

PF2 – Loan Note Instrument
Consultation draft –July 2013

Please also refer to the HMT consultation document which accompanies this draft document.

Dated

2013

[SPV]

DEED
CONSTITUTING [INSERT INTEREST
RATE]% [FIXED] RATE
UNSECURED LOAN NOTES [INSERT
YEAR OF FINAL REDEMPTION]

Subject to the terms of the Intercreditor Deed (defined herein)

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This Deed¹ is made on

20[]

Between

(1) **[Name of SPV]** (Company No. ♦) whose registered office is at ♦ **(Company)**.

Whereas

(A) The Company has resolved, pursuant to a resolution of its directors passed on _____, to create the Loan Notes (as defined below).

(B) The Company has determined to constitute the Loan Notes in the manner set out in this Deed.

It is agreed

1 Definitions

In this Deed unless the context requires otherwise:

Business Day means any day on which the banks are open for business in London (excluding Saturdays, Sundays and public holidays);

Conditions means the conditions of the Loan Notes to be endorsed on each Loan Note set out in schedule 2 (as modified from time to time in accordance with schedule 2);

directors means the board of directors at the relevant time of the Company or a duly authorised committee of the board;

[Equity Subscription Agreement] means the equity subscription agreement dated [on or around the date of this Deed] between [] and [];

Extraordinary Resolution has the meaning set out in paragraph 10.3 of schedule 4;

First Interest Payment Date means [];

Final Redemption Date means [];

HoldCo means [] (Company No. ♦) whose registered office is at ♦;

HoldCo Articles means the articles of association for HoldCo;

Indebtedness means the aggregate principal amount for the time being payable in respect of the Loan Notes together with all accrued interest;

¹ Parties should take tax advice on the terms of the loan note instrument based on the transaction specific details.

[Intercreditor Deed] means the intercreditor deed dated [on or around the date of this Deed] between [] and [];

Interest Payment Dates means [] and [] (or, if any such day is not a Business Day, the immediately preceding Business Day) in each year from and including [] up to and including the Final Redemption Date and **Interest Payment Date** means any one of them;

Interest Period means, in the case of periods other than the first Interest Period, the period from and including the last preceding Interest Payment Date up to (but excluding) the next succeeding Interest Payment Date and, in the case of the first Interest Period, means the period from (and including) the date of issue of the Loan Notes, up to (but excluding) the First Interest Payment Date;

Interest Rate means []²%;

Loan Notes means the []% [Fixed] Rate Unsecured Loan Notes [] of the Company constituted by this Deed;

Noteholders means the person or persons at the relevant time entered in the Register as holders of Loan Notes;

Ordinary Resolution has the meaning set out in paragraph 9.3 of schedule 4;

Principal Funding Agreement means [*description of senior facility documents*];

Provisions means the provisions for meetings of Noteholders set out in schedule 4;

Redemption Date means each date set out in the Repayment Schedule;

Register means the register of Noteholders maintained by or on behalf of the Company pursuant to this Deed;

Registrar means the company secretary of the Company or such successor or replacement registrar or registrars as may be appointed by the Company from time to time;

Repayment Schedule means the schedule set out at schedule 5;

² The draft document has been prepared on the basis that the interest rate (whether fixed or floating) will be set out in the document at the time the loan note instrument is entered into. This document has been prepared on the basis there is one issue of loan stock and each equity investor subscribes on a pro rata basis. If there is more than one issue revisions would be required.

Restricted Overseas Person means a person resident in the United States, Canada, Australia or Japan or a US person as defined in Regulation S of the United States Securities Act of 1933 (as amended);

Shareholders Agreement means the shareholders agreement in respect of HoldCo dated on or around the date of this Deed made between [], [] and [];

Shares means shares in HoldCo;

£ or Sterling means the lawful currency of the United Kingdom; and

United States means the United States of America, its members and possessions, any State of the United States and the District of Columbia and all other areas subject to its jurisdiction.

2 Interpretation

2.1 In this Deed unless the context otherwise requires:

- (a) any recitals and schedules form part of this Deed and references to this Deed include them;
- (b) references to recitals, clauses and schedules are to recitals and clauses of, and schedules to, this Deed and references in a schedule or part of a schedule to paragraphs are to paragraphs of that schedule or that part of that schedule;
- (c) references to this Deed or any other document are to this Deed or that document as in force for the time being and as amended from time to time in accordance with this Deed or that document (as the case may be); and
- (d) words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa.

2.2 The headings and contents table in this Deed are for convenience only and do not affect its interpretation.

2.3 In this Deed the words **other**, **includes**, **including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

3 Issue, form and status

- 3.1 The principal amount of the Loan Notes is limited to £_____.
- 3.2 The Loan Notes issued from time to time by the Company shall rank pari passu equally and rateably with the other unsecured obligations of the Company.
- 3.3 The Loan Notes shall be issued in denominations or multiples of £1 in principal amount and shall be held subject to and with the benefit of the Conditions and the Provisions.
- 3.4 [The Company shall issue the Loan Notes pursuant to this Deed in accordance with the Equity Subscription Agreement.]³

4 Interest

Pending redemption or repayment of the Loan Notes in accordance with the Conditions, the Company will pay interest to each Noteholder on the principal amount of his Loan Notes as provided in the Conditions.

5 Redemption and repayment

As and when the Loan Notes or any of them are required to be redeemed or repaid in accordance with the Conditions, the Company shall pay to the Noteholders the full amount of the Indebtedness payable in respect of the Loan Notes held by them that are being redeemed or repaid in accordance with the Repayment Schedule.

6 Payments

- 6.1 The principal money and interest payable upon the Loan Notes shall be paid:
- (a) by cheque or warrant sent through the post to the registered address of the Noteholder or, in the case of joint Noteholders to the registered address of that one of the joint Noteholders who is first named on the Register or to such person and to such address as the Noteholder or joint Noteholders may in writing direct; or
 - (b) by telegraphic transfer or bank transfer or by means of Bankers Automated Clearing System to such person and to such bank account as the Noteholder or joint Noteholders may in writing direct, subject to any charges, costs and expenses which may properly be incurred in connection with such transfer by the Company being paid by the relevant Noteholder(s).

³ To apply if all Loan Notes are not subscribed at financial close.

- 6.2 Every cheque or warrant referred to in this clause 6 shall be made payable to the order of the Noteholder to whom it is sent. All payments of principal and/or interest to be made by the Company will be made after any deduction or withholding for or on account of any present or future tax required by law to be deducted or withheld.

7 Enforcement

At any time after the Loan Notes or any of them have become repayable or any interest on the principal has become payable, the Noteholders or any of them may (subject to them having delivered a demand to the Company in the form set out in schedule 3), without further notice, institute such proceedings as they think fit to enforce payment of the monies then due and payable in accordance with this Deed.

8 Certificates and Register

- 8.1 Each Noteholder shall be entitled free of charge to one certificate for the Loan Notes registered in his name. Joint holders of Loan Notes will only be entitled to one certificate in respect of the Loan Notes held by them jointly which will be delivered to the first-named of such joint holders unless all such joint holders otherwise specify in writing. The certificates for the Loan Notes shall refer to this Deed, shall be substantially in the form set out in schedule 1, shall each bear a distinguishing number, shall have endorsed on them the Conditions and a form of demand in the form set out in schedule 3 and shall be under the common or securities seal of the Company to be affixed in the manner provided by the articles of association at the relevant time of the Company or in such other manner as may be permitted by statute and authorised by the directors.
- 8.2 The Company shall procure that the Registrar shall at all times keep at its offices at the address printed on the Loan Notes (or at such other place within the United Kingdom as the Company may from time to time notify to Noteholders) the Register recording:
- (a) the number of Loan Notes and their principal amount;
 - (b) the certificate number;
 - (c) the date of issue of the Loan Notes and all subsequent transfers or other changes of ownership of them;
 - (d) the names and addresses of the Noteholders for the time being of the Loan Notes;
 - (e) the principal amount of Loan Notes registered in their respective

names;

- (f) the dates on which each Noteholder was entered on the Register; and
- (g) particulars of all repayments.

- 8.3 A Noteholder shall be entitled at all reasonable times during office hours to inspect the Register.
- 8.4 The Company will recognise each Noteholder as the absolute owner of his Loan Notes and will not be bound to take notice of, or to see to the execution of, any trust whether express, implied or constructive to which any Loan Note may be subject. The receipt of such Noteholder (or as regards interest, the receipt of the person registered as holder of a Loan Note on the relevant date) (or in either case in the case of joint holdings of any one of such holders), for the interest on or for the money payable upon the redemption or payment of the same shall be a good discharge to the Company notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest or claim of any person (other than the Noteholder) to or in such Loan Note, interest or money.
- 8.5 No notice of any trust, express, implied or constructive, shall (except as provided by statute or as required by an order of a court of competent jurisdiction) be entered on the Register in respect of any Loan Notes.
- 8.6 The personal representatives of a deceased Noteholder (not being one of several joint holders) shall be the only persons recognised by the Company as having any title to or interest in that Loan Note on the death of such Noteholder.
- 8.7 In the case of the death of any of the joint holders of any Loan Note, the survivors will be the only persons recognised by the Company as having any title to or interest in that Loan Note.
- 8.8 Any person becoming entitled to a Loan Note in consequence of the death or bankruptcy of a Noteholder or otherwise by operation of law may, upon producing such evidence that he is so entitled as the directors may reasonably require, be registered himself as the Noteholder or, subject to Condition 7 of the Conditions, may transfer that Loan Note.
- 8.9 The Company shall comply with the provisions of the certificates for the Loan Notes, the Conditions and the provisions set out in schedules 2 and 4, and the Loan Notes shall be held subject to and with the benefit of the said provisions and Conditions, all of which shall be deemed to be incorporated in this Deed and shall be binding on the Company and the Noteholders each of whom shall, subject to the Conditions and the terms of the Intercreditor Deed, be

entitled to sue for the performance and observance of such provisions in respect of its Loan Notes.

8.10 This Deed, including, without limitation, the Conditions, is subject to the provision of the Intercreditor Deed and the Company shall not make any payments or do anything under this Deed, including, without limitation, the Conditions, which would result in a breach of the Intercreditor Deed.

8.11 In the event of a conflict between the terms of this Deed and the Intercreditor Deed, the terms of the Intercreditor Deed shall prevail.

9 Transfer

9.1 No Noteholder may transfer Loan Notes unless it transfers (or procures the transfer of) an equivalent proportion (relative to the number of Loan Notes that the Noteholder owns) of Shares held by it to the proposed transferee in accordance with the terms of the Shareholders Agreement and the HoldCo Articles.

9.2 Any transfer shall be in writing signed by or on behalf of the transferor or his personal representatives or, in the case of a corporation, under its common or corporate seal or under the hand of a duly authorised representative (in which event the transfer must be accompanied by evidence satisfactory to the directors of the authority of such person), and may be in any usual or common form.

9.3 Every instrument of transfer in respect of the Loan Notes must be left with the Registrar at its registered office (or at such other place in the United Kingdom as the Company may from time to time notify to Noteholders) accompanied by the relevant certificate (or (a) confirmation that the certificate is in the hands of the Registrar; or (b) if the directors so agree, at their absolute discretion, an indemnity in respect of a lost certificate; both in a form reasonably satisfactory to the Company) and such other evidence as the directors may reasonably require to prove the title of the transferor or his right to transfer the Loan Notes. All instruments of transfer which are registered shall be retained by the Company.

9.4 No fee shall be payable in respect of the registration of any transfer.

9.5 The Loan Notes are not, and will not be, registered under the United States Securities Act of 1933 (as amended) and no steps have been or will be taken to enable the Loan Notes to be offered in compliance with the relevant securities laws of any state, district or territory of the United States, Canada, Australia or Japan. Accordingly, the Loan Notes may not be offered, sold or delivered, directly or indirectly, in or into the United States, Canada, Australia or Japan. No transfer of Loan Notes in breach of this restriction will be

registered by the Company.

10 Replacement of Loan Notes

If any Loan Note is defaced, worn-out, lost or destroyed it may, at the discretion of the directors, be renewed on such terms (if any) as to evidence and indemnity and payment of any expenses incurred by the Company in investigating any relevant evidence as the directors may reasonably determine but otherwise free of charge and (in the case of defacement or wearing-out) on delivery up of the old Loan Note.

11 Notices

- 11.1 The Company may give any notice, or may send any Loan Note or other document, to a Noteholder either personally or by sending it by post in a prepaid envelope addressed to the Noteholder at his address as shown in the Register or by leaving it at that address. In the case of joint holders of a Loan Note, all notices shall be given to the holder who is first named in the Register in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders. A Noteholder whose address as shown in the Register is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address but, unless he does so, no such Noteholder shall be entitled to receive any notice from the Company.
- 11.2 Any notice to be given to a Noteholder may be given by reference to the Register as it stands at any time within the period of five days before the notice is given and no change in the Register after that time shall invalidate the giving of the notice.
- 11.3 Every person who becomes entitled to a Loan Note shall be bound by any notice in respect of that Loan Note which, before his name is entered in the Register, has been given to the person from whom he derives his title.
- 11.4 Where, by reason of the suspension or curtailment of postal services within the United Kingdom, the Company is unable effectively to convene a meeting of Noteholders by notice sent by post, notice of the meeting shall be sufficiently given if given by advertisement in one leading national daily newspaper published in the United Kingdom. The Company shall send a confirmatory copy of the notice to Noteholders by post if, at least six clear days before the meeting, the posting of notices to addresses throughout the United Kingdom again becomes practicable.
- 11.5 Any notice to be given by the Company to the Noteholders or any of them and not provided for by or pursuant to the Conditions shall be sufficiently given if given by advertisement in at least one leading national daily newspaper

published in the United Kingdom.

11.6 Any notice required to be given to the Company by the Noteholders under this Deed may be given either personally or by sending it by post to the Company at its registered office (or such other address for this purpose chosen by the Company and notified to the Noteholders).

11.7 If a notice is:

(a) delivered by hand between 9.00 am and 5.00 pm on a Business Day (such time period being referred to in this clause 11 as within **Business Hours**), it shall be deemed received when so delivered or, if delivered by hand outside Business Hours, it shall be deemed received at 9.00 am on the next Business Day after the time of delivery;

(b) sent by post:

(i) if the notice was posted on a Business Day, it shall be deemed received at 9.00 am on the second Business Day after the day the envelope containing such notice was posted; or

(ii) if the notice was not posted on a Business Day, it shall be deemed received at 9.00 am on the third Business Day after the day on which the envelope containing such notice was posted.

11.8 In proving the giving of a notice, it shall be conclusive evidence to prove:

(a) if delivered by hand, that the notice was left at the appropriate address;
or

(b) if sent by post, that the envelope containing such notice was properly addressed and posted.

11.9 A notice given by advertisement shall be deemed to have been served on the day on which the advertisement appears.

11.10 A notice may be given by the Company to a person entitled to a Loan Note in consequence of the death or bankruptcy of a Noteholder by sending or delivering it in any manner authorised by this Deed for the giving of notice to a Noteholder addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any like description, at the address, if any, within the United Kingdom supplied for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy of the Noteholder had not occurred.

12 Dealings

The Loan Notes are not capable of being dealt in on any stock exchange in the United Kingdom or elsewhere and no application has been or is intended to be made to any stock exchange for the Loan Notes to be listed or otherwise traded.

13 Inspection

A copy of this Deed shall be kept at the registered office of the Company and of the Registrar and any Noteholder and any person authorised by a Noteholder may at all reasonable times during office hours inspect it.

14 Endorsement

A memorandum of execution of any deed supplemental to this Deed shall be endorsed by the Company on this Deed.

15 Governing law

15.1 This Deed and the Loan Notes and any non-contractual obligations arising out of them are governed by and shall be construed in accordance with English law.

15.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

Executed and delivered as a deed by the Company on the date of this Deed.

Schedule 1

Form of Loan Note

Certificate No.	Transfer number	Date of registration	Amount £♦
	[(Company No. [])	

[Fixed] Rate Unsecured Loan Notes []

Issued in accordance with the Company's memorandum and articles of association and pursuant to a resolution of the board of directors passed on ♦ [with power to issue further Loan Notes⁴].

This is to certify that ♦ (Noteholder) is/are the registered holder(s) of £♦ in principal amount of [Fixed] Rate Unsecured Loan Notes [] (**Loan Notes**) constituted by a Deed entered into by the Company on ♦ (**Deed**) and issued with the benefit of, and subject to, the provisions contained in such Deed and the Conditions endorsed on the Loan Notes. Words and expressions defined in the Deed shall, unless the context requires otherwise, have the same meaning when used in this Certificate.

Interest is payable on the Loan Notes in accordance with Condition 2 of the Conditions. The Loan Notes are repayable and redeemable in accordance with Condition 3 of the Conditions.

The Loan Notes are transferable in accordance with the terms of the Deed. This certificate must be surrendered before any transfer of the Loan Notes can be registered or any new Loan Note certificate can be issued. The Loan Notes may not be offered, sold or delivered in or into the United States, Canada, Australia or Japan.

Schedule 4 to the Deed contains provisions relating to meetings of Noteholders.

A copy of the Deed is available for inspection at the registered office of the Company at ♦ and of the Registrar at ♦. Copies may be obtained by any Noteholder upon request and upon payment of a reasonable fee.

This Loan Note (and any non-contractual obligations arising out of it) shall be governed by and construed in accordance with English law.

⁴ To be deleted if all Loan Notes are issued on financial close.

This Loan Note is executed and delivered as a deed by the Company.

Executed and delivered as a **DEED** by)
[])
acting by its duly authorised signatories:)

.....
Director

.....
Director/ Secretary

OR

Executed and delivered as a **DEED** by)
[])
acting by its duly authorised signatory:)

.....
Director

In the presence of:

Witness Signature:

Name:

Address

Schedule 2

The Conditions

Words and expressions defined in the Deed shall bear the same meanings when used in this schedule.

1 Form and Status

The Loan Notes are issued in amounts or multiples of £1 in principal amount and constitute unsecured obligations of the Company.

2 Interest

2.1 Interest on the Loan Notes shall accrue at the Interest Rate from day to day and will be calculated on the basis of a 365 day year and will be payable on each Interest Payment Date at the Interest Rate.

2.2 [If the Company fails to pay any Interest due and payable by it on the relevant Interest Payment Date then such unpaid Interest shall be deemed to be capitalised and be added to the principal amount of the Loan Notes then outstanding (**Capitalised Interest**) and will itself accrue interest at the Interest Rate.]

2.3 Subject to the terms of the Intercreditor Deed, on each Interest Payment Date, the Company shall apply any funds it has available for the purposes of making payments hereunder in the following order:

First in payment of any Interest payable on such date;

[[Second/Third] in payment of any Capitalised Interest (if any) outstanding at such date]; and

[Second/Third] in payment of any principal amounts payable in respect of the Loan Notes on such date.

2.4 The Company shall be entitled to deduct or withhold from any interest payments any present or future tax required by law to be deducted or withheld from them and shall within 30 days of such deduction provide evidence of such withholding or deduction to the Noteholders.

2.5 Interest shall cease to accrue on any Loan Notes becoming due for redemption, purchase by the Company or repayment as from the day prior to the relevant due date for payment, unless payment of the money due to the Noteholder shall not be made by the Company in which event interest shall continue to accrue until the date of actual payment of the money due to the

Noteholder.

- 2.6 Save in the case of a redemption under Condition 3.1, interest shall be paid to Noteholders on the Register at the close of business on the relevant Interest Payment Date.
- 2.7 At the time interest is paid the Company shall deliver to the Noteholder (or procure the delivery of) a certificate as to the relevant Interest Rate, the gross amount of the relevant interest payment and the amount of tax, if any, deducted.

3 Repayment and redemption

- 3.1 Subject to the terms of the Intercreditor Deed, unless previously repaid or redeemed or purchased by the Company and cancelled the Loan Notes will be redeemed in full at par in accordance with the Repayment Schedule together with accrued interest on the Loan Notes being redeemed in respect of the period from and including the immediately preceding Interest Payment Date up to but excluding the relevant Redemption Date (subject to any deduction or withholding required by law in respect of any tax).
- 3.2 Any redemption of the Loan Notes in accordance with the Repayment Schedule shall be made pro rata to each Noteholders' holding of the Loan Notes.
- 3.3 Subject to the terms of the Intercreditor Deed, a Noteholder shall be entitled on the Final Redemption Date to require the whole (whatever the amount) of the principal amount payable on any remaining Loan Note registered in his name to be repaid at par together with accrued interest up to but excluding the date of payment (subject to any deduction or withholding required by law in respect of any tax) by the Company upon delivering to the Registrar the relevant Loan Note certificate not less than 30 days' prior to the Final Redemption Date. Subject to the receipt thereof, upon the Final Redemption Date, the Company shall pay off that part of the Indebtedness.
- 3.4 Every Noteholder, any of whose Loan Notes are due to be redeemed under any of the provisions of the Deed or these Conditions, shall not later than the due date for such redemption deliver up such Loan Notes to the Company or as the Company shall direct and, if any Loan Note so delivered up represents part of the principal not then due to be redeemed, the Company may endorse such Loan Note with a memorandum of the date and amount paid to the holder of such Loan Note and return the same or may cancel such Loan Note and without charge issue to such Noteholder a new Loan Note for the balance of the principal due to him and not so redeemed. Unless and until a Loan Note (or, if the directors so agree at their discretion, an indemnity in respect of

a lost certificate in a form reasonably satisfactory to the Company) is so delivered, the Company shall not be under any obligation to repay the principal payable on it.

3.5 Any monies left unclaimed following redemption by the Company in terms of Condition 3.4 shall be placed by the Company on an interest bearing account for the benefit of the relevant Noteholder(s).

3.6 Otherwise than set out above, the Company shall not be entitled to redeem any of the Loan Notes without the prior written consent of all the Noteholders.

4 Repayment on default

4.1 Subject to the terms of the Intercreditor Deed, a Noteholder shall be entitled by notice in writing to the Company to require repayment of the Indebtedness payable in respect of each Loan Note (together with all interest accrued and unpaid on the relevant Loan Notes) of which he is the holder (or any part, being £1 in principal amount or a multiple of it) upon the happening of any of the following events:

(a) any failure by the Company to pay in full any interest payable in respect of the Loan Notes [(unless such interest is capitalised in accordance with paragraph 2.2 of Schedule 2 (The Conditions)] or any principal payable in respect of the Loan Notes, in each case within [5] days after the due date for its payment;

(b) the Company:

(i) is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or to be insolvent;

(ii) suspends making payments of any of its debts or announces an intention to do so; or

(iii) a moratorium is declared in respect of any of its indebtedness;

(c) except as provided below:

(i) the Company by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling of any of its indebtedness;

(ii) any step (including petition, proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any of the Company's creditors;

(iii) a meeting of the Company's shareholders or directors is

convened for the purpose of considering any resolution, to petition for or to file documents with a court or any register for its winding-up or administration dissolution (unless the Company can demonstrate to the satisfaction of the Noteholders that the convening of such a meeting is frivolous or vexatious) or any such resolution is passed;

- (iv) any person presents a petition or files documents with a court or register or any person presents an application or takes any other steps (including the making of a statutory declaration) for the Company's winding-up, administration or dissolution;
- (v) an order for the Company's winding-up or administration is made;
- (vi) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator, receiver, administrator or similar officer is appointed in respect of the Company or any of its assets;
- (vii) the Company's shareholders or directors request the appointment of, or give notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator or similar officer (unless the Company is able to demonstrate to the satisfaction of the Noteholders that such request or notice is frivolous or vexatious); or
- (viii) any other analogous step or procedure in any jurisdiction

paragraph (c) above does not apply to a winding-up application which is potentially frivolous, vexatious or an abuse of process and is unconditionally discharged or struck out within 10 Business Days of being presented;

- (d) the Company ceases, or threatens to cease, to carry on business;
- (e) the Project Agreement is terminated;
- (f) [any financial indebtedness of the Company under the Principal Funding Agreement:
 - (i) is not paid when due nor within any originally applicable grace period; or
 - (ii) 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); or

- (g) any commitment for financial indebtedness of the Company pursuant to the Principal Funding Agreement is cancelled or suspended as a result of an event of default (however described).]

4.2 The Company shall as soon as practicable notify the Noteholders of the happening of any of the events specified in this Condition 4.

5 Purchase

The Company may at any time by agreement with the relevant Noteholder purchase any Loan Notes at any price by tender, or, with the sanction of an Extraordinary Resolution, private treaty.

6 Cancellation

Any Loan Notes repaid, redeemed or purchased by the Company shall forthwith be cancelled and shall not be available for re-issue.

7 Registration

7.1 The Loan Notes will be registered in amounts or integral multiples of £1 and will be transferable in accordance with clause 9 of this Deed.

7.2 The Loan Notes are not, and will not be, registered under the United States Securities Act of 1933 (as amended) nor under any of the relevant securities laws of any state, district or territory of the United States, Canada, Australia or Japan. Accordingly, the Company may require reasonable evidence that a proposed transfer is exempt from or not subject to the registration or other requirement of any relevant legislation in any of those jurisdictions and in the absence of prior receipt of such evidence the Loan Notes may not be offered, sold, delivered or distributed, directly or indirectly, in or into the United States, Canada, Australia or Japan nor to or for the benefit of any Restricted Overseas Person by the use of the mail or any means (including without limitation, fax transmission, telex or telephone).

7.3 No transfer of Loan Notes in breach of this restriction or the restrictions set out in the Deed will be registered by the Company.

8 Prescription

Any amount in respect of (i) interest on any Loan Notes which remains unclaimed by the relevant Noteholder for a period of five years and (ii) any amount due in respect of principal money upon any Loan Notes which remains unclaimed for a period of 10 years by the relevant Noteholder (in

each case from the date on which the relevant payment first becomes due) shall be held on trust by the Company for the relevant Noteholder until the end of the relevant period and shall after such period revert to the Company and the relevant Noteholder shall cease to be entitled to it, and the Register will be amended to reflect any such reversion.

9 Modification of rights

The provisions of the Deed and the Conditions may from time to time be modified, abrogated or compromised in any respect by the Company with the sanction of an Extraordinary Resolution.

10 [Further issues of Loan Notes

The Company shall not, without the prior sanction of an Extraordinary Resolution, create or issue further loan notes having the same terms and conditions as the Loan Notes.^{5]}

⁵ If further loan notes will be issued after financial close (e.g. if an equity bridge facility is provided) the required revisions to this document would include amendment of this Condition to permit the issue of that loan stock.

Schedule 3

Form of Demand

To:

[Dated]

By Recorded Delivery

1 This demand is sent pursuant to the terms of a Deed (**Deed**) entered into on ♦ 20♦ by ♦ (**Company**).

2 I/We am/are the registered holder of the relevant Loan Notes issued under the terms of the Deed.

Full name: ♦

Registered address: ♦

3 I/We enclose the certificate(s) relating to the Loan Notes in respect of which demand is made.

4 I/We claim the amount of principal of £♦ and interest of £♦ which fell due for payment on ♦.

5 I/We confirm that:

(a) none of the Loan Notes in respect of which such claim is made has been cancelled, redeemed or repurchased by the Company nor has it been converted into shares or securities of the Company or any other company; and

(b) the sum demanded is due and payable by the Company, all conditions and demands necessary in connection with it under the Deed have been fulfilled and made; any grace period relating to it has elapsed; and the Company is not contesting liability in circumstances where the Company is entitled to withhold payment.

6 Payments under this demand less any amount deducted or withheld in respect of any tax or future tax on interest payments that the Company is required by law to deduct should be made to the registered holder's bank account at ♦ Bank Plc of ♦ to the account number ♦.

7 Please acknowledge on the enclosed copy of the demand receipt of this demand and the enclosed certificate relating to the Loan Note.

Signed.....

By or on behalf of the registered Noteholder*

- * In the case of joint Noteholders, each must sign and, in the case of corporate Noteholders, this Notice must be executed by a director or a duly authorised representative, in which event the Loan Note must be accompanied by the authority under which this Notice is completed.

Schedule 4

Provisions for meetings of the Noteholders.⁶

1 Convening a meeting

- 1.1 The directors may at any time and shall, upon a request in writing signed by a Noteholder or Noteholders holding or representing in aggregate not less than 15%⁷ in principal amount of the Loan Notes at the relevant time outstanding, convene a meeting of the Noteholders.
- 1.2 A general meeting called for the passing of an Extraordinary Resolution (as defined in paragraph 10.3) shall be called by at least 21 clear days' notice, and all other general meetings shall be called by at least 14 clear days' notice. The notice shall specify the place, the day and the time of the meeting and the general nature of the business to be transacted but, except in the case of a resolution to be proposed as an Extraordinary Resolution, it shall not be necessary to specify the terms of any resolutions to be proposed. Subject to the provisions of the Conditions, notices shall be given to all Noteholders, to all persons entitled to Loan Notes in consequence of the death or bankruptcy of a Noteholder, to the directors and to the auditors of the Company. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive it shall not invalidate the proceedings at the relevant meeting.

2 Quorum

- 2.1 At any meeting convened for any purpose persons holding or representing by proxy at least 86% in principal amount of the Loan Notes shall form a quorum. No business (other than the choosing of a chairman) shall be transacted at any meeting unless the requisite quorum is present.
- 2.2 If a quorum is not present within 30 minutes (or such longer time as the chairman may decide to wait not exceeding one hour) after the time appointed for holding the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other earlier or later day, time and place as the directors may determine unless the meeting was convened upon the requisition of the Noteholders, in which case it shall be dissolved. Notice of such adjourned meeting shall be sent to all Noteholders. At the adjourned meeting the Noteholders present in person or by proxy and entitled to vote

⁶ This Schedule would be revised if there is more than one class of loan stock. It is intended that the Noteholders of different classes would vote together as one body.

⁷ This percentage has been proposed to be consistent with the shareholders agreement.

shall, whatever the principal amount of the Loan Notes held by them, form a quorum.

- 2.3 The chairman (if any) of the directors, or in his absence the vice-chairman or in the absence of both of them some other director nominated by the directors, shall preside as chairman of the meeting and if there is only one director present, he shall be chairman. If no director is willing to act as chairman, or if no director is present within five minutes after the time appointed for holding the meeting, the Noteholders present and entitled to vote shall choose one of their number to be chairman.

3 Persons entitled to attend and speak

A director or the secretary of the Company and any other person authorised for that purpose by the directors shall, notwithstanding that he is not a Noteholder, be entitled to attend and speak at any meeting of Noteholders.

4 Adjournment

The chairman may with the consent of a meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give notice of an adjourned meeting.

5 Passing of resolutions

- 5.1 A resolution put to the vote of a meeting shall be decided by a show of hands, the chairman shall, if he is a Noteholder, both on a show of hands and on a poll, not have a casting vote in addition to the votes to which he may be entitled as a Noteholder.
- 5.2 At any meeting of Noteholders (unless a poll is demanded by the chairman or by one or more Noteholders present in person or by proxy, entitled to vote) a declaration by the chairman that a resolution has been carried and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact.

6 Polls

- 6.1 If at any meeting a poll is so demanded it shall, unless the demand is withdrawn, be taken in such manner and either at once or after such adjournment as the chairman may direct (not being more than 30 days after the poll is demanded) and the result of such poll shall be deemed to be the relevant resolution of the meeting at which the poll was demanded. Any poll demanded at any meeting on the election of a chairman or on any question of adjournment shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than in relation to the resolution on which the poll was demanded. In the case of any poll not taken immediately at least seven days' notice shall be given specifying the time, date and place at which the poll is to be taken.
- 6.2 The demand for a poll may, before the poll is taken, be withdrawn with the consent of the chairman and a demand so withdrawn shall be taken not to have invalidated the result of any show of hands declared before the demand was made and, if the demand is made before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 6.3 A poll shall be taken as the chairman may direct and he may appoint scrutineers (who need not be Noteholders) and fix a time, date and place for declaring the result of the poll. The result of the poll shall be deemed to be the relevant resolution of the meeting at which the poll was demanded.

7 Votes

- 7.1 On a show of hands every Noteholder who (being an individual) is present in person or (being a corporation) is present by a proxy who is not himself a Noteholder entitled to vote shall have one vote. On a poll every Noteholder present in person or by proxy shall have one vote for every £1 in principal amount of Loan Notes of which he is the holder.
- 7.2 In the case of joint holders the vote of the senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders and seniority shall be determined by the order in which the names of the holders stand in the Register.
- 7.3 No objection shall be raised to the qualification of any voter or to the counting of, or failure to count, any vote except at the meeting or adjourned meeting at which the vote objected to is tendered. Subject to any objection made in due time, every vote counted and not disallowed at the meeting shall be valid and every vote disallowed or not counted shall be invalid. Any objection made in

due time shall be referred to the chairman whose decision shall be final and conclusive. A Noteholder entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses the same way.

8 Proxies

8.1 A proxy need not be a Noteholder. A deed appointing a proxy shall be in writing in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the appointor. A corporation may execute a form of proxy either under its common seal or under the hand of a duly authorised officer. A Noteholder may appoint more than one proxy to attend on the same occasion. Deposit of a deed of proxy shall not preclude a Noteholder from attending and voting at the meeting or at any adjournment of it.

8.2 The form of proxy and any authority under which it is executed or a copy of the authority certified notarially or in some other way approved by the directors shall:

- (a) be deposited at the Company's registered office or at such other place in the United Kingdom as is specified in the notice convening the meeting or in any form of proxy sent out by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the form of proxy proposes to vote;
- (b) in the case of a poll taken more than 24 hours after it was demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for taking the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 24 hours after it was demanded, be delivered at the meeting in question or at any adjournment of it to the chairman or to the secretary or to any other director,

and a form of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

8.3 A vote given or poll demanded by a proxy shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll, unless notice of the determination was received by the Company at its registered office, or at such other place at which the form of proxy was duly deposited, before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for

taking the poll.

- 8.4 The form of proxy in relation to a meeting shall be deemed also to confer authority to demand or join in demanding a poll (and for the purposes of these Provisions a demand for a poll made by a person as proxy for a Noteholder shall be the same as a demand made by the Noteholder) and such deed shall also be valid for use at any adjournment of the meeting.
- 8.5 The directors may at the Company's expense send forms of proxy to Noteholders by post or otherwise (with or without provision for their return prepaid) for use at any meeting either in blank or nominating in the alternative any one or more of the directors or any other person. If for the purpose of any meeting, forms of proxy are issued at the Company's expense, they shall be issued to all (and not to some only) of the Noteholders entitled to be sent a notice of the meeting and to vote at it. The accidental omission to send such a form of proxy or give such an invitation to, or the non-receipt of it by, any Noteholder entitled to attend and vote at a meeting shall not invalidate the proceedings at that meeting.

9 Ordinary resolutions

- 9.1 A meeting of the Noteholders may by Ordinary Resolution sanction any matter unless in accordance with the terms of this Deed an Extraordinary Resolution is required.
- 9.2 An Ordinary Resolution shall be binding upon all the Noteholders whether present or not present at the meeting at which it is passed and each of the Noteholders shall be bound to give effect to it accordingly and the passing of any such resolution shall be conclusive evidence without appeal that the circumstances justify the passing of it.
- 9.3 The expression **Ordinary Resolution** means a resolution passed at a meeting of the Noteholders duly convened and held in accordance with these Provisions by a majority consisting of not less than 86% of the persons voting at such meeting upon a show of hands or if a poll is demanded on the resolution then by a majority consisting of not less than 86% of the votes given on such poll.
- 9.4 A resolution in writing signed by the holders of 86% in principal amount of the Loan Notes at the relevant time outstanding who are at the relevant time entitled to receive notice of meetings in accordance with these Provisions shall for all purposes be as valid and effective as an Ordinary Resolution. In the case of two or more joint holders the signature of any one of those joint holders will be sufficient for this purpose. Such a resolution in writing may be contained in one document or in several documents in like form each signed

by one or more Noteholders.

10 Extraordinary resolutions

10.1 A meeting of the Noteholders may by Extraordinary Resolution sanction any modification, abrogation, compromise or release previously approved in writing by the Company in any respect of any provisions of the Deed or these Conditions or all or any of the rights of the Noteholders against the Company whether such rights shall arise under the Deed or otherwise and in particular (but without limitation) shall have power to sanction:

- (a) any amendment reducing the Interest Rate;
- (b) the capitalisation of any Loan Notes;
- (c) any scheme of arrangement or any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company;
- (d) the exchange of the Loan Notes for, or the conversion of the Loan Notes into, shares, stocks, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed;
- (e) the release of the Company from the payment of all or any part of the principal monies and interest owing upon the Loan Notes and other monies payable pursuant to these terms;
- (f) any modification, abrogation or compromise of or arrangement in respect of the rights of the Noteholders against the Company whether such rights shall arise under these terms of the certificate for the Loan Notes or otherwise;
- (g) the appointment of any person (whether a Noteholder or not) as a committee to represent the interests of the Noteholders and to confer upon such committee any powers or discretions which the Noteholders could themselves exercise;
- (h) the creation or issue of further loan notes having the same terms and conditions as the Loan Notes,

provided that no modification of the Conditions or terms applicable to the Loan Notes shall (i) take effect unless the Company has consented and agreed to the terms or (ii) be effected which would enable the Loan Notes to be dealt on any stock exchange.

10.2 An Extraordinary Resolution shall be binding upon all the Noteholders

whether present or not present at the meeting at which it is passed and each of the Noteholders shall be bound to give effect to it accordingly and the passing of any such resolution shall be conclusive evidence without appeal that the circumstances justify the passing of it.

- 10.3 The expression **Extraordinary Resolution** means a resolution passed at a meeting of the Noteholders duly convened and held in accordance with these Provisions by a majority consisting of not less than 100% of the persons voting at such meeting upon a show of hands or if a poll is demanded on the resolution then by a majority consisting of not less than 100% of the votes given on such poll.
- 10.4 A resolution in writing signed by the holders of 100% in principal amount of the Loan Notes at the relevant time outstanding who are at the relevant time entitled to receive notice of meetings in accordance with these Provisions shall for all purposes be as valid and effective as an Extraordinary Resolution. In the case of two or more joint holders the signature of any one of those joint holders will be sufficient for this purpose. Such a resolution in writing may be contained in one document or in several documents in like form each signed by one or more Noteholders.

11 Minutes

Minutes of all resolutions and proceedings at every meeting of the Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Company and shall be available for inspection by Noteholders during normal business hours on reasonable notice being given to the Company.

Schedule 5
Repayment Schedule

Executed and delivered as a **DEED** by)
[])
acting by its duly authorised signatories:)

.....
Director

.....
Director/ Secretary

OR

Executed and delivered as a **DEED** by)
[])
acting by its duly authorised signatory:)

.....
Director

In the presence of:

Witness Signature:

Name:

Address