been finalised in accordance with Clause 15 (*Loan Model*).

"Final Maturity Date" means 21 April 2023.

"Final Utilisation Date" means 30 June 2020.

"Finance Document" means this Agreement and any other document designated as such by the Lender and the Borrower.

"Financial Indebtedness" means 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 GAAP, 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) 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 marked to market value 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.

"Financial Statements" means the most recent financial statements of the Borrower which it has delivered to the Lender.

"First Repayment Date" means 21 October 2020.

"Fourth Repayment Date" means 21 April 2022.

"Fifth Repayment Date" means 21 October 2022.

"Funding Requirement Assumptions" means the assumptions required for the preparation of Initial Funding Requirements Forecasts, as described in Clause 15 (*Loan Model*);

"GAAP" means IFRS, save to the extent modified by the Government Financial Reporting Manual, any direction from the Secretary of State for Work and Pensions issued in accordance with the Pensions Act 2008 and the Lender's reasonable instructions from time to time.

"Government Actuary's Department" means the Government Actuary's Department, a department of the United Kingdom Government.

"Government Financial Reporting Manual" means the Government Financial Reporting Manual published by HM Treasury (which is currently published at http://www.hm-treasury.gov.uk/frem_index.htm).

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

"Initial Funding Requirements Forecast" means an initial funding requirements forecast prepared in accordance with Clause 15.2 (*Initial Funding Requirements Forecasts*);

"Interest Period" means, in relation to a Loan or an Unpaid Sum, each period determined in accordance with Clause 9 (*Interest Periods*).

"Investment Management Agreements" means each agreement to which the Borrower is a party which relates to the provision of investment management services or custodial services in respect of investments in relation to the Scheme.

"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 Model" means the loan model as agreed between the Parties and delivered to the Lender in accordance with paragraph 3.2 of Schedule 1 (*Initial Conditions Precedent*), as amended from time to time in accordance with Clause 15 (*Loan Model*).

"Material Adverse Effect" means, in relation to any event or circumstance or series of events or circumstances, an effect which is materially adverse to:

- (A) the operations, financial results or financial condition of the Borrower;
- (B) the ability of the Borrower to comply with any payment or other material obligation under a Finance Document or in respect of the Scheme Administration; and/or
- (C) the rights or interests of the Lender under the Finance Documents.

"Material Contracts" means:

- (A) the National Employment Savings Trust Scheme Administration Service dated 15 March 2010 between the Borrower and Tata Consultancy Services Limited; and
- (B) save for any Investment Management Agreement, each other agreement to which the Borrower is a party which provides for the Borrower to make aggregate payments thereunder which are equal to or greater than £5 million per annum.

"Material Party" means a party to a Material Contract other than the Borrower.

"Moody's" means Moody's Investor Services, Inc.

"Net Funding Requirements" has the meaning given to that term in Clause 15.2 (*Initial Funding Requirement Forecasts*).

"Party" means a party to this Agreement.

"Potential Remediation Event" means a Remediation Event or any event or circumstance specified in Clauses 19.1 to 19.12 (inclusive) (*Remediation Events and Breaches of Condition*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be a Remediation Event.

"Principal Accounting Officer" means the Principal Accounting Officer of the Department for Work and Pensions, or such other officer of the Department for Work and Pensions who is duly authorised to carry out the duties of the Principal Accounting Officer in relation to this Agreement under applicable departmental guidelines.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, the first day of that period.

"Remediation Event" means any event or circumstance specified as such in Clauses 19.1 to 19.12 (inclusive) (*Remediation Events and Breaches of Condition*).

"Repayment Date" means, in relation to any Loan, the First Repayment Date, the Second Repayment Date, the Third Repayment Date or an Additional Repayment Date, as determined in accordance with Clause 6.1 (*Repayment of Loans*).

"Repeating Representations" means each of the representations set out in Clauses 16, other than the representations set out in Clauses 16.6 (*Deduction of Tax*) and 16.7 (*No filing or stamp taxes*).

"S&P" means Standard and Poors Rating Group, a division of McGraw Hill Inc., and includes any successor to its rating business.

"Scheme" means the pension scheme known as the National Employment Savings Trust established by Article 3 of the Scheme Order.

"Scheme Administration" means all activities relating to the setting up, administration and management of the Scheme.

"Scheme Order" means The National Employment Savings Trust Order 2010.

"Second Repayment Date" means 21 April 2021.

"Sixth Repayment Date" means 21 April 2023.

"State Aid Clearance" means the State Aid Clearance delivered by the Secretariat General of the European Commission on 7 July 2010 to the Office of the United Kingdom Permanent Representative to the European Union in relation to "State Aid N 158/2009 - United Kingdom Establishment of the National Employment Savings Trust – NEST".

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

"Termination Date" means the date on which:

- (A) the Borrower has no further obligation or liability (whether actual or contingent) to make payments to the Lender under or pursuant to the terms of any of the Finance Documents; and
- (B) the Lender has no obligation or liability (whether actual or contingent) pursuant to, or in connection with, the Finance Documents, or any of them, which could give rise to such an obligation or liability of the Borrower.

"Third Repayment Date" means 21 October 2021.

"United Kingdom Debt Management Office" means the United Kingdom Debt Management Office, an executive agency of Her Majesty's Treasury.

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

"Updated Operational Data" has the meaning given to that term at Clause 17.4 (*Annual Operations Report*).

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date of a Utilisation, being the date on which a Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in schedule 2 (*Utilisation Request*).

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

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

1.2 Construction

(A) Unless a contrary indication appears, any reference in this Agreement to:

- (1) the **"affiliates"** of any person, shall be construed as a reference to that person's subsidiaries, any holding company of that person and all other subsidiaries of any such holding company, from time to time;
- (2) **"agreed form"** in relation to a document being in an **"agreed form"** means such document in or substantially in the form agreed by the Borrower and the Facility Lender, and initialled by them for the purposes of identification only.
- (3) any **"agreement"** or **"document"** shall be construed as a reference to such agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;
- (4) **"this Agreement"** shall be construed as a reference to the agreement or document in which such reference appears together with all recitals and Schedules thereto;
- (5) an **"Annex"** shall, subject to any contrary indication, be construed as a reference to an annex of the agreement or document in which such reference appears;
- (6) **"assets"** includes present and future properties, revenues and rights of every description;
- (7) an **"authorisation"** or **"consent"** shall be construed as including any authorisation, consent, approval, resolution, licence, exemption, permission, recording, notarisation, filing or registration;
- (8) an **"authorised officer"** shall be construed, in relation to any Party, as a reference to a person duly authorised by such Party as notified by such Party to the other Party as being authorised to sign any agreement, certificate or other document or to take any decision or action, as applicable, and in respect of whom a certified copy of the authorising resolution and specimen signature have been provided to the other parties to such agreement, certificate or other document;
- (9) a **"calendar year"** is a reference to a period starting on (and including) 1 January and ending on (and including) the immediately following 31 December;
- (10) a **"certified copy"** shall be construed as a reference to a copy of that document, certified on behalf of the Borrower by an authorised officer to be a complete, accurate and up-to-date copy of the original document;

- (11) a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a clause of the agreement or document in which such reference appears;
- (12) “**continuing**” shall, in relation to any Remediation Event, Potential Remediation Event or Breach of Condition, be construed as meaning that such Remediation Event, Potential Remediation Event or Breach of Condition has not been remedied or waived by the Lender;
- (13) “**control**” shall be construed such that A shall control B if:
- (A) where B is a company, more than half of the issued share capital of B is beneficially owned, directly or indirectly, by A; or
 - (B) A holds, directly or indirectly, the power to direct or cause the direction of the management or policies of B, through its ownership of voting securities, by contract or otherwise,
- and “**controlled**” and other such derivatives shall be construed accordingly; provided that, notwithstanding the foregoing, the Borrower, as a non-departmental public body, shall be deemed not to be under the control of: (i) the UK Government or any governmental authority thereof, including Her Majesty’s Treasury and the Lender (or any officers, employees or entities thereof); or (ii) any persons or entities controlled by or under common control with the UK Government or any governmental authority thereof (including Her Majesty’s Treasury and the Lender) (or any officers, employees or entities thereof) and which are not part of the Borrower and its subsidiary or subsidiary undertakings (including the Scheme and each of its subsidiary or subsidiary undertakings);
- (14) the “**equivalent**” on any given date in any currency (the “first currency”) of an amount denominated in another currency (the “second currency”) is a reference to the amount of the first currency which could be purchased with the amount of the second currency at the spot rate of exchange determined by the Lender at or about 11.00 a.m. on such date for the purchase of the first currency with the second currency in the London foreign exchange markets for delivery on the second Working Day thereafter;
- (15) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (16) a “**governmental authority**” means any governmental body, agency, department or regulatory, self-regulatory or other similar authority or organisation;
- (17) the “**group**” of any person, shall be construed as a reference to that person, its subsidiaries and any holding company of that person and all other subsidiaries of any such holding company, from time to time;
- (18) “**hereunder**”, “**herein**” and similar expressions shall mean “under” or “in” the agreement or document in which they appear and shall not be restricted to the clause or Schedule of the agreement or document in which they appear;

- (19) a “**holding company**” of a company or corporation shall be construed as a reference to any company or corporation of which the first-mentioned company or corporation is a subsidiary;
- (20) “**include**” or “**including**” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrase or words of like import;
- (21) “**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;
- (22) “**law**” includes common or customary law, principles of equity and any constitution, decree, judgment, decision, legislation, order, ordinance, regulation, bye-law, statute, treaty or other legislative measure in the United Kingdom or the European Union;
- (23) a “**liability**” shall be construed as including any liability whether actual, contingent, present or future;
- (24) a “**modification**” means, in relation to any document:
- (A) any variation, modification or amendment thereof;
 - (B) any waiver of an obligation to comply with; or
 - (C) any supplement or other change thereto;
- (25) a “**month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, in relation to the last month of any period:
- (A) if the numerically corresponding day is not a Working Day, that period shall end on the next Working Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Working Day; and
 - (B) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Working Day in that calendar month;
- (26) a “**Part**” shall, subject to any contrary indication, be construed as a reference to a part of the agreement or document in which such reference appears;
- (27) a “**person**” shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (28) any “**Party**” or “**person**” shall be construed so as to include its and any subsequent successors, permitted transferees and permitted assigns in accordance with their respective interests;

- (29) **"quarter"** means a period of three calendar months starting on (and including) 1 January, 1 April, 1 July and 1 October and ending on (and including) 31 March, 30 June, 30 September and 31 December respectively;
- (30) a reference to a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being a regulation, rule, official directive, request or guideline with which a prudent person carrying on the same or a similar business to the Borrower would comply) of any governmental body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (31) **"repay"** (or any derivative form thereof) shall, subject to any contrary indication, be construed to include "prepay" (or, as the case may be, the corresponding derivative form thereof);
- (32) a **"right"** shall be construed as including any right, title, interest, claim, remedy, discretion, power or privilege, in each case whether actual, contingent, present or future;
- (33) a **"Schedule"** shall, subject to any contrary indication, be construed as a reference to a schedule of the agreement or document in which such reference appears;
- (34) **"security interest"** shall be construed as including a reference to any mortgage, charge, pledge, lien, security assignment, hypothecation or any other security interest, encumbrance, agreement or arrangement of any kind whatsoever having the effect of securing any obligation of any person or any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;
- (35) a **"subsidiary"** of a company or corporation shall be construed as a reference to any company or corporation:
- (a) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
 - (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or
 - (c) which is a subsidiary of another subsidiary of the first-mentioned company or corporation,

and, for these purposes, a company or corporation shall be treated as being **"controlled"** by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;

- (36) the **"winding-up"**, **"dissolution"** or **"administration"** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, receivership, administrative receivership, arrangement, adjustment, protection or relief of debtors; and

- (37) a “**year**” is a reference to a period starting on one day in a month in a calendar year and ending on the numerically corresponding day in the same month in the next succeeding calendar year, save that, where any such period would otherwise end on a day which is not a Working Day, it shall end on the immediately preceding Working Day;
- (38) a provision of law is a reference to that provision as amended or re-enacted; and
- (39) a time of day is a reference to London time.
- (B) Clause, Part and Schedule headings contained in, and any index or table of contents to, any agreement or document are for ease of reference only.
- (C) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (D) References to any circumstance or matter being so far as the Borrower is aware or being within its knowledge shall be treated as including a reference to the awareness and knowledge of its Chief Executive Officer, its Chief Financial Officer, its General Counsel, its Director of Business Delivery, its Managing Director of Scheme Development and its duly authorised officers from time to time.

1.3 **Third party rights**

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

PART 2: THE FACILITY

2. The Facility

- (A) Subject to the terms of this Agreement, the Lender makes available to the Borrower a sterling term loan facility in an aggregate amount equal to the Commitment (as such amount may be adjusted from time to time in accordance with the terms of this Agreement).
- (B) For the avoidance of doubt, the Commitment shall be £119,957,366 in relation to the period starting on (but excluding) 31 March 2010 and ending on (and including) 31 March 2011, and the Loan Model projects and estimates that the Commitment as at the date of this Agreement in relation to each period set forth below shall be the amount set forth beside it:

Period	Commitment
1 April 2011 – 31 March 2012	£179,530,043
1 April 2012 – 31 March 2013	£251,699,032
1 April 2013 – 31 March 2014	£327,631,955
1 April 2014 – 31 March 2015	£415,356,681
1 April 2015 – 31 March 2016	£511,239,197
1 April 2016 – 31 March 2017	£611,599,191
1 April 2017 – 31 March 2018	£656,368,236
1 April 2018 – 31 March 2019	£665,764,029
1 April 2019 – 31 March 2020	£659,216,100

- (C) The Lender:
- (1) consents in accordance with section 76(4) of the Pensions Act 2008 to the exercise by the Borrower of its power to borrow under section 76(3)(b) of that Act in the manner provided for in this Agreement; and
 - (2) confirms to the Borrower that the Lender has obtained the consent and approval required from HM Treasury in relation to the provisions of this Agreement under paragraph 18 of Schedule 1 to that Act.

3. **Purpose**

3.1 **Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards amounts due and payable, or which will become due and payable within six months of the relevant Utilisation Date, in respect of the Scheme Administration, and for no other purpose. For the avoidance of doubt, no amount borrowed under the Facility may be applied for investment as a Scheme asset.

3.2 **Monitoring**

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

4. **Conditions of Utilisation**

4.1 **Initial conditions precedent**

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in schedule 1 (*Initial Conditions precedent*) in form and substance satisfactory to the Lender (acting reasonably). The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 **Further conditions precedent**

The Lender will only be obliged to make a Loan available to the Borrower on the Utilisation Date if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (A) no Breach of Condition is continuing or would result from the proposed Loan; and
- (B) the Repeating Representations to be made by the Borrower are true in all material respects.

PART 3: UTILISATION

5. **Utilisation**

5.1 **Delivery of a Utilisation Request**

- (A) The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11.00 a.m. on the date falling six Working Days prior to the requested Utilisation Date.
- (B) No more than one Utilisation Request may be delivered in any month.

5.2 **Completion of a Utilisation Request**

- (A) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (1) the proposed Utilisation Date is the fifteenth Working Day in a Month commencing within the Availability Period; and
 - (2) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).
- (B) Only one Loan may be requested in each Utilisation Request.

5.3 **Currency and amount**

- (A) The currency specified in a Utilisation Request must be sterling.
- (B) The amount of the proposed Loan must be an amount which is not more than the Available Commitment and which is a minimum of £500,000 or, if less, the Available Commitment.

5.4 **Deemed Utilisation**

- (A) If, at any time, any Competent Authority determines that the Facility constitutes unlawful or misused state aid to any extent, or that the terms of the State Aid Clearance have been breached in any respect causing any state aid granted to the Borrower to have been unlawful or misused, then, notwithstanding Clause 4.2 (*Further Conditions Precedent*) and Clauses 5.1 to 5.3 (inclusive) above, the Borrower shall be deemed to have made an additional Utilisation on the date that such unlawful or misused state aid was determined to have been first made available to the Borrower in an amount equal to the amount of such state aid.
- (B) Notwithstanding the provisions of Clause 8.2 (*Payment of Interest*) (but without prejudice to the Borrower's liability to pay interest when due in relation to each then current and future Interest Period), if one or more Interest Periods in respect of a Loan resulting from a deemed Utilisation under paragraph (A) above shall have ended (or if one or more Interest Periods in respect of a Loan resulting from a deemed Utilisation under this paragraph (B) shall have ended), no Remediation Event shall result from the fact that the interest accrued and payable by the Borrower in respect thereof shall not have been paid in relation to any such Interest Period, and the Borrower shall be deemed to have made an additional Utilisation

on the last day of each such Interest Period in an amount equal to the amount of such interest.

- (C) The Lender shall promptly notify the Borrower of each such deemed Utilisation, of the amount of the Loan resulting therefrom, and of the Applicable Interest Rate in respect thereof.

PART 4: REPAYMENT, PREPAYMENT AND CANCELLATION

6. Repayment

6.1 Repayment of Loans

(A) Subject to paragraph (B) below, the Borrower shall repay each Loan in respect of which the Utilisation Date thereof shall have occurred:

- (1) on or prior to 31 December 2010, on the First Repayment Date;
- (2) after 31 December 2010, but on or prior to 31 March 2012, on the Second Repayment Date; and
- (3) after 31 March 2012, but on or prior to 30 September 2013, on the Third Repayment Date;
- (4) after 30 September 2013, but on or prior to 31 March 2015, on the Fourth Repayment Date;
- (5) after 31 March 2015, but on or prior to 30 September 2016, on the Fifth Repayment Date;
- (6) after 30 September 2016, but on or prior to the Final Utilisation Date, on the Sixth Repayment Date;

provided that, in relation to any Loan, if, on its Utilisation Date, the Loan Model projects that the Borrower shall have sufficient funds available to it to repay all (or part thereof equal to at least £500,000) of such Loan on a 21 October or 21 April falling prior to the Repayment Date which would otherwise apply in accordance with paragraphs (1), (2), (3), (4), (5) and (6) above, the Borrower shall repay such Loan (or part thereof) on such 21 October or 21 April or on such other date that the Borrower and the Lender may agree (each such date, an “**Additional Repayment Date**”).

- (B) If the Borrower is deemed to have made any Utilisation under Clause 5.4 (*Deemed Utilisation*), it may, by notice to the Lender, request that paragraph (A) above should be modified to reflect the additional repayment requirements resulting therefrom.
- (C) Following its receipt of a notice under paragraph (B) above, the Lender shall notify the Borrower of its consent in principle to its request, or of its alternative proposals in respect thereof (which for the avoidance of doubt may include that no changes are required to paragraph (A) above), not later than two months following receipt of such notice. Any such notification shall include the Lender's reasons for its decision.
- (D) If the Lender has made alternative proposals to the Borrower in a notice delivered under paragraph (C) above, the Borrower shall notify the Lender of its consent in principle to such alternative proposals, or of its own alternative proposals in respect thereof, not later than one month following receipt of such notice. Any such notification shall include the Borrower's reasons for its decision.

- (E) If the Borrower has made alternative proposals to the Lender in a notice delivered under paragraph (D) above, the Lender shall notify the Borrower of its consent in principle to such alternative proposals, or call, within five Working Days, a meeting between senior representatives of each of the Borrower and the Lender, who shall consult together for a period not exceeding 10 Working Days with a view to reaching agreement over any modifications to paragraph (A) above.
- (F) If the Borrower and the Lender cannot reach agreement following the end of the 10 Working Day consultation period under paragraph (E) above, the Lender's determination shall prevail so long as it is confirmed by the Principal Accounting Officer, and the Borrower and the Lender shall make such modifications to paragraph (A) above as may be required by such determination.

6.2 Repayment of all other amounts

The Borrower shall ensure that all other amounts payable under the Finance Documents are paid in full on or prior to the Final Maturity Date.

6.3 Scheme Members and Beneficiaries

Notwithstanding any other term of this Agreement, but without prejudice to the Scheme's charges deducted in the ordinary course of the Borrower's operations from the total contributions to, and/or value of, scheme members' pension accounts, neither scheme members nor beneficiaries shall have any liability for the payment or repayment of any Loans or Unpaid Sums, or any other amount payable by the Borrower under the Finance Documents.

7. Prepayment and Cancellation

7.1 Illegality

If it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

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

7.2 Voluntary cancellation

The Borrower may, if it has given the Lender not less than 10 Working Days' prior notice, cancel the whole or any part (being a minimum amount of £5 million) of the Available Commitment.

7.3 Voluntary Prepayment of Loans

- (A) The Borrower may, if it has given the Lender not less than 22 nor more than 29 Working Days' prior notice and the Lender has granted its consent thereto, prepay the whole or any part of a Loan or Unpaid Sum (but if in part, being an amount that

reduces the amount of the Loan or Unpaid Sum by a minimum amount of £5 million). The Lender shall consult with HM Treasury before granting any such consent.

- (B) Each prepayment of a Loan or Unpaid Sum (or part thereof) shall be made together with:
 - (1) any outstanding interest accrued thereon until (but excluding) the date of such prepayment;
 - (2) any Break Costs due in respect of such prepayment (or reduced to the extent of any Break Gains due in respect thereof).
- (C) The Lender shall notify the Borrower of whether it consents to such prepayment within 20 Working Days of receipt from the Borrower of a notice of prepayment in accordance with paragraph (A) above.

7.4 Restrictions

- (A) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (B) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs or Break Gains, without premium or penalty.
- (C) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (D) Without prejudice to Clause 2 (*The Facility*), no amount of the Commitment cancelled, or of any Loan prepaid, under this Agreement may be subsequently reinstated.

PART 5: COSTS OF UTILISATION

8. Interest

8.1 **Calculation of interest**

The rate of interest on each Loan for each Interest Period is its Applicable Interest Rate.

8.2 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period.

8.3 **Default interest**

(A) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from (and including) the due date up to the date of actual payment (both before and after judgment) at a rate which is 2 per cent higher than the Applicable Interest Rate for such Loan. Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lender.

(B) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 **Notification of rates of interest**

The Lender shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

9. Interest Periods

9.1 **Duration of Interest Periods**

(A) Each Interest Period for a Loan or Unpaid Sum shall be a period of six months commencing on (and including) 21 April or 21 October and ending on (but excluding) the immediately subsequent 21 October or 21 April, as the case may be; provided that:

- (1) the first Interest Period for each Loan shall commence on (and include) its Utilisation Date and end on (but exclude) the earlier of the immediately subsequent 21 April or 21 October;
- (2) the first Interest Period for each Unpaid Sum shall commence on (and include) the date that payment in respect of such amount became due and payable and end on (but exclude) the earlier of the immediately subsequent 21 April or 21 October; and
- (3) the last Interest Period for each Loan shall commence on (and include) the later of the 21 April or 21 October falling immediately prior to its Repayment Date and end on (but exclude) such Repayment Date.

9.2 **Non-Working Days**

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

10. **Break Costs and Break Gains**

10.1 **Certification of Break Costs and Break Gains**

Within ten Working Days of its receipt of any notice of prepayment in accordance with Clause 7.3 (*Voluntary Prepayment of Loans*), the Lender shall provide a certificate to the Borrower confirming the amount of any Break Costs or Break Gains arising as a result of such prepayment.

10.2 **Payment of Break Costs**

The Borrower shall, on the date of the relevant prepayment, pay to the Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than its scheduled date of repayment in relation to Loans or payment in relation to Unpaid Sums in accordance with the terms of this Agreement.

10.3 **Payment of Break Gains**

The Lender shall, on the date of the relevant prepayment, pay to the Borrower its Break Gains attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than its scheduled date of repayment in relation to Loans or payment in relation to Unpaid Sums in accordance with the terms of this Agreement.

10.4 **Calculation of Net Present Values**

For the purposes of paragraph (A) of the definition of Break Costs and paragraph (B) of the definition of Break Gains, the net present value of each scheduled payment of interest or repayment of principal shall be calculated by the Lender on a basis which is consistent with the methodology applied in the Loan Model, but using a discount rate which is equal to the Applicable Interest Rate which the Lender would have applied in relation to a Loan with a Utilisation Date on the date that the Borrower delivered its notice of prepayment in respect of such Loan or Unpaid Sum in accordance with Clause 7.3 (*Voluntary Prepayment of Loans*).

PART 6: ADDITIONAL PAYMENT OBLIGATIONS

11. Increased Costs

11.1 **Increased costs**

(A) The Borrower shall, within three Working Days of a demand by the Lender, pay to the Lender the amount of any Increased Costs incurred by it as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(B) In this Agreement "**Increased Costs**" means:

- (1) an additional or increased cost; or
- (2) a reduction of any amount due and payable under any Finance Document,

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

11.2 **Increased cost claims**

(A) The Lender shall promptly notify the Borrower of the event giving rise to the claim.

(B) The Lender shall, as soon as practicable, provide a certificate confirming the amount of its Increased Costs.

12. Other Indemnities

12.1 **Currency indemnity**

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

- (1) making or filing a claim or proof against the Borrower; or
- (2) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

(B) 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.

12.2 Other indemnities

The Borrower shall within three Working Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- (A) the occurrence of any Remediation Event, Potential Remediation Event or Breach of Condition;
- (B) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (C) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (D) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

12.3 Indemnity to the Lender

The Borrower shall promptly indemnify the Lender against any cost, loss or liability incurred by the Lender (acting reasonably) as a result of:

- (A) investigating any event which it reasonably believes is a Potential Remediation Event; or
- (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

13. Mitigation by the Lender

13.1 Mitigation

- (A) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*) or Clause 11 (*Increased costs*).
- (B) Clause 13.1(A) above does not in any way limit the obligations of the Borrower under the Finance Documents.

13.2 Limitation of liability

- (A) The Borrower shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 13.1 (*Mitigation*).
- (B) This Clause 13 shall only apply to the Lender in its capacity as the lender under this Agreement and does not apply to the Lender in any other capacity, nor shall it have any effect upon any power or public law function of the Lender. In addition, the Lender is not obliged to take any steps under Clause 13.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it or the proper exercise of any of its powers or public law functions.

14. **Costs and expenses**

14.1 **Transaction expenses**

The Borrower shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of:

- (A) this Agreement and any other documents referred to in this Agreement; and
- (B) any other Finance Documents executed after the date of this Agreement.

14.2 **Amendment costs**

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within three Working Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

14.3 **Enforcement costs**

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

PART 7: FUNDING REQUIREMENTS

15. Loan Model

15.1 Assumptions

The Borrower:

- (A) may, at any time that it believes any Funding Requirement Assumption is materially incorrect; and
- (B) shall:
 - (1) if so required by the Lender, within two months of the Lender's notification thereof; or
 - (2) within two months of each Calculation Date,

acting reasonably and in good faith, prepare and deliver to the Lender a notice in accordance with Clause 15.3 (*Determination of Assumptions*) specifying the values of the macroeconomic, operational and costs assumptions (the "**Funding Requirement Assumptions**") to be used in the Initial Funding Requirements Forecast to be prepared in accordance with Clause 15.2 (*Initial Funding Requirements Forecast*).

15.2 Initial Funding Requirements Forecast

- (A) The Borrower shall, acting reasonably and in good faith, prepare and deliver to the Lender, at the same time that it delivers a notice to the Lender specifying Funding Requirement Assumptions, an Initial Funding Requirements Forecast (each, an "**Initial Funding Requirements Forecast**") in respect of the immediately preceding Calculation Period, the then current Calculation Period and each subsequent Calculation Period.
- (B) Each Initial Funding Requirements Forecast:
 - (1) shall be generated by the Loan Model on the basis of the Funding Requirement Assumptions delivered in accordance with Clause 15.1 (*Assumptions*);
 - (2) shall be consistent with the Borrower's most recent financial statements delivered in accordance with Clause 17.1 (*Financial Statements*) and the Updated Operational Data delivered in respect of the immediately preceding Calculation Period in accordance with Clause 17.4 (*Annual Operations Reports*);
 - (3) save in respect of any additional assumptions incorporated in the Loan Model from time to time in accordance with Clause 15.6 (*Amendments to the Loan Model*), shall not be prepared on the basis of any other assumptions; and
 - (4) shall be prepared as of such Calculation Date and set out, for the then current and for each succeeding Calculation Period until and including 31 March 2060, a projection and estimate of:

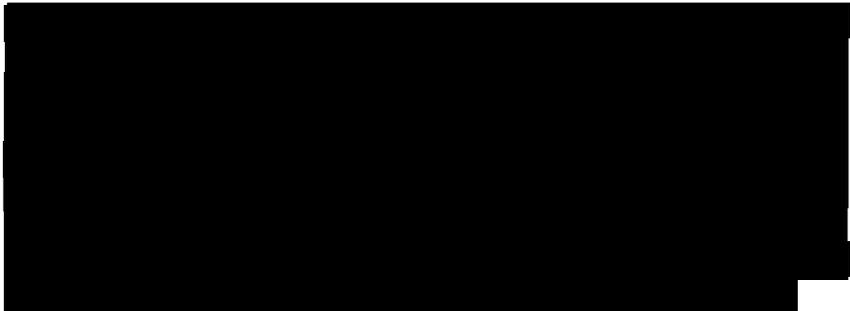
- (a) the Updated Operational Data for each such Calculation Period, including the volumes of contributing and non-contributing Scheme members; and
 - (b) the aggregate amount of Loans that the Borrower needs or, assuming the availability of further loans under this Agreement or otherwise to be made available to the Borrower by the Lender, would need to borrow or maintain outstanding under this Agreement to ensure that it has or would have sufficient cash available to it to meet its obligations in respect of the Scheme Administration as they fall due for each such Calculation Period (each such amount for each such Calculation Period, the “**Net Funding Requirements**”).
- (C) Within two months of the end of each Calculation Period, the Borrower shall deliver an Actualised Funding Requirements Statement in respect of the the immediately preceding Calculation Period (each, an “**Actualised Funding Requirements Statement**”). Each Actualised Funding Requirements Statement shall be generated on exactly the same basis as the Initial Funding Requirements Forecast as described in paragraph (B) above, save that:
- (1) the Updated Operational Data referred to in paragraph (B)(2) above shall be adjusted so that the aggregate amount of costs referred to in Clause 17.4(H) (*Annual Operations Reports*) for this purpose shall be the aggregate amount of such costs which the Borrower would have incurred had the projected volumes of contributing and non-contributing Scheme members in the most recent Final Funding Requirement Forecast agreed in respect of the immediately preceding Calculation Period been the actual volumes of contributing and non-contributing members reported in the then current Updated Operational Data; and
 - (2) the amount determined in accordance with paragraph (B)(4)(b) above, as adjusted in accordance with this paragraph (C), shall be referred to as the “**Actualised Funding Requirements**”.

15.3 Determination of Assumptions

- (A) The Funding Requirement Assumptions shall comprise the following and shall be determined consistently in respect of the Loan Model at the relevant time and shall comprise:
- (1) macroeconomic assumptions, including:
 - (a) UK Government interest rates;
 - (b) commercial market rates for borrowers whose long-term, unsecured, unsubordinated debt is rated by S&P and Moody’s as similar to the implied rating determined in relation to the Borrower by the Government Actuaries Department; and
 - (c) average earnings growth rates,
 (together, the “**Macroeconomic Assumptions**”);
 - (2) operational assumptions, including:

- (a) volumes of contributing members;
 - (b) volumes of non contributing members;
 - (c) average contributions; and
 - (d) the average rate of return produced by assets held within the Scheme (together, the “**Operational Assumptions**”); and
- (3) costs assumptions, including:
- (a) the Borrower’s operating, employment and administration costs;
 - (b) the Pension Regulator General levy in respect of the Scheme;
 - (c) debt collection costs;
 - (d) provision for change control; and
 - (e) costs reserve
- (together, the “**Costs Assumptions**”); provided that:

(i)



- (ii) the Lender may only propose a change to the Costs Assumptions where the immediately preceding Calculation Period ended on 31 March 2013 or 31 March 2016, save, in relation to any particular Costs Assumption, where the Borrower has proposed a change to that Costs Assumption; and
- (iii) without prejudice to paragraph (i) above, the Lender may not propose a change to the investment management costs element of the Costs Assumptions,

but excluding therefrom factors determined pursuant to Clause 15.4 (*Objections to Initial Funding Requirements Forecasts*).

15.4 **Objections to Initial Funding Requirements Forecasts**

- (A) The Lender may, acting reasonably, dispute the reasonableness of any of the Funding Requirement Assumptions or any other element of the Loan Model from time to time, or the accuracy or reasonableness of any Initial Funding Requirements Forecast or Actualised Funding Requirements Statement, by notifying the Borrower in writing (each, a “**Dispute Notice**”) not later than one month following receipt of the relevant notice of Funding Requirement Assumptions,

Initial Funding Requirements Forecast and Actualised Funding Requirements Statement; provided that:

- (1) the Lender may only issue a Dispute Notice in respect of the Costs Assumptions where the immediately preceding Calculation Period ended on 31 March 2013 or 31 March 2016, save, in relation to any particular Costs Assumption, where the Borrower has proposed a change to that Costs Assumption; and
 - (2) without prejudice to Clause 15.3(A)(3)(i) (*Determination of Assumptions*), the Lender may not propose a change to the investment management costs element of the Costs Assumptions.
- (B) A Dispute Notice shall include the Lender's reasons for believing the relevant Funding Requirement Assumption, element of the Loan Model from time to time, Initial Funding Requirements Forecast or Actualised Funding Requirements Statement, as the case may be, to be inaccurate, together with its proposals in respect thereof.

15.5 Final Funding Requirements Forecast

- (A) If a Dispute Notice is not received by close of business on the relevant date referred to in Clause 15.4(A) (*Objections to Initial Funding Requirements Forecasts*), the Initial Funding Requirements Forecast shall become the Final Funding Requirements Forecast and the Actualised Funding Requirements Statement shall be confirmed.
- (B) Following receipt of a Dispute Notice, senior representatives of each of the Borrower and the Lender shall consult together for a period not exceeding ten Working Days, acting reasonably with a view to agreeing such matter or matters as are in dispute. Within three Working Days of the conclusion of such discussions:
- (1) if the Lender agrees to withdraw all of its objections, the relevant Funding Requirement Assumptions, Initial Funding Requirements Forecast or Actualised Funding Requirements Statement shall be agreed and the Initial Funding Requirements Forecast shall become the Final Funding Requirements Forecast and the Actualised Funding Requirements Statement shall be confirmed;
 - (2) if Borrower and the Lender have agreed the Initial Funding Requirements Forecast or the Actualised Funding Requirements Statement subject to the making of any modifications, the Borrower shall deliver to the Lender an Initial Funding Requirements Forecast or Actualised Funding Requirements Statement, as the case may be, modified to take such changes into account, and such modified Initial Funding Requirements Forecast shall, if confirmed by the Lender, become the Final Funding Requirements Forecast and the Actualised Funding Requirements Statement shall be confirmed; and
 - (3) if the Borrower and the Lender cannot resolve the subject of a Dispute Notice on or before the date falling thirteen Working Days after service of the Dispute Notice, the Lender's view shall prevail so long as it is confirmed by the Principal Accounting Officer, and the Borrower shall deliver to the Lender such Initial Funding Requirements Forecast or Actualised Funding Requirements Statement, as the case may be, modified to take into account changes consistent with the Lender's views and such modified Initial Funding

Requirements Forecast shall, if confirmed by the Lender, become the Final Funding Requirements Forecast and the Actualised Funding Requirements Statement shall be confirmed.

15.6 Amendments to the Loan Model

- (A) Subject to the provisos to Clause 15.3(A)(3) (*Determination of Assumptions*) and Clause 15.4(A) (*Objections to Initial Funding Requirements Forecasts*), each Party may from time to time propose to modify the Loan Model by giving a notice to the other Party, specifying the amendments it requires and the reasons for its request.
- (B) If the other Party, acting reasonably, does not agree to any such proposed modification to the Loan Model, it shall notify the Party who made the proposal within 30 days of receipt of the relevant request, giving the reasons for such disagreement.
- (C) If the Party that made the proposal does not agree with the reasons for the other Party's disagreement, it may call, within five Working Days, a meeting between senior representatives of each of the Borrower and the Lender, who shall consult together for a period not exceeding 10 Working Days with a view to reaching agreement over any modifications to paragraph (A) above.
- (D) If the Borrower and the Lender cannot reach agreement following the end of the 10 Working Day consultation period under paragraph (C) above, the Lender's determination shall prevail so long as it is confirmed by the Principal Accounting Officer, and the Borrower and the Lender shall make such modifications to the Loan Model as may be required by such determination.

PART 8: REPRESENTATIONS, UNDERTAKINGS, REMEDIATION EVENTS AND BREACHES OF CONDITION

16. Representations

The Borrower makes the representations and warranties set out in Clauses 16.1 to 16.15 (inclusive) to the Lender on the date of this Agreement.

16.1 Status

It has the power to own its assets and carry on its operations as they are and will be being conducted.

16.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in the legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

16.3 Non-conflict with other obligations

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

- (A) any law or regulation applicable to it;
- (B) its constitutional documents; or
- (C) any agreement or instrument binding upon it or any of its assets.

16.4 Power and authority

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

16.5 Validity and admissibility in evidence

All Authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party have been obtained or effected and are in full force and effect.

16.6 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

16.7 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that

jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

16.8 **No Breach of Condition**

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

16.9 **No misleading information**

- (A) Any factual information provided to the Lender by the Borrower was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (B) The financial projections contained in the Funding Requirements Forecast delivered in accordance with Schedule 1 (*Initial Conditions Precedent*) and in each Initial Financial Forecast have been prepared in good faith on the basis of recent historical information and on the basis of reasonable assumptions.

16.10 **Financial statements**

- (A) Its Financial Statements were prepared in accordance with GAAP consistently applied unless expressly disclosed to the Lender in writing to the contrary before the date of this Agreement.
- (B) Its Financial Statements fairly represent its financial condition and operations during the relevant financial year unless expressly disclosed to the Lender in writing to the contrary before the date of this Agreement.

16.11 **Pari passu ranking**

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.

16.12 **No proceedings pending or threatened**

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

16.13 **No material adverse change**

- (A) There has been no material adverse change in its operations, financial results or financial condition, nor has any event or circumstance or series of events or circumstances occurred which has had or is reasonably likely to have a Material Adverse Effect.

- (B) Neither the execution and delivery of the Finance Documents, nor the performance of the Borrower's obligations thereunder, is reasonably likely to have a Material Adverse Effect.

16.14 **Insolvency Event**

None of the events referred to in Clause 19.6 (*Insolvency*) has occurred and is continuing.

16.15 **Immunity**

The Borrower will not be entitled to claim immunity from suit, execution, attachment or other legal process.

16.16 **Repetition**

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

17. **Information Undertakings**

The undertakings in this Clause 17 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

17.1 **Financial statements**

The Borrower shall supply to the Lender in sufficient copies as soon as the same become available, but in any event within five months after the end of each of its financial years its audited financial statements for that financial year.

17.2 **Requirements as to financial statements**

- (A) Each set of financial statements delivered by the Borrower pursuant to Clause 17.1 (*Financial statements*) shall be certified by an authorised officer as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- (B) Each set of financial statements of the Borrower delivered pursuant to Clause 17.1 (*Financial statements*) shall be prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Financial Statements unless, in relation to any set of financial statements, it notifies the Lender that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Borrower) deliver to the Lender:
- (1) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Borrower's Financial Statements were prepared; and
 - (2) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether any changes are required to the Loan Model to ensure that it can output accurate projections and estimates of Net Funding Requirements for subsequent Calculation Periods.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Financial Statements were prepared.

17.3 Monthly reports

The Borrower shall provide to the Lender, as soon as the same become available, but in any event within 10 Working Days of the end of each month falling after the date hereof, a monthly report substantially consistent with the form set forth at Schedule 4 (*Form of Annual Report*) and signed on behalf of the Borrower by an authorised officer containing:

- (A) its management accounts for that month;
- (B) actual volumes of contributing and non-contributing Scheme members during the immediately preceding month;
- (C) the aggregate valuation of the assets held within the Scheme on the last day of the immediately preceding month;
- (D) the aggregate amount of contributions made by Scheme members, including member charges and information as to the types of member charges during the immediately preceding month;
- (E) the aggregate amount of payments made to Scheme members during the immediately preceding month;
- (F) the aggregate amount of transfers out of the Scheme made by members during the immediately preceding month;
- (G) the aggregate amount of investment management costs incurred in respect of the assets held within the Scheme during the immediately preceding month;
- (H) the aggregate amount of other income earned by the Borrower during the immediately preceding month; and
- (I) the Borrower's operating, employment, administration, consultancy and other costs, and the costs of the Pension Regulator Levy in respect of the Scheme, during the immediately preceding month.

17.4 Annual Operations Reports

The Borrower shall provide to the Lender, as soon as the same become available, but in any event within two months of the end of each Calculation Period, an annual operations report substantially in the form set forth at Schedule 4 (*Form of Annual Operations Report*) and signed on behalf of the Borrower by an authorised officer containing:

- (A) actual volumes of contributing and non-contributing Scheme members, on a monthly basis, during the immediately preceding Calculation Period;
- (B) the aggregate valuation of the assets held within the Scheme on the first day of the immediately preceding Calculation Period, together with the aggregate valuation thereof on the last day of each Month falling within such Calculation Period;

- (C) the aggregate amount of contributions made by Scheme members, including member charges and information as to the types of member charges, on a monthly basis, during the immediately preceding Calculation Period;
- (D) the aggregate amount of other income earned by the Borrower, on a monthly basis, during the immediately preceding Calculation Period;
- (E) the aggregate amount of payments made to Scheme members, on a monthly basis, during the immediately preceding Calculation Period;
- (F) the aggregate amount of transfers out of the Scheme made by members during the immediately preceding Calculation Period;
- (G) the aggregate amount of investment management costs incurred in respect of the Scheme during the immediately preceding Calculation Period; provided that, for the purposes of the Loan Model, such aggregate amount shall be no greater than the maximum amount thereof provided for such Calculation Period in the Loan Model; and
- (H) the Borrower's operating, employment, administration, consultancy and other costs, and the costs of the Pension Regulator levy in respect of the Scheme, on a monthly basis, during such Calculation Period,

(together, in relation to a Calculation Period, the "**Updated Operational Data**").

17.5 **Information: miscellaneous**

The Borrower shall supply to the Lender:

- (A) all documents dispatched by the Borrower to its creditors generally (or any class thereof) at the same time as they are dispatched;
- (B) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and
- (C) promptly, such further information regarding its financial condition, operations, results of operation and prospects as the Lender may reasonably request.

17.6 **Notification of Potential Remediation Event**

The Borrower shall notify the Lender of any Potential Remediation Event (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

18. **General Undertakings**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 **Authorisations**

The Borrower shall promptly:

(A) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(B) supply certified copies to the Lender of,

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

18.2 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject.

18.3 **Financial Indebtedness**

(A) Except as provided below, the Borrower may not incur nor permit to remain outstanding any Financial Indebtedness.

(B) Paragraph (A) above does not apply to:

(1) any Financial Indebtedness incurred under the Finance Documents;

(2) any Financial Indebtedness falling within the meaning of paragraph (D) of the definition thereof, so long as the aggregate amount of such Financial Indebtedness does not exceed £5 million; or

(3) any Financial Indebtedness approved by the Lender.

18.4 **Loans Out**

(A) Except as provided below, the Borrower may not provide nor permit to remain outstanding any Financial Indebtedness to any person.

(B) Paragraph (A) above does not apply to bank deposits made in the ordinary course of trading.

18.5 **Negative pledge**

(A) The Borrower shall not create or permit to subsist any security interests over any of its assets.

(B) The Borrower shall not:

(1) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower;

(2) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(3) 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

(4) enter into any other preferential arrangement having a similar effect,

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

- (C) Clauses 18.5(A) and 18.5(B) above do not apply to:
- (1) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
 - (2) any lien arising by operation of law and in the ordinary course of trading;
 - (3) any security interest entered into pursuant to any Finance Document; or
 - (4) any security interest securing Financial Indebtedness falling within the meaning of paragraph (D) of the definition thereof, the principal amount of which does not exceed £5 million.

18.6 Disposals

- (A) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (B) Clause 18.6(A) above does not apply to any sale, lease, transfer or other disposal:
- (1) made in the ordinary course of trading of the disposing entity;
 - (2) of assets in exchange for other assets comparable or superior as to type, value and quality; or
 - (3) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under Clauses 18.6(B)(1) to 18.6(B)(3) above) does not exceed £5 million (or its equivalent in another currency or currencies) in any financial year.

18.7 Merger

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

18.8 Material contracts

- (A) The Borrower shall maintain, comply with, and perform, in all material respects, all of its respective obligations under each of the Material Contracts, including, save where payment is being disputed in good faith, the timely settlement of all amounts due thereunder, and maintain, exercise and enforce all of its rights thereunder.
- (B) The Borrower shall not modify nor otherwise agree to any modifications to any Material Contract, nor enter into any other agreement, nor series of related contracts with the same or affiliated counterparties, nor agree to settle any dispute on terms, which, in each case:

- (1) provides for aggregate payments to be made thereunder of £5 million or greater; provided that where a Material Contract, agreement or series of related contracts relates to services being provided to the Borrower or otherwise in connection with the Scheme Administration over a period of more than twelve months, the compliance thereof with this paragraph (B)(1) shall be determined by reference to the annual average of the aggregate payments due over the term thereof; or
- (2) would be reasonably likely to have a Material Adverse Effect.

18.9 **Investment Management Agreements**

The Borrower shall maintain, comply with, and perform, in all material respects, all of its respective obligations under each of its Investment Management Agreements, including the timely settlement of all amounts due thereunder, and maintain, exercise and enforce all of its rights thereunder.

18.10 **Hedging Transactions**

Except as the Lender may agree from time to time, the Borrower shall not enter into any derivative transaction in connection with protection against or benefit from fluctuation in any rate or price.

18.11 **Change of operations**

The Borrower shall procure that no substantial change is made to the general nature of the operations from that carried on at the date of this Agreement.

19. **Remediation Events and Defaults**

Each of the events or circumstances set out in Clauses 19.1 to 19.12 (inclusive) is a Remediation Event.

19.1 **Non-payment**

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

- (A) its failure to pay is caused by:
 - (1) administrative or technical error; or
 - (2) a Disruption Event; and
- (B) payment is made within three Working Days of its due date.

19.2 **Final Funding Requirements Forecasts**

Any Final Funding Requirements Forecast projects and estimates that:

- (A) in relation to any Calculation Period, the amount equal to (i) the Net Funding Requirements for the next succeeding Calculation Period, **less** (ii) the Net Funding Requirements for such Calculation Period, will be greater than the Annual Upper Limit for such next succeeding Calculation Period; or

- (B) the Net Funding Requirements in respect of the Calculation Period commencing on (but excluding) the Calculation Date falling on 31 March 2030 will be greater than zero; or
- (C) the Borrower will not be able to meet any amount which is due and payable to the Lender under a Finance Document.

19.3 Other obligations

The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 19.1 (*Non-payment*)).

19.4 Misrepresentation

- (A) Except as provided in paragraph (B) below, any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (B) No Remediation Event, Potential Remediation Event or Breach of Condition will occur under Clause 19.4(A) above if the Lender notifies the Borrower that any such misrepresentation has been mitigated to its satisfaction, or if the Borrower delivers to the Lender a document signed by two authorised signatories setting out a full explanation of the reason for the misrepresentation, and a remediation plan which sets out in detail the Borrower's plan to ensure that such misrepresentation ceases to be continuing and is not repeated, which is satisfactory to the Lender, and uses its best endeavours to comply in full with the requirements of such remediation plan.

19.5 Cross default

- (A) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (B) Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (C) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (D) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- (E) No Remediation Event, Potential Remediation Event or Breach of Condition will occur under this Clause 19.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 19.5(A) to 19.5(D) above is less than £5 million (or its equivalent in any other currency or currencies).

19.6 Insolvency

- (A) The Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (B) A moratorium is declared in respect of any indebtedness of the Borrower.

19.7 Insolvency proceedings

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

- (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation of the Borrower other than a solvent liquidation or reorganisation of the Borrower;
- (B) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- (C) the appointment of a liquidator (other than in respect of a solvent liquidation of the Borrower), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
- (D) enforcement of any security interests over any assets of the Borrower,

or any analogous procedure or step is taken in any jurisdiction.

19.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower having an aggregate value of £5 million and is not discharged within 10 Working Days.

19.9 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents, save where any such obligation is immaterial to the Borrower's performance of its material obligations under the Finance Documents in all respects.

19.10 Repudiation

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

19.11 Suspension of operations

- (A) Any Material Contract is terminated prior to its replacement to the satisfaction of the Lender.
- (B) The Scheme Administration or, in each case, a material part thereof is Abandoned.
- (C) The Borrower ceases, or threatens or is required to cease, to carry on its operations.

19.12 Material adverse change

- (A) An event or circumstance or series of events or circumstances occur or exist which have had or would be reasonably likely (in the opinion of the Lender, acting reasonably) to have a Material Adverse Effect.
- (B) The Actualised Funding Requirements projected by any Actualised Funding Requirements Statement, as determined in accordance with Clause 15.2 (*Funding Requirements Forecasts*), in respect of the immediately preceding Calculation Period are less than the aggregate amount of outstanding Loans on the last day thereof.

19.13 Consequences of any Remediation Event

On and at any time after the occurrence of a Remediation Event which is continuing the Lender may require, by notice to the Borrower, that the Borrower should deliver to the Lender, within one month of its receipt of such notice, a document, signed by two authorised officers on behalf of the Borrower, explaining the reasons for the occurrence and continuation of such Remediation Event and the steps that the Borrower is taking to ensure its prompt remedy and its non-repetition; provided that, in the case of a Remediation Event under Clause 19.12(B) (*Material Adverse Change*), the Borrower shall not be required to take steps to complete the cure of such Remediation Event within a period of less than one year after the occurrence thereof.

19.14 Consequences of a Breach of Condition

- (A) Without prejudice to the Secretary of State for the Department of Work and Pension's powers under the Scheme Order, if at any time the Lender, acting reasonably, notifies the Borrower that it is not satisfied that (i) a Remediation Event has been satisfactorily resolved, or (ii) sufficient steps are being taken by the Borrower to ensure the prompt and satisfactory remediation of a Remediation Event, a breach of condition shall have occurred (each, a "**Breach of Condition**") and the Lender may, by notice to the Borrower:
 - (1) require that the Borrower must make specified revisions to its annual operations plan, operating budget and financial commitments in relation to the Scheme Administration, other than specified revisions to the level of deductions that the Borrower may make under the provisions of the Scheme from the pension accounts of members of the Scheme; and
 - (2) in the case of a Remediation Event under Clause 19.1 (*Non-payment*) or Clause 19.2 (*Final Funding Requirements Forecasts*), exercise its powers under the Scheme Order to require that the Borrower must make specified revisions to the level of deductions that it makes from Scheme members' pension accounts.
- (B) The Borrower hereby irrevocably acknowledges that the occurrence of a Breach of Condition shall be a breach of the conditions of the Loans made available to the Borrower under this Facility for the purposes of Section 27(11)(b) of the Scheme Order.

19.15 Cancellation and Acceleration

If, at any time after the Lender has made any requirement under Clauses 19.14 (A) or (B) (*Consequences of a Breach of Condition*), it is not satisfied (i) that the Borrower is acting

in compliance with such requirement or (ii) that the relevant Breach of Condition is capable of being remedied on a satisfactory basis within a reasonable period of time, the Lender may:

- (A) cancel the Commitment (or any amount thereof) whereupon it shall immediately be cancelled;
- (B) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (C) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable.

PART 9: MISCELLANEOUS

20. **Changes to the Parties**

No Party may assign or transfer any of its rights or transfer any of its rights or obligations under the Finance Documents.

21. **Conduct of Operations by the Lender**

No provision of this Agreement will:

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

22. **Payments**

22.1 **No set-off by the Borrower**

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 for) set-off or counterclaim.

22.2 **Working Days**

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

22.3 **Currency of account**

- (A) Subject to Clause 22.3(B) below, sterling is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (B) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

22.4 **Change of currency**

- (A) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (1) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be

translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and

- (2) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (B) If a change in the currency of the United Kingdom occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice and otherwise to reflect the change in currency.

22.5 **Disruption to Payment Systems etc.**

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

- (A) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (B) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (A) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (C) any such changes agreed upon by the Lender and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 27 (*Amendments and Waivers*); and
- (D) the Lender shall not be liable for any damages, costs or losses whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 22.5.

23. **Set-Off**

The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of operations for the purpose of the set-off.

24. **Notices**

24.1 **Communications in writing**

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

24.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is set forth at the beginning of this Agreement, or any substitute address or department or officer as one person may notify to the other person by not less than five Working Days' notice.

24.3 Delivery

(A) Any communication or document made or delivered by one Party to another under or in connection with the Finance Documents will only be effective:

- (1) if by way of fax, when received in legible form; or
- (2) if by way of letter, when it has been left at the relevant address or five Working Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 24.2 (*Addresses*), if addressed to that department or officer.

(B) Any communication or document to be made or delivered by one Party to another under this Agreement will be effective only when actually received by the other Party and then only if it is expressly marked for the attention of the department or officer identified with the Party's signature below (or any substitute department or officer as the Party shall specify for this purpose).

24.4 Electronic Communication

(A) Any communication to be made between the Lender and the Borrower under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Lender and the Borrower:

- (1) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (2) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (3) notify each other of any change to their address or any other such information supplied by them.

(B) Any electronic communication made between the Lender and the Borrower will be effective only when actually received in readable form.

24.5 English language

(A) Any notice given under or in connection with any Finance Document must be in English.

(B) All other documents provided under or in connection with any Finance Document must be:

- (1) in English; or
- (2) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

25. **Calculations and Certificates**

25.1 **Accounts**

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

25.2 **Certificates and Determinations**

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

25.3 **Day count convention**

Subject to Clause 22.3 (*Currency of Account*), any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

26. **Partial Invalidity**

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

27. **Remedies and Waivers**

- (A) Any term of the Finance Documents may be amended or waived only by written agreement of the Parties. The Lender shall consult with HM Treasury before granting its consent to any material amendment or waiver.
- (B) No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

28. **Counterparts**

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

PART 10: GOVERNING LAW AND ENFORCEMENT

29. **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

30. **Enforcement**

30.1 **Jurisdiction**

- (A) The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement (a "Dispute").
- (B) The Parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This Clause 30.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

SCHEDULE 1: INITIAL CONDITIONS PRECEDENT

1. **The Borrower**

- 1.1 A copy of the constitutional documents of the Borrower.
- 1.2 A copy of a resolution of the members of the Borrower:
 - (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.4 A certificate of the Borrower (signed by an authorised officer on its behalf) confirming that borrowing the Commitment would not cause any borrowing or similar limit binding on the Borrower to be exceeded.
- 1.5 A certificate of the Borrower (signed by an authorised officer on its behalf) certifying that each copy document relating to it specified in this schedule 1 is correct, complete and in full force and effect.

2. **Legal Opinion**

- 2.1 A legal opinion of Simmons & Simmons LLP, legal advisers to the Lender, in respect of, *inter alia*, the legal, valid, binding and enforceable nature of the Borrower's obligations under the Finance Documents.

3. **Other Documents and Evidence**

- 3.1 A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 3.2 A CD-Rom of the Loan Model and the Initial Funding Requirements Forecast prepared as of the first day of the first Calculation Period.
- 3.3 A letter to the Lender from HM Treasury confirming that HM Treasury has given its consent to the loans to be made under this Agreement.
- 3.4 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 15 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

SCHEDULE 2: FORM OF UTILISATION REQUEST

From: [*Borrower*]

To: [*Lender*]

Dated:

Dear Sirs

**[Company] – [•] Facility Agreement
dated [•] (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [•] (or, if that is not a Working Day, the next Working Day)

Amount: [•] or, if less, the Available Commitment
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [*account*].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for
[*name of Borrower*]

SCHEDULE 3: ANNUAL UPPER LIMITS

Calculation Period	Annual Upper Limit
2011/12	£60,000,000
2012/13	£73,000,000
2013/14	£83,000,000
2014/15	£92,000,000
2015/16	£105,000,000
2016/17	£105,000,000
2017/18	£56,000,000
2018/19	£36,000,000
2019/20	£29,000,000

SCHEDULE 4: FORM OF ANNUAL OPERATING REPORT

Loan Reporting Pro Forma													
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total for year/as at year end
Income and Expenditure													
Revenue - AMC													
Revenue - Contribution Charge													
Loan Income													
Grant in Aid Received													
Other Income													
Total Income													
Scheme Administration Set Up													
Scheme Administration Operating													
TPR Levy													
Debt Collection													
Other Scheme Operating													
Investment Management													
NEST Corp - Staff													
NEST Corp - Consultancy													
NEST Corp - Communications													
NEST Corp - Accommodation													
NEST Corp - Goods and Services													
Interest													
Non Cash - depreciation													
Total Expenditure													
<i>Of which chargeable</i>													
<i>Of which non chargeable</i>													
Cash Flow													
Total Income													
<i>Movement in creditors -</i>													

AMC																				
Movement in debtors - AMC																				
Movement in creditors - Contribution Charge																				
Movement in debtors - Contribution Charge																				
Total Expenditure																				
Movement in Debtors																				
Movement in Creditors																				
Non Cash Costs																				
Release of Provisions																				
Capital Purchases																				
Cash Flow																				
Bank Balance																				
Opening Balance																				
Income received																				
Payments Out																				
Closing Balance																				
Balance Sheet																				
Fixed Assets																				
Debtors																				
Cash																				
Creditors																				
Loan Finance																				
Net Assets/Liabilities																				
Scheme Information																				
Contributing Members																				
Opening Balance																				
Increase in period - new joiners																				
Increase in period members restarting to contribute																				

Decrease in period													
Closing Balance													
Non Contributing Members													
Opening Balance													
Increase in period													
Decrease in period													
Closing Balance													
Funds under Management													
Opening balance													
Contributions recievable													
Other reciepts													
Payments out													
Administration Costs													
Movement in funds													
Closing Balance													

This Agreement has been entered into on the date stated at the beginning of this Agreement.

The Borrower

SIGNED by TIM JONES)
NATIONAL EMPLOYMENT SAVINGS TRUST)
CORPORATION)



11 NOV 2010

The Lender

SIGNED by LEIGH LEWIS)
FOR AND ON BEHALF OF)
THE DEPARTMENT FOR WORK AND)
PENSIONS)



11 Nov 2010