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- (c) effecting any registrations and carrying out any other relevant formalities; and
- (d) giving notices to the relevant Borrower, any Surety or any other person.

11.1.3 If the Lender fails to make or is prevented from making Loans under the Guaranteed Facility Agreement and to the extent to which UK Export Finance or a New UKEF Lender makes Loans in respect of the commitment of the Lender, that party who makes the Loans in respect of the commitment (be it UK Export Finance or a New UKEF Lender) shall be entitled to receive any commitment fee payable and/or any commission or other fee payable (but not yet paid) to the Lender in respect of those Loans and in respect of the period during which UK Export Finance or a New UKEF Lender makes such Loans available.

11.1.4 Any notice given by UK Export Finance pursuant to Clause 11.1.1 above shall be irrevocable.

## **11.2 Undertakings of the Lender to UK Export Finance**

11.2.1 Following any such notification as is referred to in Clause 11.1 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*), the Lender undertakes to provide such assistance to UK Export Finance as UK Export Finance may from time to time reasonably require to effect the Transfer and assignment to UK Export Finance or one or more New UKEF Lender(s) who may be willing to purchase all or any part of the Lender's Loans as specified in such notice and its corresponding rights under any Security and against any Surety in respect of such Loans.

11.2.2 The Lender undertakes to pay any costs it incurs associated with any transfer pursuant to Clause 11.1 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*) by it to UK Export Finance or one or more New UKEF Lender(s).

## **12 Nature of Parties' relationship**

### **12.1 Duty of care**

Notwithstanding any other provision of any Guarantee Document but without prejudice to UK Export Finance's obligations under Clause 4.1 (*Guarantee*) or affecting Clause 12.2 (*Duty to minimise losses and maximise Recoveries*), in relation to the Finance Documents and each Guaranteed Borrower Payment, the Lender shall:

- (a) comply with its policies and procedures in all material respects;
- (b) exercise the same degree of skill, care and competence as a reasonably skilled, experienced and competent international financial institution that was regularly engaged in providing trade and export finance would exercise had a Borrower Payment not been a Guaranteed Borrower Payment with the benefit of UK Export Finance's obligations under Clause 4.1 (*Guarantee*); and
- (c) at all times act in good faith in relation to UK Export Finance.

### **12.2 Duty to minimise losses and maximise Recoveries**

12.2.1 Notwithstanding any other provision of any Finance Document, but without prejudice to UK Export Finance's obligations under Clause 4.1 (*Guarantee*), Clause 10.2 (*Enforcement action*)









































any orders, regulations, instruments or other subordinate legislation made under the relevant statute;

- (f) references to liability or liabilities are to be construed to include all liabilities and obligations whether actual, contingent, present or future and whether incurred solely or jointly or as principal or surety;
- (g) the words **other** and **otherwise** shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible; and
- (h) the words **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any foregoing words.

## 2 Transfer of rights and obligations

2.1 With effect from the Commencement Date and subject as provided in Clause 2.3 below:

- (a) the Transferor releases and discharges the Borrower from its obligation to pay interest on, and to repay, the Transferred Loan to the Transferor;
- (b) the Borrower agrees to pay interest on, and to repay, the Transferred Loan to the Transferee on the due dates therefor as provided for in the Loan Agreement and in accordance with the terms thereof;
- (c) the Borrower releases and discharges the Transferor from its liabilities and obligations under the Loan Agreement with respect to the Transferred Commitment and all other liabilities and obligations of the Transferor whatsoever under the Loan Agreement and accepts the liability of the Transferee in respect of the Transferred Commitment and such other liabilities and obligations of the Transferor in place of the liability of the Transferor, and hereby grants to the Transferee the same rights under the Loan Agreement in every way as if the Transferee were and had been party to the Loan Agreement as the Lender with a commitment of £\*\* and as if it had advanced to the Borrower an amount equal to the Transferred Loan; and
- (d) the Transferee undertakes to perform the obligations of the Transferor under the Loan Agreement and to be bound by the terms of the Loan Agreement in every way as if the Transferee were and had been party to the Loan Agreement as the Lender with a commitment of £\*\* and as if it had advanced to the Borrower an amount equal to the Transferred Loan.

2.2 The Transferee shall pay to the Transferor on the Commencement Date an amount equal to the Transferred Loan.

2.3 Notwithstanding the provisions of Clause 2.1, the Borrower shall not be released in respect of any of its other liabilities and obligations to the Transferor under the Loan Agreement, including (but without limitation) the payment of any commitment fee (subject to clause 11.1.3 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*) of the Guarantee Agreement) and the payment to the Transferor in respect of interest to the Transferred Loan which has accrued up to but not including the Commencement Date.

### **3 Payment**

All payments to be made by the Transferee to the Transferor under this Agreement shall be made in [sterling] without any deduction or withholding for or on account of any taxes or otherwise and in immediately available and freely transferable funds to the account of the Transferor at \*\*

### **4 The Transferor and the Transferee**

4.1 The Transferee confirms to the Transferor that:

- (a) it has received a copy of the Finance Documents and of all such other documents, approvals and opinions relating to the Finance Documents and/or the Borrower as the Transferee has required to see in connection with this Agreement and the Transferee accepts all the terms thereof;
- (b) from the Commencement Date it will be solely responsible for making its own independent appraisal of, and investigations into:
  - (i) the financial conditions, creditworthiness, affairs, status and nature of the Borrower and each other party to any document relating to any of the Finance Documents or contemplated by this Agreement;
  - (ii) the Finance Documents and any other document relating thereto or contemplated by the Agreement; and
  - (iii) the matters and things contemplated by the Finance Documents or any such other document; and
- (c) from the Commencement Date it will not rely on the Transferor to appraise or keep under review on its behalf, the financial condition, creditworthiness, affairs, status or nature of the Borrower or any other party to any document relating to, or any matter or thing contemplated by, any of the Finance Documents or any such other document.

4.2 The Transferor and the Transferee agree that:

- (a) the Transferor has no rights or entitlements under the Guarantee Agreement in relation to the Transferred Loan or the Transferred Commitment;
- (b) the Transferor has no residual beneficial interest in the Transferred Loan or the Transferred Commitment;
- (c) subject to any rights or entitlements pursuant to the Guarantee Agreement, the Transferee shall have no recourse or claim on the Transferor for any loss, cost, expense or liability sustained or incurred by the Transferee as a result of or in connection with this Agreement;
- (d) the Transferor is not obliged to enter into any arrangements to repurchase the Transferred Loan or the Transferred Commitment or any part thereof at any time or other arrangements whereby the Transferred Loan or the Transferred Commitment or any part thereof are re-transferred at any time to the Transferor; and

- (e) subject to any obligations under the Guarantee Agreement, the Transferor is not obliged to enter into any arrangements to indemnify or compensate the Transferee for any losses incurred by the Transferee pursuant to this Agreement or by reason of any failure by the Borrower to perform any of its obligations under any of the Finance Documents.

## **5 Further assurances**

The Transferor agrees to execute and deliver to the Transferee any and all instruments and to issue and deliver such notices and procure such consents and acknowledgements as shall be necessary or the Transferee may deem reasonably advisable to perfect the transfer herein contained.

## **6 Passing of documents and information**

The Borrower authorises the Transferor:

- (a) to deliver the Finance Documents and any other related documents or records to the Transferee; and
- (b) to provide the Transferee with any information which is in the possession of the Transferor or any person acting on its behalf and which relates to the Finance Documents, the Borrower or any other party to the Finance Documents.

## **7 Incorporation**

Upon the Commencement Date, this Agreement shall be construed as one with the Loan Agreement and provisions contained in the Loan Agreement which are inconsistent with the terms of the Agreement shall cease to apply. Accordingly the Loan Agreement shall, where the context so requires, be read and construed accordingly.

## **8 Law and jurisdiction**

- 8.1 This Agreement shall be governed by, and construed in all respects in accordance with, English law.
- 8.2 The parties hereto agree that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Agreement and for such purposes irrevocably submits to the jurisdiction of such courts.

**In witness whereof the Transferor and the Transferee has each executed this Agreement as a deed with the intention that it be delivered the day and year first before written.**











## SCHEDULE TO GUARANTEE TRANSFER CERTIFICATE

### Address for notices:

Address: [ ]

Attention: [ ]

Email: [ ]

### [Process agent:

[Name and address of the agent for service of process in relation to any proceedings before the English courts in connection with the Guarantee Agreement]]<sup>8</sup>

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<sup>8</sup>Include unless the New Lender is incorporated in England and Wales.

