

UK Export Finance

Early Project Services Guarantee Guarantee Standard Terms and Conditions (Issue No. 1.1)

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Guarantee Standard Terms and Conditions

Your agreement with **His Britannic Majesty's Secretary of State**, acting through the Export Credits Guarantee Department, operating as UK Export Finance (**UK Export Finance**), whose office is at 1 Horse Guards Road, London SW1A 2HQ, consists of the Guarantee Letter which incorporates these Guarantee Standard Terms and Conditions and any other Guarantee Document.

In the event of any inconsistency between the Guarantee Letter and the Guarantee Standard Terms and Conditions, the Guarantee Letter will prevail.

1 Definitions and interpretation

1.1 Definitions

Administration Records means any records (other than those covered by legal privilege) preserved in any medium or form (including records stored electronically) which relate specifically to the administration of any of the Guarantee Documents, the Finance Documents or the Supply Contract.

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person, or any other Subsidiary of that Holding Company.

Approved Credit Terms has the meaning given to it in the Guarantee Letter.

Applicable Loss means any Guaranteed Borrower Payment (reduced by any Recoveries) that is due and payable to the Lender by a Borrower or Surety (without double counting), which is unpaid on or at any time after its due date.

Assigned Rights means (in relation to a Guaranteed Borrower Payment) all the Lender's right, title and interest required to be assigned in a Requirement for Assignment, or assigned in an Assignment.

Assignment and **Assign** means (in relation to a Guaranteed Borrower Payment) an assignment (or purported assignment) granted by the Lender in favour of UK Export Finance (or UK Export Finance's proposed assignee) following the making of a Requirement for Assignment, as contemplated by Clause 13.3 (*Assignment of Guaranteed Borrower Payments*) and substantially in the form set out in Schedule 2 (*Form of Assignment*), or as otherwise agreed in writing with UK Export Finance.

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

Base Currency means the base currency as defined in the Guarantee Letter.

Borrower means a borrower under the Facility Agreement, as identified in the Guarantee Letter.

Borrower Default means:

- (a) a failure by a Borrower to make a Guaranteed Borrower Payment in accordance with the Guaranteed Facility Agreement when due; or
- (b) the occurrence of a Sanctions Event in relation to a Guaranteed Borrower Payment.

Borrower Payment means any payment due from a Borrower to the Lender under the Guaranteed Facility Agreement in relation to the payment of:

- (a) principal under the Guaranteed Facility Agreement;
- (b) scheduled interest under the Guaranteed Facility Agreement; and/or
- (c) any Increased Cost Payment under the Guaranteed Facility Agreement.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London and any other city specified in the Guarantee Letter.

Buyer means the buyer under the Supply Contract, as identified in the Guarantee Letter.

Cessation Notice has the meaning given to it in Clause 14.1.1 (*Suspension*).

Change Request means a request delivered in writing by the Lender to UK Export Finance setting out:

- (a) the changes the Lender seeks to make to any Finance Document; or
- (b) the consent to a change in respect of the Supply Contract,

under Clause 9.1 (*Changes to the Finance Documents or Supply Contract*).

Claim means a claim for payment in relation to a Guaranteed Borrower Payment made by the Lender from UK Export Finance pursuant to the terms of the Guarantee Agreement.

Claim Notice means a notice of a Claim made by the Lender to UK Export Finance which is delivered in accordance with Clause 18.1 (*Claim Notices*), and is substantially in the form set out in Schedule 1 (*Claim Notice*) or such other form as notified (with at least 20 Business Days' notice) to the Lender by UK Export Finance in writing.

Claimed Amount means the quantum of any Applicable Losses that are the subject of a Valid Claim, whether or not UK Export Finance has paid the Claim.

Confidential Information means all information (in relation to the Guarantee Agreement) relating to: a Borrower, any Surety, the Supplier, the Buyer, the Lender or any Finance Document, of which UK Export Finance becomes aware, or which is otherwise received by UK Export Finance from the Lender in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains (or is derived or copied from) such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by UK Export Finance of Clause 22 (*Confidentiality and Records*);
- (b) is identified in writing at the time of delivery as non-confidential by: a Borrower, any Surety, the Supplier, the Buyer or the Lender (or any of their advisers); or
- (c) is known by UK Export Finance before the date the information is disclosed to it by: a Borrower, any Surety, the Supplier, the Buyer or the Lender (or any of their advisers), or is lawfully obtained by UK Export Finance after that date, from a source which is, as far as UK Export Finance is aware, unconnected with a Borrower, any Surety, the Supplier, the Buyer or the Lender (or any of their advisers) and which, in either case,

as far as UK Export Finance is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

Cover Period means the period starting on the Cover Start Date and ending on the Discharge Date.

Cover Start Date has the meaning given to it in Clause 2 (*Conditions precedent*).

Default Interest means any default interest that may be due to the Lender from a Borrower under a Guaranteed Facility Agreement, howsoever described or computed.

Default Payment Date means the earlier of:

- (a) the last day of a Default Payment Period; or
- (b) such earlier date as elected by UK Export Finance and notified in writing to the Lender,

in each case if that day is not a Business Day, the next succeeding Business Day.

Default Payment Period means, in respect of a Borrower Default, the period of ninety (90) days from and including the date on which the relevant Guaranteed Borrower Payment, in relation to which a Borrower Default has occurred, was due.

Default Payment Period Recovery has the meaning given to it in Clause 10.5 (*Adjustments*).

Defaulted Amount means:

- (a) the quantum of the Claimed Amount that was due from a Borrower at the start of the relevant Default Payment Period; or
- (b) where more than one Default Payment Period ends on the same Default Payment Date, the aggregate of the Claimed Amounts due from a Borrower at the start of each of those Default Payment Periods,

in both instances, minus any Recoveries (without double counting).

Delay Interest means interest payable by UK Export Finance pursuant to Clause 4.2.1 and/or 4.2.2 (*Interest on Defaulted Amounts*).

Delay Interest Period means:

- (a) during any Default Payment Period, such period as may be agreed in writing between the Lender and UK Export Finance; or
- (b) if there is no Recovery that would reduce the Defaulted Amount during a Default Payment Period, the period from the start of that Default Payment Period until the Default Payment Date of that Default Payment Period; and
- (c) if there is a Recovery that would reduce the Defaulted Amount during a Default Payment Period, the Default Payment Period shall be divided into successive Delay Interest Periods as follows:

- (i) the period from the start of that Default Payment Period until the first Recovery of that Default Payment Period; and
- (ii) following the Delay Interest Period at sub-paragraph (i) above, each successive period from the most recent Recovery that would reduce the Defaulted Amount until the earlier of:
 - (A) the next Recovery that would reduce the Defaulted Amount; or
 - (B) the Default Payment Date.

Delay Interest Rate has the meaning given to that term in the Guarantee Letter.

Discharge Date means the later of:

- (a) the Termination Date; and
- (b) the date on which:
 - (i) all of the Guaranteed Borrower Payments are irrevocably discharged in full; and
 - (ii) the Lender has no liability to make advances or provide other financial accommodation pursuant to the Finance Documents.

Discharged Guarantee Rights and Obligations has the meaning given to it at Clause 15.4 (*Procedure for transfer*).

Disposal and **Dispose** means any sale, lease, transfer, delivery or other disposal.

Facility Agreement means the facility agreement entered into between the Lender and a Borrower in relation to the Supply Contract, the details and terms of which are confirmed pursuant to, and as identified in, the Guarantee Letter.

Dispute has the meaning given to it at Clause 26.1 (*Jurisdiction*).

Excess Interest has the meaning given to it at Clause 10.5 (*Adjustments*).

Existing Lender has the meaning given to it at Clause 15.1 (*Transfers by the Lender*).

Finance Document means:

- (a) the Facility Agreement (and any "Finance Document" (or similarly defined term) as may be defined therein);
- (b) any form of guarantee, indemnity or other credit support instrument provided by any Surety in relation to any of a Borrower's liabilities under the Facility Agreement; or
- (c) any other document from time to time designated as such by the Parties.

Guarantee Agreement means:

- (a) the Guarantee Letter;

- (b) these Guarantee Standard Terms and Conditions, as incorporated into the Guarantee Letter by reference; and
- (c) any other document from time to time designated as such by the Parties.

Guarantee Confidential Information means:

- (a) the Records;
- (b) the contents of the Records; and
- (c) all written or oral explanations provided in respect of the Records pursuant to Clause 22 (*Confidentiality and Records*).

Guarantee Documents means:

- (a) the Guarantee Agreement;
- (b) the Lender Letter of Undertaking;
- (c) any Warranty;
- (d) any Claim Notice;
- (e) any Assignment;
- (f) any Guarantee Transfer Certificate; and
- (g) any other document from time to time designated as such by the Parties.

Guarantee Letter means the guarantee letter issued by UK Export Finance to the Lender, which incorporates these Guarantee Standard Terms and Conditions.

Guarantee Transfer Certificate means a certificate substantially in the form set out in Schedule 4 (*Form of Guarantee Transfer Certificate*) or any other form agreed between the Lender, a New Lender and UK Export Finance.

Guarantee Transfer Date means, in relation to a transfer of a Lender's rights, interests and obligations under the relevant Guarantee Documents to a New Lender pursuant to Clause 15 (*Transferability*), the later of:

- (a) the proposed Guarantee Transfer Date specified in the relevant Guarantee Transfer Certificate; and
- (b) the date on which UK Export Finance executes the relevant Guarantee Transfer Certificate.

Guaranteed Borrower Payment has the meaning given to that term in Clause 6.3 (*Loan eligibility criteria*).

Guaranteed Facility Agreement means the Facility Agreement during the Cover Period.

Holding Company means, in relation to a person, any other person in respect of which it is a Subsidiary.

Increased Cost Payment means any payment due from a Borrower under the Guaranteed Facility Agreement in relation to Increased Costs incurred as a result of:

- (a) any change in (or in the interpretation, administration or application of) any law or regulation; or
- (b) compliance with any law or regulation made after the date of the Guarantee Agreement.

Increased Cost Payment Default means a Borrower Default because of the failure of a Borrower to make an Increased Cost Payment in relation to the Guaranteed Facility Agreement.

Increased Costs means, in relation to the Guaranteed Facility Agreement:

- (a) a reduction:
 - (i) in the rate of return from the facility made available under the Guaranteed Facility Agreement; or
 - (ii) on the Lender's (or its Affiliates') overall capital;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under the Guaranteed Facility Agreement,

which is incurred or suffered by the Lender (or any of its Affiliates) to the extent that it is attributable to the Lender having entered into its commitment, or funding, or performing its obligations, under the Guaranteed Facility Agreement.

Information Legislation means:

- (a) the Freedom of Information Act 2000;
- (b) the Environmental Information Regulations 2004; and
- (c) any other law or regulation from time to time governing the disclosure of information held by public bodies in response to requests from individuals or organisations.

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (c) the time-barring of claims under the Limitation Acts;
- (d) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of UK stamp duty may be void; and
- (e) defences of set-off or counterclaim,

and similar principles, rights and defences under the laws of any Relevant Jurisdiction.

Lender means the entity entering into the Guarantee Agreement with UK Export Finance, as identified as the "Lender" in the Guarantee Letter.

Lender Due Diligence means, in relation to the Finance Documents, the Lender applying its policies and procedures to satisfy itself as to the following matters:

- (a) "know your customer" requirements in relation to a Borrower, the Supplier and any Surety;
- (b) anti-bribery and corruption;
- (c) anti-money laundering;
- (d) fraud;
- (e) Tax evasion;
- (f) terrorism;
- (g) environmental compliance; and
- (h) sanctions.

Lender Letter of Undertaking means a letter of undertaking substantially in the form annexed to the Guarantee Letter.

Lender Team means, in relation to the Finance Documents, at any time all or any of the individuals within the Lender who at that time are/is responsible for originating, executing, managing, administering, approving or monitoring any of the Finance Documents.

Limitation Acts means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

Loan or **Loans** means any loan or loans made by the Lender to a Borrower under the Guaranteed Facility Agreement.

Mandate means, in relation to the Supply Contract, the mandate awarded by the relevant Borrower or a Borrower's Affiliate to the Lender to provide the Facility Agreement that finances the Supply Contract (whether that mandate arises under a specific agreement or in correspondence between a Borrower or a Borrower's Affiliate and the Lender, or otherwise).

Mandate Records means any records other than those covered by legal privilege preserved in any medium or form, including records stored electronically, which relate:

- (a) specifically to the obtaining of any Mandate; and
- (b) only to the period up to the date of award of such Mandate.

New Lender means any bank or financial institution or a trust, fund or other entity regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets which, with the prior written consent of UK Export Finance, has become a Lender in accordance with Clause 15 (*Transferability*).

New UKEF Lender means an entity which is to become a lender pursuant to Clause 11.1 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*).

Party means a party to the Guarantee Agreement.

Post-Termination Borrower Payments has the meaning given to it in Clause 14.2.2 (*Termination*).

Post-Termination Claim has the meaning given to it in Clause 14.2.2 (*Termination*).

Prescribed Steps has the meaning given to it in the Guarantee Letter.

Quasi-Security means, in relation to a person:

- (a) any Disposal of any of its assets on terms whereby they are or may be leased to, or re-acquired by, that person and/or an Affiliate of that person;
- (b) any Disposal of any of its receivables on recourse terms;
- (c) any entry into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
- (d) 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.

Records means Administration Records and/or the Mandate Records.

Recovery and **Recoveries** means, in relation to any Guaranteed Facility Agreement, any sum collected, received or recovered by the Lender at any time (whether before or after a Claim), including where the collection, receipt or recovery is by way of set-off or similar, from:

- (a) a Borrower;
- (b) any Surety; or
- (c) from any other source,

less the reasonable costs and expenses incurred by the Lender (or by any receiver appointed by the Lender) in making that collection, receipt or recovery where such costs or expenses are incurred on or after the Borrower Default to which the Recovery relates, save that:

- (d) costs and expenses that:
 - (i) have not been the subject of any valid demand for reimbursement from a Borrower or any Surety; or
 - (ii) are not due and owing from a Borrower or any Surety;
- (e) any internal costs and expenses of the Lender; and
- (f) any amounts that UK Export Finance has reimbursed to the Lender pursuant to Clause 10.3 (*Sharing Recovery costs*),

shall not be deducted.

Relevant Jurisdiction means:

- (a) the United Kingdom;
- (b) each Borrower's jurisdiction of incorporation, and (if different) its principal place of business or the location out of which it is borrowing under the Facility Agreement;
- (c) the Buyer's jurisdiction of incorporation and (if different) its principal place of business;
- (d) any Surety's jurisdiction of incorporation and (if different) its principal place of business or the location out of which it is providing its guarantee of any liability under any Finance Document;
- (e) the jurisdiction of incorporation of any obligors to the Finance Documents (however the term "obligors" is defined);
- (f) the Lender's jurisdiction of incorporation and (if different) the location of the branch out of which it is making the facility under the Facility Agreement available; and
- (g) the governing law and jurisdiction of any Finance Document.

Repayment Date means the scheduled date for the repayment of a Loan under the Guaranteed Facility Agreement.

Repeating Representations means each of the representations set out in Clauses 6.1(d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) (*Representations and warranties*).

Request for Information means a request for information under the Information Legislation.

Requirement for Assignment means, in relation to a Guaranteed Borrower Payment, a requirement to assign made by UK Export Finance on the Lender, pursuant to Clause 13.3 (*Assignment of Guaranteed Borrower Payments*).

Sanctions Authority means:

- (a) the United Kingdom;
- (b) the United States of America;
- (c) the United Nations Security Council;
- (d) the European Union; and
- (e) any member state of the European Union.

Sanctions Event means, in relation to a Borrower Payment due to a Lender, that UK Export Finance is satisfied that:

- (a) a Borrower has made the Guaranteed Borrower Payment; but

- (b) the Lender is unable to receive and/or access that Guaranteed Borrower Payment because of applicable Sanctions Laws and Regulations.

Sanctions Laws and Regulations means any economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority from time to time.

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Service Document has the meaning given to it at Clause 26.2 (*Service of process*).

Special Conditions means any special conditions in relation to a Loan, as identified in the "Special Conditions" paragraph of the Guarantee Letter.

Spot Rate means, at any time, in relation to any actual or notional currency conversion by a person, the spot rate of exchange prevailing at that time for the two relevant currencies as determined by that person at the relevant time using a source reasonably selected by it.

Subsidiary means:

- (a) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006; and
- (b) any company which would be a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 but for any Security subsisting over the shares in that company from time to time.

Supplier means the supplier under the Supply Contract, as identified in the Guarantee Letter.

Supply Contract means the contract for the supply of goods or services containing UK content, as further described in the Guarantee Letter.

Support Fee means any fees payable or paid to UK Export Finance by the Lender pursuant to Clause 3 (*UK Export Finance Support Fee*).

Surety means any surety in respect of any of a Borrower's liabilities under the Facility Agreement, as identified in the Guarantee Letter.

Suspension Borrower Payments has the meaning given to it in Clause 14.1.2 (*Suspension*).

Suspension Claims has the meaning given to it in Clause 14.1.2 (*Suspension*).

Suspension Notice has the meaning given to it in Clause 14.1.1 (*Suspension*).

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).

Tax Credit means a credit against, relief from, remission for, or repayment of any Tax.

Tax Deduction means a deduction or withholding for, or on account of, Tax from a payment under a Guarantee Document.

Tax Payment means the increase in a payment made by UK Export Finance to the Lender under Clause 5.2 (*Withholdings*).

Termination Date means the date a Termination Notice is issued by UK Export Finance to the Lender pursuant to Clause 14.2.1 (*Termination*).

Termination Event has the meaning given to it in Clause 14.2.1 (*Termination*).

Termination Notice has the meaning given to it in Clause 14.2.1 (*Termination*).

Transfer means, in relation to a Guaranteed Borrower Payment, a transfer or purported transfer by the Lender in favour of UK Export Finance (or a New UKEF Lender) pursuant to the purchase of outstanding undrawn commitments and/or Loans, as contemplated by Clause 11.1 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*) and substantially in the form set out in Schedule 3 (*Form of Transfer*) or as otherwise agreed in writing with UK Export Finance.

UK or United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

Utilisation Request means a utilisation request (however described) for a Loan.

Valid Claim means a Claim which complies with the conditions set out in Clause 4.4 (*Validity of Claims*).

Warranty means, with respect to a Loan, a warranty by the Supplier or the Lender as required by (and in the relevant form annexed to) the Guarantee Letter and signed on behalf of the Supplier or Lender by a director or other officer thereof duly authorised to do so and accompanied by the documents specified therein, and **Warranties** shall be construed accordingly.

1.2 Interpretation

1.2.1 Unless a contrary indication appears, any reference in any Guarantee Document to:

- (a) the **Lender**, a **Borrower**, the **Buyer**, any **Surety**, the **Supplier**, any **Party** or any other person shall be construed to include its successors in title, permitted assigns and permitted transferees to, or of, its relevant rights and/or obligations;
- (b) **assets** includes present and future properties, revenues and rights of every description;
- (c) a **Finance Document**, **Guarantee Document**, **Supply Contract** or any other agreement or instrument is a reference to that Finance Document, Guarantee Document, Supply Contract, or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) **guarantee** (noun) means any guarantee, letter of credit, payment undertaking, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (e) **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;
- (f) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (g) a **record** includes any information, records or documents, whether in electronic format or otherwise;
- (h) 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 guideline with which institutions of a relevant similar type generally comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation, either as enacted or, if applicable, as it has effect from time to time in the United Kingdom, including as retained EU law within the meaning of the European Union (Withdrawal) Act 2018;
- (i) **control** and **controlled** means, in relation to a company (the **company controlled**), control of the company controlled:
 - (i) by virtue of any contractual arrangements (including, without limitation, any provisions in the memorandum and articles of association (or the equivalent documents in the case of a company incorporated in a jurisdiction other than that of England and Wales)) of the company controlled or of any other company; and/or
 - (ii) by virtue of ownership (whether directly or through nominees or trustees) of more than 50% of the voting share capital of the company controlled; or
 - (iii) through a chain of companies, each of which controls the next by the means described at sub-paragraph (i) and/or (ii) above;
- (j) a provision of law is a reference to that provision as amended or re-enacted;
- (k) a time of day is a reference to London time;
- (l) the singular includes a reference to the plural, and vice versa; and
- (m) **including** means **including without limitation** and **in particular** means **in particular but without limitation** (and **includes** and **particular** or any similar concepts are interpreted accordingly).

1.2.2 Section, clause and schedule headings are for ease of reference only.

1.2.3 Unless a contrary indication appears, a term used in any other Guarantee Document or in any notice given under or in connection with any Guarantee Document has the same meaning in that Guarantee Document or notice as defined in:

- (a) first, the Guarantee Letter; and
- (b) secondly, if not defined in the Guarantee Letter, these Guarantee Standard Terms and Conditions.

- 1.2.4 Unless a contrary indication appears, where in any Guarantee Document it states that UK Export Finance **may** do something or take such step as it considers appropriate, or where in any Guarantee Document any discretion, power or right is conferred on UK Export Finance, it shall be interpreted to mean that UK Export Finance may do that thing, or take that step or exercise that discretion, power or right conclusively and in its sole, absolute and unfettered discretion and without consultation or notice to any other person.
- 1.2.5 Where any Guarantee Document refers to a limit or amount in one currency it shall be, where the context requires, a reference to that amount in that currency (or equivalent in another currency or currencies) applying the Spot Rate.
- 1.2.6 In relation to any reference in any Guarantee Document to the Lender applying or complying with (or similar concept) its policies and procedures, the Lender shall be responsible for determining (acting reasonably) whether or not it has so applied or complied.
- 1.2.7 A breach of any Guarantee Document by the Lender is continuing if it has not been waived in writing by UK Export Finance.
- 1.2.8 A reference to a Lender, Borrower, Buyer, Surety, Supplier, Facility Agreement, Loan, Supply Contract or any other term that relates to a specific Facility Agreement is to be determined by reference to the Guarantee Letter that relates to that Facility Agreement.

1.3 Third party rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999, or the law of any other Relevant Jurisdiction governing the rights of third parties, to enforce or to enjoy the benefit of any term of the Guarantee Agreement.

2 Conditions precedent

- 2.1.1 UK Export Finance shall have no liability to the Lender under the Guarantee Agreement until each of the documents, payments and other evidence listed in paragraph 5.1 of the Guarantee Letter:
- (a) has been received by UK Export Finance, in form and substance satisfactory to UK Export Finance; or
 - (b) UK Export Finance has waived or deferred the requirement for those documents, payments or other evidence that have not been so received.
- 2.1.2 Once UK Export Finance has received all the documents, payments and other evidence in accordance with Clause 2.1.1(a) above or it has agreed to waive or defer those documents, payments or other evidence not so received in accordance with Clause 2.1.1(b) above, UK Export Finance shall notify the Lender in writing (the date of such notification being the **Cover Start Date**, unless the notification specifies another date as the Cover Start Date, in which case such alternate date will be the **Cover Start Date**).

3 UK Export Finance Support Fee

3.1 Obligation to pay Support Fee

- 3.1.1 In consideration of the undertakings of UK Export Finance to the Lender contained in the Guarantee Agreement, the Lender agrees to pay (or shall procure payment on its behalf of)

the Support Fee to UK Export Finance in the amount and at the times agreed in the Guarantee Letter.

- 3.1.2 All payments of a Support Fee shall be non-refundable unless UK Export Finance (acting in its sole discretion) confirms in writing otherwise.

4 Guarantee and interest on Defaulted Amounts

4.1 Guarantee

Subject to Clause 4.3 (*Liability of UK Export Finance*), UK Export Finance undertakes that, following receipt by UK Export Finance of a Valid Claim, it will pay to the Lender on the relevant Default Payment Date (or such earlier date, as elected by UK Export Finance and notified in writing to the Lender), the Defaulted Amount due pursuant to that Valid Claim, along with any interest due on that Defaulted Amount in accordance with Clause 4.2 (*Interest on Defaulted Amounts*).

4.2 Interest on Defaulted Amounts

- 4.2.1 Subject to Clause 10.5 (*Adjustments*), on the Default Payment Date for a Default Payment Period during which there is no Recovery, UK Export Finance shall, in addition to the relevant Defaulted Amount (which is the subject of a Valid Claim), pay to the Lender the sum of the amounts produced by calculating interest on that Defaulted Amount for the relevant Delay Interest Period, during that Default Payment Period, at the Delay Interest Rate.

- 4.2.2 Subject to Clause 10.5 (*Adjustments*), on the Default Payment Date for any Default Payment Period during which there are one or more Recoveries, UK Export Finance shall, in addition to the Defaulted Amount which is the subject of a Valid Claim, pay to the Lender the sum of the amounts produced by calculating interest on the Defaulted Amount for each successive Delay Interest Period, during the Default Payment Period, at the Delay Interest Rate.

4.3 Liability of UK Export Finance

- 4.3.1 UK Export Finance shall have no liability for or in relation to any Default Interest.
- 4.3.2 The liability of UK Export Finance under the Guarantee Agreement shall not be impaired or discharged by reason of a Finance Document being amended or waived, *provided that* such amendment or waiver is in accordance with the terms of the Guarantee Agreement.
- 4.3.3 UK Export Finance shall have no liability to the Lender in relation to any amounts that are due to the Lender other than for:
- (a) a Guaranteed Borrower Payment that is the subject of a Valid Claim;
 - (b) interest due on Defaulted Amounts in accordance with Clause 4.2 (*Interest on Defaulted Amounts*); and
 - (c) any amounts due to be reimbursed by UK Export Finance to the Lender, pursuant to Clause 10.3 (*Sharing Recovery costs*).

4.4 Validity of Claims

A Claim shall be a Valid Claim only if, at the date the Claim Notice that relates to it is delivered to UK Export Finance, the relevant Claim satisfies all of the following:

- (a) it is issued within the Cover Period;
- (b) it is not a Post-Termination Claim or a Suspension Claim;
- (c) it is issued in respect of a Borrower Default that is continuing;
- (d) it only requests payment from UK Export Finance for an Applicable Loss that has arisen during the Cover Period;
- (e) it accurately identifies in reasonable detail the quantum and nature of the Applicable Loss for which the Lender is claiming payment from UK Export Finance;
- (f) it accurately confirms the Default Payment Date upon which the Defaulted Amount should be paid;
- (g) the Claim Notice has been delivered by the Lender to UK Export Finance in accordance with Clause 18.1 (*Claim Notices*);
- (h) it is delivered to UK Export Finance:
 - (i) in respect of an initial Claim, no later than thirty (30) days (or such longer period as may be agreed by UK Export Finance); or
 - (ii) in respect of any subsequent Claim, no later than ten (10) days,

after the date on which the relevant Guaranteed Borrower Payment became due and payable but was not paid;
- (i) it includes the Lender's calculation, as at four (4) Business Days prior to the relevant Default Payment Date, of the amount of interest it has calculated would be payable by UK Export Finance pursuant to Clauses 4.2.1 or 4.2.2 (*Interest on Defaulted Amounts*);
- (j) it is accompanied by copies of the Lender's demand to a Borrower for payment, repayment or reimbursement, as the case may be, of the Applicable Losses; and
- (k) in relation to the Applicable Losses claimed, all representations and warranties set out in Clause 6.1 (*Representations and warranties*) were true in all material respects when they were given and/or deemed repeated.

4.5 Further information

Within ten (10) Business Days of submitting a Claim Notice, the Lender shall deliver to UK Export Finance:

- (a) all material correspondence or other documentation relating to the Lender's demand to a Borrower or Surety for payment, repayment or reimbursement, as the case may be; and
- (b) a copy of all Utilisation Requests that relate to the relevant Guaranteed Borrower Payment(s).

4.6 Request for information

Without prejudice to UK Export Finance's obligations under Clause 4.1 (*Guarantee*) to pay a Valid Claim, or the Lender's obligation to provide information under Clause 4.5 (*Further information*), the Lender shall within ten (10) Business Days of a request from UK Export Finance, provide any additional supporting information and documents relating to:

- (a) a Claim and its validity; or
- (b) any Borrower Payment,

which UK Export Finance requests at any time.

4.7 Illegality

Notwithstanding any provision of the Guarantee Agreement, UK Export Finance shall not be required to take any action or make any payment where the taking of that action or the making of the payment would, in its opinion, be unlawful in England and Wales, the place in which that action is to be taken or the place to which any payment is to be made.

5 Payments and withholdings

5.1 Payments

- 5.1.1 All payments to be made by UK Export Finance to the Lender under the Guarantee Agreement shall be made in the Base Currency to the bank account identified in the Guarantee Letter, or such other account as the Lender may from time to time notify UK Export Finance in writing.
- 5.1.2 If UK Export Finance and the Lender so agree in writing, any amount expressed to be payable by UK Export Finance under the Guarantee Agreement for the account of the Lender may be paid in a currency other than the Base Currency.
- 5.1.3 Any payment which requires conversion into the Base Currency prior to being made by UK Export Finance shall be converted at the Spot Rate calculated by UK Export Finance.

5.2 Withholdings

- 5.2.1 If UK Export Finance is required by any law or regulation of the UK to make any deduction or withholding from any sum payable by UK Export Finance to the Lender (other than a deduction or withholding on account of Tax on the overall net income of the Lender), then the sum payable by UK Export Finance (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives a net sum equal to the sum that it would have received had no such deduction or withholding been made. UK Export Finance shall promptly send to the Lender the Tax certificate relating to the sum deducted or withheld.
- 5.2.2 If the Lender is required by any law or regulation of a country other than the UK to make any deduction or withholding from any sum payable to any other Party, then the Lender:
 - (a) shall increase the sum payable in respect of which such deduction or withholding is required to be made to the extent necessary to ensure that, after the making of that deduction or withholding, UK Export Finance shall receive a net sum equal to the sum which it would have received had no such deduction or withholding been made; and

- (b) shall promptly send to UK Export Finance a Tax certificate relating to the sum deducted or withheld.
- 5.2.3 For the purpose of the Guarantee Agreement, the Lender must act through the same office as it is acting for the purposes of the Guaranteed Facility Agreement.
- 5.2.4 If the Lender acts for the purposes of the Guarantee Agreement through an office located outside the UK it shall, on demand, indemnify UK Export Finance against any liability to pay any Tax or duty which UK Export Finance may incur in connection with the Guarantee Agreement by reason of the Lender acting through such an office.
- 5.2.5 The Lender agrees that, to the extent that there is any shortfall in any amount payable to it due to:
 - (a) UK Export Finance having no obligation to increase a payment in respect of any deduction or withholding under Clause 5.2.1 above; or
 - (b) the provisions of Clause 5.2.2 above,it will not seek to claim such shortfall from UK Export Finance.
- 5.2.6 The amount of any deduction or withholding for, or on account of, any present or future Taxes, fees, assessments or other charges of whatever nature imposed by any governmental authority (not being the governmental authority in the jurisdiction of incorporation or, if different, the tax residency, of a Borrower or any Surety) in respect of any sum:
 - (a) payable by a Borrower or any Surety to or for the account of the Lender pursuant to a Finance Document; or
 - (b) receivable by the Lender pursuant to a Finance Document,shall be deemed to have been received by the Lender on the date such sum was payable or receivable, as the case may be.
- 5.2.7 If UK Export Finance makes a Tax Payment and the Lender determines that:
 - (a) a Tax Credit is attributable to:
 - (i) an increased payment of which that Tax Payment forms part, to that Tax Payment; or
 - (ii) to a Tax Deduction in consequence of which that Tax Payment was required; and
 - (b) the Lender has obtained and utilised that Tax Credit,the Lender shall pay an amount to UK Export Finance which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by UK Export Finance.

6 Representations and warranties of the Lender

6.1 Representations and warranties

The Lender represents and warrants to UK Export Finance that:

- (a) subject to the Legal Reservations, the obligations under the Finance Documents are legal, valid, binding on and enforceable against:
 - (i) each Borrower;
 - (ii) any Surety; and
 - (iii) each other obligor to the Finance Documents (however the term "obligor" is defined),

which is a party to such Finance Document;

- (b) the Lender has undertaken such due diligence in respect of the Finance Documents that, in line with its policies and procedures, it would have undertaken if the Guaranteed Facility Agreement was not covered by the Guarantee Agreement,

- (c) each of:

- (i) each Borrower;
- (ii) the Buyer;
- (iii) the Supplier;
- (iv) any Surety; and
- (v) each other obligor to the Finance Documents (however the term "obligor" is defined),

has represented to the Lender it has obtained (and will maintain in full force and effect) all Authorisations required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents and the Supply Contract to which it is a party, and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation and the applicable jurisdiction of each Finance Document and the Supply Contract;

- (d) it has the sole legal and beneficial entitlement to:

- (i) each Guaranteed Borrower Payment; and
- (ii) any payments due from any Surety in relation to any Guaranteed Borrower Payments,

and all of its right, title and interest in and to each Guaranteed Borrower Payment and any payments due from any Surety in relation to any Guaranteed Borrower Payments, are free and clear of any Security or Quasi-Security;

- (e) other than as permitted pursuant to Clauses 11 (*Purchase of commitments or Loans*) or 15 (*Transferability*), it has not made any Disposal of any of its right, title or interest in or to any Guaranteed Borrower Payments or any payments due from any Surety in relation to any Guaranteed Borrower Payment;
- (f) it is entitled to:
 - (i) allow the inspection of; and
 - (ii) provide,

information and copies of records and documents to UK Export Finance as required pursuant to its obligations under the Guarantee Agreement, including pursuant to Clause 8.1 (*Information about Guaranteed Borrower Payments*) and Clause 8.2 (*Inspection*) other than where, after taking all reasonable steps to enable it to make such a representation, the Lender is prevented from being able to do so in relation to any Borrower Payment as a consequence of a change of law in a Relevant Jurisdiction that occurs after the date the relevant Loan the Borrower Payment relates to was disbursed;
- (g) it is validly incorporated and existing under the laws of its jurisdiction of incorporation and has all requisite capacity, power and authority to own its assets and to conduct its operations in the manner in which they are currently owned and conducted;
- (h) it has duly and validly entered into each Finance Document and Guarantee Document (to which it is a party);
- (i) the entry by it into any Finance Documents and its entry into any Guarantee Documents, its rights and obligations thereunder and all other agreements related thereto do not conflict with:
 - (i) any law or regulation applicable to it or binding on its assets;
 - (ii) its constitutional documents;
 - (iii) any agreement or instrument binding on it or any of its assets; or
 - (iv) any order or judgment of any court or other agency of government applicable to it;
- (j) it can:
 - (i) freely Assign its right, title and interest in or to any of the Borrower Payments, or any payments due from any Surety in respect of any Borrower Payments, to UK Export Finance;
 - (ii) freely Transfer, its right, title and interest in and to any of the Borrower Payments, or any payments due from any Surety in respect of any Borrower Payment, to UK Export Finance and the Borrower has confirmed in writing it will promptly execute such Transfer upon the Lender's request; and
 - (iii) UK Export Finance can exercise its rights of subrogation,
in each case without:

- (A) the need to obtain the consent of a Borrower, any Surety or other person or, where such consent is required, that consent has been obtained in writing; or
- (B) needing to take any further actions (including, without limitation, to acquire consent, issue any notice, notarise or apostille any document, make any registration or payment of fees) other than those actions set out as Prescribed Steps or as set out in Clauses 11 (*Purchase of commitments or Loans*) or 13.3 (*Assignment of Guaranteed Borrower Payments*),

other than where, after taking all reasonable steps to enable it to make such a representation, the Lender is prevented from being able to do so in relation to any Borrower Payment as a consequence of a change of law in a Relevant Jurisdiction that occurs after the date the relevant Loan the Borrower Payment relates to was disbursed;

- (k) all factual information provided by it and/or any of its Affiliates to UK Export Finance in relation to the Finance Documents and the Guarantee Documents was true and accurate in all material respects as at the date it was provided, as far as the Lender Team was aware at that time (having made reasonable enquiries and having complied with the Lender's policies and procedures);
- (l) it is not entitled to claim immunity for itself or its assets from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation, or in any other jurisdiction, in relation to the Guarantee Documents;
- (m) it has not breached any material provision of any of the Finance Documents or the Guarantee Documents (including, without limitation, there has been no misrepresentation by it in respect of the representations and warranties given in the Lender Letter of Undertaking); and
- (n) no other party to any of the Finance Documents has breached any material provision of the Finance Documents to which it is a party as far as the Lender Team is aware, having made reasonable enquiries and having complied with the Lender's policies and procedures; and
- (o) the purpose of any Loans is limited to the financing of:
 - (i) the payment of the Support Fee on the Lender's behalf; or
 - (ii) the liabilities of the Buyer to the Supplier under the Supply Contract.

6.2 Repetition

6.2.1 The Lender makes the representations and warranties at Clause 6.1 (*Representations and warranties*) on the date of the Guarantee Letter.

6.2.2 The Repeating Representations are also deemed to be repeated by the Lender by reference to the facts and circumstances then existing on:

- (a) each date it is required to comply with its information obligations at Clause 8.1 (*Information about Guaranteed Borrower Payments*);

- (b) each date it makes a Claim; and
- (c) each Default Payment Date.

6.3 Loan eligibility criteria

Borrower Payments in relation to a Loan (the **Relevant Loan**) will be **Guaranteed Borrower Payments** if, subject to Clause 9.3 (*Unauthorised changes*), on the date the Relevant Loan is disbursed:

- (a) the Relevant Loan is disbursed in accordance with and pursuant to the Guaranteed Facility Agreement;
- (b) the Relevant Loan is disbursed during the Cover Period in accordance with the Approved Credit Terms;
- (c) the Lender has received or issued (in each case as required under the Guarantee Letter) a Warranty in relation to the Relevant Loan;
- (d) the Relevant Loan is not a Post-Termination Borrower Payment or a Suspension Borrower Payment;
- (e) the Relevant Loan satisfies any Special Conditions;
- (f) the Lender has the sole legal and beneficial entitlement to:
 - (i) the Relevant Loan; and
 - (ii) any payments due to it from any Surety that relate to the Relevant Loan,(both (i) and (ii) together being the **Relevant Borrower Payments**), and its right, title and interest in and to the Relevant Borrower Payments are free and clear of any Security or Quasi-Security;
- (g) the Lender has not breached any material provision of any Finance Documents to which it is a party;
- (h) no party to any of the Finance Documents has breached any material provision of the Finance Documents to which it is a party, as far as the Lender Team is aware, having made reasonable enquiries and having complied with the Lender's policies and procedures;
- (i) other than subject to Clauses 11 (*Purchase of commitments or Loans*) or 13.3 (*Assignment of Guaranteed Borrower Payments*), the Lender has not made any Disposal of any of its right, title or interest in and to the Relevant Borrower Payments;
- (j) the Lender is entitled to:
 - (i) allow the inspection of; and
 - (ii) provide,information and copies of records and documents to UK Export Finance, as required pursuant to its obligations under the Guarantee Agreement, including pursuant to

Clause 8.1 (*Information about Guaranteed Borrower Payments*) and Clause 8.2 (*Inspection*);

- (k) subject to the Legal Reservations, and as far as the Lender Team is aware (having made reasonable enquiries and complied with the Lender's policies and procedures), the obligations under each of the Finance Documents are legal, valid, binding on and enforceable against:
 - (i) each Borrower;
 - (ii) any Surety; and
 - (iii) each of the other obligors under any of the Finance Documents (however the term "obligors" is defined), which is a party to such Finance Document;
- (l) as far as the Lender Team is aware, having made reasonable enquiries and having complied with the Lender's policies and procedures:
 - (i) each Borrower;
 - (ii) the Supplier;
 - (iii) the Buyer;
 - (iv) any Surety; and
 - (v) each other obligor to the Finance Documents (however the term "obligor" is defined),

has obtained (and is maintaining in full force and effect) all Authorisations required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents and the Supply Contract, and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation and the applicable jurisdiction of each Finance Document and the Supply Contract;

- (m) subject to the Legal Reservations, the Finance Documents and the Guarantee Documents have been duly and validly executed and delivered by the Lender and the obligations expressed to be assumed by the Lender are legal, valid, binding and enforceable on the Lender;
- (n) the Lender can:
 - (i) freely Assign, its right, title and interest in and to any of the Relevant Borrower Payments to UK Export Finance; and
 - (ii) freely Transfer, its right, title and interest in and to any of the Relevant Borrower Payments to UK Export Finance and the Borrower has confirmed in writing it will promptly execute such Transfer upon the Lender's request; and

UK Export Finance will be entitled to exercise such transferred right, title and interest and its rights of subrogation, in each case without:

- (A) the need to obtain the consent of a Borrower, any Surety or other person or, where such consent is required, that consent has been obtained in writing; or
 - (B) needing to take any further actions (including, without limitation, to acquire consent, issue any notice, notarise or apostille any document, make any registration or payment of fees) other than those actions set out as Prescribed Steps or as set out in Clauses 11 (*Purchase of commitments or Loans*) or 13.3 (*Assignment of Guaranteed Borrower Payments*); and
- (o) the entry into the Finance Documents and the Guarantee Document, the obligations within such documents and all other related agreements do not conflict with:
- (i) any law or regulation applicable to the Lender or binding on the Lender's assets;
 - (ii) the Lender's constitutional documents;
 - (iii) any agreement or instrument binding upon the Lender or any of the Lender's assets; or
 - (iv) any order or judgment of any court or other agency of government applicable to the Lender.

7 General undertakings of the Lender

7.1 The Lender undertakes to UK Export Finance that, from the date of the Guarantee Letter until the Discharge Date has occurred and all of the Guaranteed Borrower Payments are irrevocably discharged in full:

- (a) it shall promptly obtain, comply with and do all that is necessary or desirable to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents and the Guarantee Documents;
- (b) it shall utilise its best endeavours to promptly obtain, comply with and do all that is necessary or desirable to maintain in full force and effect any Authorisation required under any applicable law or regulation to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation (and the applicable jurisdiction of each Finance Document and Guarantee Document) of each Finance Document and Guarantee Document, and promptly notify UK Export Finance in writing if it is unable to do so;
- (c) it shall not create or allow to subsist any Security or Quasi-Security over any of its right, title or interest in and to:
 - (i) any Guaranteed Borrower Payments; or
 - (ii) any Surety's obligations under the Finance Documents; and
- (d) other than as permitted pursuant to Clauses 11 (*Purchase of commitments or Loans*) or 15 (*Transferability*), it shall not enter into a single transaction or a series of

transactions to Dispose of any of its right, title or interest in and to:

- (i) any Guaranteed Borrower Payments; or
- (ii) any Surety's obligations under the Finance Documents.

7.2 The Lender undertakes to UK Export Finance that, promptly and as and when required during the Cover Period:

- (a) it shall take all such measures as are necessary or desirable to protect, preserve and enforce the rights, powers and discretions of the Lender and UK Export Finance under or in connection with the Finance Documents and any Guaranteed Borrower Payments;
- (b) it shall do nothing to prejudice or adversely affect the Lender's or UK Export Finance's rights against a Borrower or Surety under or in connection with any of the Finance Documents and any Guaranteed Borrower Payment;
- (c) it shall not take any action (or refrain from taking any action) if it knows (or should reasonably know) that taking (or refraining from taking) that action may prejudice or adversely affect (in any material respect) any right or interest of UK Export Finance under the Guarantee Agreement;
- (d) in relation to Clauses 8.2.3 and 8.2.4 (*Inspection*), the Lender shall:
 - (i) furnish such oral or written explanations of any Records (within the Lender's knowledge) as any of UK Export Finance's authorised representatives, employees or personnel (as the case may be) request; and
 - (ii) permit them to take copies of any of the Records which they request;
- (e) it shall comply with its policies and procedures, and with applicable law and regulation, in carrying out Lender Due Diligence; and
- (f) if (in relation to Lender Due Diligence) the Lender Team makes any material adverse finding, the Lender shall within five (5) Business Days:
 - (i) notify UK Export Finance of that finding; and
 - (ii) provide UK Export Finance with a reasonable level of detail (as determined by UK Export Finance) and supporting documentation regarding that finding.

7.3 The Lender shall not directly use the name of HM Government, Export Credits Guarantee Department or UK Export Finance, or refer to the existence of any of the Guarantee Documents, in connection with the raising of funds from any capital market, without the prior written consent of UK Export Finance.

8 Information undertakings

The undertakings in this Clause 8 remain in force from the date of the Guarantee Agreement for so long as:

- (a) any liabilities in relation to any Guaranteed Borrower Payment exist; or

(b) any actual or contingent obligation to pay any money by one Party to the other exists, and (in each case) has not been paid or discharged in full.

8.1 Information about Guaranteed Borrower Payments

8.1.1 The Lender shall, within ten (10) Business Days of a request from UK Export Finance, supply UK Export Finance with:

- (a) complete, certified copies of the executed Finance Documents;
- (b) any information relating to any Guaranteed Borrower Payments; and
- (c) use its best endeavours to provide any other information UK Export Finance requests,

in each case, in such form as notified by UK Export Finance from time to time.

8.1.2 The Lender will provide all Warranties in relation to any Guaranteed Borrower Payments within ten (10) Business Days of receipt of a written request from UK Export Finance.

8.1.3 The Lender shall, within five (5) Business Days, notify UK Export Finance if any of the Lender Team at any time becomes aware that:

- (a) any event of default (howsoever described) has occurred under any of the Finance Documents;
- (b) a Borrower or any Surety has failed to pay any of its payment obligations to the Lender on its due date;
- (c) any material breach has occurred under the Supply Contract or one or more circumstances are in existence that the Lender considers are reasonably likely to lead to a Borrower Default and/or a Claim;
- (d) there has been a misrepresentation by the Supplier or any breach of a Warranty;
- (e) any Applicable Loss has occurred; or
- (f) any:
 - (i) fraud has (or may have) occurred in relation to any Borrower Payment, unless the Lender is prevented by law or regulation from notifying UK Export Finance of such fraud;
 - (ii) matter in relation to any Guaranteed Borrower Payment exists or has arisen, that results at any time in the Lender's requirements as described in the definition of "Lender Due Diligence" not being satisfied in full; or
 - (iii) material breach of any of the Lender's policies and procedures by the Lender in relation to any aspect of the Guaranteed Facility Agreement or any Guaranteed Borrower Payment,

and, in the case of each of sub-paragraphs (f)(i) to (iii), above provide UK Export Finance with details of any investigative, enforcement or remedial action taken or intended to be taken by the Lender to address such situation.

8.2 Inspection

8.2.1 Upon written notice given by UK Export Finance at any time, the Lender shall (within ten (10) Business Days) allow any person(s) specified by UK Export Finance to visit any premises of the Lender during normal business hours to inspect and take copies of any records at or accessible from those premises relating to any of the Guaranteed Borrower Payments.

8.2.2 The Lender shall provide all reasonable assistance to UK Export Finance in relation to any such inspection.

8.2.3 Without prejudice to Clause 8.2.1 above, the Lender shall permit any:

- (a) UK Export Finance employee; or
- (b) person authorised by UK Export Finance (approved by the Lender, such approval not to be unreasonably withheld or delayed),

to visit, during business hours, any of the Lender's premises where any Administration Records are kept, or UK Export Finance believes may be kept, for the sole purpose of inspecting, auditing and taking copies of any Administration Records, provided that UK Export Finance gives the Lender at least ten (10) Business Days' notice of that required visit.

8.2.4 The Lender shall permit any:

- (a) UK Export Finance employee; or
- (b) person authorised by UK Export Finance (approved by the Lender, such approval not to be unreasonably withheld or delayed),

to visit, during business hours, any of the Lender's premises where any Mandate Records are kept, or UK Export Finance believes may be kept, in order to inspect any Mandate Records to the extent necessary to verify the accuracy of any statements made, and/or any information given, by the Lender in the Guarantee Agreement, provided that UK Export Finance gives the Lender at least ten (10) Business Days' notice of that required visit.

8.3 Document retention

Unless otherwise agreed with UK Export Finance, the Lender shall retain all its records relating to (or in connection with) the Guaranteed Facility Agreement until seven (7) years after the Discharge Date or longer if so requested by UK Export Finance.

8.4 No misleading information

The Lender shall ensure that any information provided by it to UK Export Finance in relation to any of the Finance Documents, the Guarantee Documents or any Guaranteed Borrower Payment was, as far as the Lender Team was aware at that time, having made reasonable enquiries and having complied with the Lender's policies and procedures, true and accurate in all material respects as at the date it was provided or as at the date (if any) as of which it is stated.

9 Amendments

9.1 Changes to the Finance Documents or Supply Contract

9.1.1 If the Lender wishes to:

- (a) make a material change to any Finance Document; or
- (b) consent to a material change to the Supply Contract,

it must request UK Export Finance's prior consent to approve the change by delivering a Change Request.

9.1.2 Upon UK Export Finance's request, the Lender must provide UK Export Finance with any information UK Export Finance requests in relation to any Change Request.

9.1.3 UK Export Finance may approve (without conditions), approve (with conditions) or reject the Change Request within ten (10) Business Days (or such number of Business Days as UK Export Finance notifies the Lender in writing it requires) by notifying the Lender in writing accordingly.

9.1.4 If UK Export Finance approves the Change Request with conditions, the Lender may accept those conditions by notifying UK Export Finance in writing or not approve the change in respect of which the Change Request was submitted.

9.1.5 Where:

- (a) UK Export Finance notifies the Lender of its approval (without conditions) pursuant to Clause 9.1.2 above; or
- (b) the Lender gives UK Export Finance notice pursuant to Clause 9.1.4 above that it accepts the conditions to UK Export Finance's approval,

the Lender may proceed with all (but not part) of the relevant changes covered by the relevant Change Request, subject to compliance with UK Export Finance's conditions (if any).

9.2 Change notifications

The Lender shall, within ten (10) Business Days of any change referred to in Clause 9.1 (*Changes to the Finance Documents or Supply Contract*) taking effect, notify UK Export Finance of such change.

9.3 Unauthorised changes

If the Lender makes any change contemplated in Clause 9.1.1 (*Changes to the Finance Documents or Supply Contract*) which:

- (a) is not previously approved by UK Export Finance under Clause 9.1.3 (*Changes to the Finance Documents or Supply Contract*); or
- (b) is so accepted, but any conditions set by UK Export Finance pursuant to Clause 9.1.3 (*Changes to the Finance Documents or Supply Contract*) are not complied with,

any Guaranteed Borrower Payments shall cease, from the date of such change, to be Guaranteed Borrower Payments, unless UK Export Finance (acting in its sole discretion) confirms in writing that such Borrower Payments shall constitute Guaranteed Borrower Payments.

9.4 Changes to the Guarantee Documents

Any term of a Guarantee Document may be amended or waived only with the signed written agreement of UK Export Finance and the Lender and any such amendment or waiver will be binding on all Parties.

10 Enforcement action and Recoveries

10.1 Lender enforcement action

Prior to submitting a Claim to UK Export Finance under the Guarantee Agreement, the Lender must have made demand for relevant Guaranteed Borrower Payment(s) from a Borrower and any Surety. Nothing in this Clause 10.1 requires the Lender to commence legal proceedings prior to submitting the relevant Claim.

10.2 Enforcement action

In relation to any Borrower Payment:

- (a) the Lender shall comply with any instructions provided by UK Export Finance in respect of the Lender's exercise of its rights and remedies against a Borrower or any Surety in respect of such Borrower Payment and the Finance Documents, including, if required, making a demand in respect of such Borrower Payment and taking such enforcement and other action within its power and making such claims against a Borrower, any Surety or any other person to obtain such recoveries as UK Export Finance requires (noting for completeness that other than demanding payment under the Finance Documents in accordance with Clause 10.1 (*Lender enforcement action*) these additional actions are not pre-conditions to the Lender submitting the relevant Claim);
- (b) other than demanding payment under the Finance Documents in accordance with Clause 10.1 (*Lender enforcement action*), the Lender will not take legal action to enforce the liabilities of a Borrower or any Surety in respect of any Borrower Payment or take other legal proceedings in connection with obtaining such recoveries or do, or fail to do, anything which (in either case) may have the effect of prejudicing, extinguishing, waiving, releasing or reducing the right, remedies or recoveries of the Lender under or in connection with the Finance Documents, without the prior written consent of UK Export Finance; and
- (c) the Lender will promptly supply all necessary information required by UK Export Finance to assist it to provide instructions or consents under this Clause 10.

10.3 Sharing Recovery costs

In relation to a Claimed Amount, to the extent the Lender does not deduct its reasonable costs and expenses incurred by the Lender in taking any reasonable enforcement or recovery action from any sums collected, received or recovered by it before it pays UK Export Finance any amount pursuant to Clause 10.4 (*Payment of Recoveries*) (as contemplated by the

definition of "Recovery"), UK Export Finance shall reimburse the Lender within ten (10) Business Days of demand at any time any reasonable costs and expenses incurred by the Lender (and approved in advance in writing by UK Export Finance) in taking any enforcement or recovery action, save such reimbursement obligations shall not apply to costs and expenses:

- (a) incurred before a Borrower Default which led to the Claim;
- (b) incurred in circumstances where the Lender was not in compliance with its obligations under Clause 12.1 (*Duty of care*) or Clause 12.2 (*Duty to minimise losses and maximise Recoveries*);
- (c) that are internal costs and expenses; or
- (d) that have not been the subject of any demand for reimbursement from a Borrower or any Surety or are not due and owing from a Borrower or any Surety,

and, to the extent that the Lender shall have deducted any excess amount or any amount for costs and expenses listed in (a) to (d), the Lender shall promptly notify UK Export Finance and pay UK Export Finance an amount equal to any such excess and such listed costs and expenses.

10.4 Payment of Recoveries

10.4.1 The Lender undertakes to UK Export Finance that it will, after UK Export Finance has made any payment pursuant to a Claim:

- (a) under Clause 4 (*Guarantee and interest on Defaulted Amounts*); or
- (b) of expenses further to Clause 10.3 (*Sharing Recovery costs*),

pay to UK Export Finance (when received), in such manner as UK Export Finance shall from time to time direct the Lender in writing, any Recoveries in respect of or in relation to the Defaulted Amount in such Claim, or the reasonable costs and expenses paid pursuant to Clause 10.3 (*Sharing Recovery costs*).

10.4.2 Following payment of a Claim by UK Export Finance, if the Lender receives any Recoveries, the Lender shall apply such Recoveries in satisfaction of the Defaulted Amount paid pursuant to that Claim, in priority to discharging other amounts.

10.5 Adjustments

10.5.1 Notwithstanding any other provision of Clause 4 (*Guarantee and interest on Defaulted Amounts*), the Lender shall notify UK Export Finance as soon as practicable in writing:

- (a) if at any time during a Default Payment Period, the Lender receives, recovers or realises any sum, including where the collection, receipt or recovery is by way of set-off or similar, in relation to the Guaranteed Facility Agreement (a **Default Payment Period Recovery**) and how such sum is applied and the amount of any Defaulted Amount still outstanding following such Default Payment Period Recovery; and (separately)

- (b) if at any time there is a Default Payment Period Recovery, of any amount of Default Interest that is paid to the Lender pursuant to that Default Payment Period Recovery; and (separately)
- (c) of the amount of any Excess Interest (defined below) that has been received, recovered or realised by the Lender which has not previously been taken into account in the calculation of any sum payable by UK Export Finance under the Guarantee Agreement.

10.5.2 For the purposes of this Clause 10.5, **Excess Interest** means the sum by which any Default Interest that relates to any Defaulted Amount, and which has been received, recovered or realised by the Lender, exceeds the amount of Delay Interest paid or payable by UK Export Finance in respect of that Defaulted Amount.

10.5.3 If any Excess Interest is received, recovered or realised by the Lender:

- (a) any liability of UK Export Finance under Clauses 4.2.1 and 4.2.2 (*Interest on Defaulted Amounts*) arising during a relevant Default Payment Period subsequent to a Default Payment Period Recovery shall be reduced by the amount of the relevant Excess Interest;
- (b) if the relevant Excess Interest exceeds such liability of UK Export Finance:
 - (i) the amount of the Excess Interest may be applied against any subsequent liability of UK Export Finance to make payments under Clause 4.1 (*Guarantee*) in relation to the Guaranteed Facility Agreement; or
 - (ii) UK Export Finance may demand the amount of the Excess Interest received, recovered or realised by the Lender be paid to UK Export Finance and the Lender will pay such amounts within five (5) Business Days of such demand; and
- (c) if all or any part of the Excess Interest is not applied as provided in paragraphs (i) and (ii) above before all liability of UK Export Finance to make payments in relation to the Guaranteed Facility Agreement under Clause 4 (*Guarantee and interest on Defaulted Amounts*) is discharged, the balance of the Excess Interest received, recovered or realised by the Lender shall be paid to UK Export Finance by the Lender on the date of such discharge.

10.5.4 Save to the extent that UK Export Finance has exercised its powers under Clause 11.1 (*Transfer of commitment or purchase of Loans at UK Export Finance's option*) and unless UK Export Finance and the Lender agree otherwise, for the purpose of Clause 4 (*Guarantee and interest on Defaulted Amounts*), the repayment of the Loans under the Guaranteed Facility Agreement will be deemed to continue to fall due in accordance with any specified repayment schedule under the Guaranteed Facility Agreement and interest shall be deemed to continue to accrue and to be payable in accordance with the scheduled interest provisions of the Guaranteed Facility Agreement.

10.5.5 Unless UK Export Finance and the Lender agree otherwise, Clause 10.5.4 shall apply notwithstanding the Lender sending to the Borrower a notice of acceleration under the Guaranteed Facility Agreement or the occurrence of an event of mandatory prepayment.

10.5.6 If after UK Export Finance has made a payment pursuant to Clause 4.1 (*Guarantee*) further to an Increased Cost Payment Default and a Borrower and the Lender subsequently agree that a lower amount was due from a Borrower in respect of the relevant Increased Cost Payment than the amount of the payment made in respect of that Increased Cost Payment by UK Export Finance under Clause 4.1 (*Guarantee*), the Lender agrees to promptly repay UK Export Finance an amount equal to:

- (a) the difference between both such payments; and
- (b) any interest paid by UK Export Finance further to Clause 4.2 (*Interest on Defaulted Amounts*) in respect of such difference as described in paragraph (a) above.

10.5.7 If a Recovery is made after notification by the Lender pursuant to Clause 4.4(i) (*Validity of Claims*) but prior to the relevant Default Payment Date, the Lender shall, as soon as practicable following such Recovery:

- (a) notify UK Export Finance in writing of the details of such Recovery together with the revised amount of interest payable by UK Export Finance pursuant to Clause 4.2.2 (*Interest on Defaulted Amounts*) as at that date; and
- (b) immediately refund to UK Export Finance any excess amounts received by the Lender.

11 Purchase of commitments or Loans

11.1 Transfer of commitment or purchase of Loans at UK Export Finance's option

11.1.1 UK Export Finance may, at any time on or after giving written notice to the Lender of not fewer than twenty (20) Business Days prior to a Repayment Date, purchase or (subject to the Lender completing satisfactory "know your customer" diligence in relation to the proposed nominee, to a person or persons nominated by UK Export Finance) procure the purchase by its nominee, through UK Export Finance, on the Repayment Date specified in the written notice, all or any part of the Lender's:

- (a) outstanding undrawn commitment; and/or
- (b) Loans,

as specified in such notice at par by way of Transfer.

11.1.2 The Lender shall, on the Repayment Date set out in such notice, Transfer (at par) such Loans or, as the case may be, such part of such Loans identified in the notice together with all unpaid interest and other amounts (including, but not limited to, break costs) accrued under the Guaranteed Facility Agreement up to the date of such transfer to UK Export Finance or New UKEF Lender(s) and assign to UK Export Finance its corresponding rights under any Security and against any Surety and/or if so specified in such notice its rights and obligations in respect of its undrawn commitment, as the case may be and the Lender shall within ten (10) Business Days take any step and execute any documentation in relation to, or to give effect to, such Transfer and assignment as UK Export Finance requires, including:

- (a) executing a Transfer in substantially the same form as set out in Schedule 3 (*Form of Transfer*) and using all reasonable endeavours to facilitate the Borrower's execution of the same;

- (b) providing reasonable evidence of the Lender's corporate authority and due execution;
- (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*)

and Clause 12.2.2, in relation to each Guaranteed Borrower Payment, the Lender shall use reasonable efforts to:

- (a) prevent or minimise Applicable Losses; and
- (b) maximise the amount of any Recoveries.

12.2.2 Nothing in any Guarantee Document shall oblige the Lender to exercise any rights of set-off, enforcement rights in relation to any Security or Quasi-Security or similar rights it may have against a Borrower or any Surety.

13 Subrogation and Assignment of Guaranteed Borrower Payments

13.1 Subrogation

In addition to all rights of subrogation arising by operation of any applicable law, to the extent that UK Export Finance pays a Claim, UK Export Finance shall be subrogated to:

- (a) all of the Lender's rights of recovery against a Borrower, any Surety or any other person in respect of any Guaranteed Borrower Payments and any Security in respect of the same;
- (b) all of the Lender's right, title and interest in and to, and its right to receive, all or part of the payment obligations which constitute any Guaranteed Borrower Payments and any Security in respect of the same; and
- (c) all of the Lender's rights against a Borrower or any Surety pursuant to the Finance Documents in respect of any Guaranteed Borrower Payments and any Security in respect of the same.

13.2 Subrogation free of encumbrances

Such rights of subrogation shall be free and clear of all claims, defences, counterclaims, rights of set-off and any Security or encumbrances of or in favour of the Lender and shall include all the Lender's right, title and interest in the Guaranteed Borrower Payments and any Security for those Guaranteed Borrower Payments corresponding to the Claim (including any corresponding rights, title and interest in and to the Finance Documents and against any Surety, including (but not limited to) any rights to Default Interest in relation to such Guaranteed Borrower Payments).

13.3 Assignment of Guaranteed Borrower Payments

If UK Export Finance has paid a Claim made in relation to any Guaranteed Borrower Payments, UK Export Finance may require the Lender to Assign to UK Export Finance (or, subject to the Lender completing satisfactory "know your customer" diligence in relation to the proposed assignee, to a person or persons nominated by UK Export Finance) all the Lender's right, title and interest in and to, and/or relating to, the Guaranteed Borrower Payments corresponding to the Claim (including any corresponding rights, title and interest in and to the Finance Documents and against any Surety, including (but not limited to) any rights to Default Interest in relation to such Guaranteed Borrower Payments), and the Lender shall within ten (10) Business Days take any step and execute any documentation in relation to, or to give effect to, such assignment as UK Export Finance requires, including:

- (a) executing an Assignment in substantially the same form as set out in Schedule 2 (*Form of Assignment*);
- (b) providing reasonable evidence of the Lender's corporate authority and due execution;
- (c) effecting any registrations and carrying out any other relevant formalities; and
- (d) giving notice to the relevant Borrower, any Surety or any other person.

13.4 Turnover

Following the occurrence of a Requirement for Assignment in relation to any Guaranteed Borrower Payments, the Lender shall within ten (10) Business Days pay UK Export Finance that part of any Recovery which corresponds to the Assigned Rights, and until such payment:

- (a) hold such sum for UK Export Finance in a segregated account identified with UK Export Finance's name; or
- (b) enter into such other arrangement in relation to such sum as UK Export Finance requests, provided that the Lender shall not be obliged to enter into any other arrangement which would breach the Lender's generally applicable policies and procedures.

13.5 Cooperation

Following the occurrence of a Requirement for Assignment in relation to any Guaranteed Borrower Payments, notwithstanding any other provision of the Finance Documents, the Lender shall:

- (a) cooperate fully with UK Export Finance and take any reasonable step or execute any document which UK Export Finance requests from time to time; and
- (b) provide UK Export Finance with any information and copy documentation which UK Export Finance requests from time to time,

in relation to making or attempting to make any Recoveries in relation to the Assigned Rights (or any of them).

13.6 Recovery costs

Following the occurrence of a Requirement for Assignment in relation to any Guaranteed Borrower Payments, notwithstanding any other provision of the Guarantee Agreement:

- (a) UK Export Finance shall, within ten (10) Business Days of demand from time to time, reimburse the Lender any reasonable costs and expenses it incurs (excluding internal costs and expenses of the Lender) in complying with Clause 13.5 (*Cooperation*); and
- (b) UK Export Finance shall bear its own costs in relation to making or attempting to make any Recoveries in relation to the Assigned Rights (or any of them).

14 Suspension and Termination

14.1 Suspension

14.1.1 Following:

- (a) a Termination Event; or
- (b) a material breach by the Lender, Borrower, Buyer, Surety or Supplier of:
 - (i) any Guarantee Document;
 - (ii) the Supply Contract; or
 - (iii) any Finance Document,

UK Export Finance may, by written notice to the Lender, suspend its guarantee obligations (a **Suspension Notice**). This suspension shall continue until UK Export Finance notifies the Lender in writing that such suspension has ceased (a **Cessation Notice**).

14.1.2 Any Borrower Payments in respect of any Loans advanced after the date of a Suspension Notice and prior to UK Export Finance issuing a Cessation Notice in relation to the relevant Suspension Notice will not be Guaranteed Borrower Payments (such payments being **Suspension Borrower Payments**) and any Claims in respect of the same will not be Valid Claims (such claims being **Suspension Claims**).

14.1.3 A Suspension Notice shall have no effect on any Guaranteed Borrower Payments that have been disbursed prior to the issuance of the Suspension Notice.

14.2 Termination

14.2.1 If one or more of the following events has occurred (each a **Termination Event**):

- (a) a Borrower, the Buyer or any Surety has failed to make a payment when due or within any originally applicable grace period, in respect of the Supply Contract or a Finance Document;
- (b) there is introduced any restriction having the force of law which, in either the Lender's or UK Export Finance's opinion, would prevent:
 - (i) a Borrower, the Buyer or any Surety from complying with any payment obligations under any of the Finance Documents or Supply Contract; or
 - (ii) the performance of any of the Guarantee Documents by any party thereto;
- (c) a Borrower, the Supplier, the Buyer any Surety or the Lender:
 - (i) has had a receiving order made against it or an order has been made for the administration of its affairs;
 - (ii) has been adjudicated insolvent or an order has been made for it to be wound up;

- (iii) has been dissolved or disestablished or has suffered the confiscation or sequestration of all or a significant part of its assets; or
- (iv) had steps taken to lead to any of the same or to a result of like effect;
- (d) war, civil war, or a deterioration in the financial or political position of the country in which a Borrower, the Buyer, the Supplier, any Surety or the Lender is incorporated or operates which means a Borrower, the Buyer, the Supplier, any Surety or the Lender would be unable to meet its respective obligations under any of the Finance Documents, Supply Contract or any of the Guarantee Documents;
- (e) if:
 - (i) any statement made to UK Export Finance by the Supplier in relation to the Supply Contract, or the basis on which the Guarantee Agreement was entered into, was a misrepresentation; or
 - (ii) any information given in a Warranty by the Supplier or Lender is incorrect or untrue in any respect considered material by UK Export Finance; or
- (f) if any statement or information provided by the Lender to UK Export Finance in relation to any of the Guarantee Documents, the Finance Documents or the Parties' entry into the Guarantee Agreement, was a misrepresentation, incorrect or untrue, in any material respect as at the date it was provided or as at the date (if any) as of which it was stated,

UK Export Finance may, by written notice to the Lender, terminate its guarantee obligations and not guarantee any future Borrower Payments (a **Termination Notice**).

14.2.2 Any Borrower Payments in respect of any Loans advanced after the date of a Termination Notice will not be Guaranteed Borrower Payments (such payments being **Post-Termination Borrower Payments**) and any Claims in respect of the same will not be Valid Claims (such payments being **Post-Termination Claims**).

14.2.3 Except in relation to a notification in relation to Clause 14.2.1(f) above, a Termination Notice shall have no effect on any Guaranteed Borrower Payments that have been disbursed prior to the issuance of the Termination Notice.

14.2.4 Following a notification in relation to Clause 14.2.1(f) above where:

- (a) the statement or information provided by the Lender originated from, or was authored by, the Lender or its Affiliates; and
- (b) any of the Lender Team was aware when the information was provided or stated that the statement or information:
 - (i) was a misrepresentation; or
 - (ii) was untrue or incorrect; or
- (c) the Lender Team had failed to:
 - (i) make reasonable enquiries; or

- (ii) comply with the Lender's policies and procedures, before providing the statement or information,

and (without prejudice to any rights and remedies at law to which UK Export Finance may be entitled) UK Export Finance may, at any time upon written notice to the Lender, immediately deem all existing Guaranteed Borrower Payments as Post-Termination Borrower Payments and the Lender must immediately refund to UK Export Finance:

- (d) an amount equal to the aggregate of the net sums which UK Export Finance has previously paid to the Lender pursuant to Clause 4 (*Guarantee and interest on Defaulted Amounts*); and
- (e) any amount which UK Export Finance certifies it has incurred by way of interest costs expenses or legal fees in respect of the Guarantee Documents and the Finance Documents (or any of them).

15 Transferability

15.1 Transfers by the Lender

15.1.1 Subject to Clauses 15.1.2 and 15.2 (*Conditions of transfer*) below, the Lender (the **Existing Lender**) may transfer (whether by novation, or by assignment of rights and assumption of obligations) all (but not part only) of its rights and obligations under the Finance Documents and the relevant Guarantee Documents to a New Lender.

15.1.2 The Lender may not transfer, novate or assign any of its rights or obligations under the Finance Documents or the Guarantee Documents without the prior written consent of UK Export Finance.

15.2 Conditions of transfer

A transfer will be effective only if:

- (a) the prior written consent of UK Export Finance has been obtained by the Existing Lender;
- (b) the procedures set out in:
 - (i) Clause 15.4 (*Procedure for transfer*); and
 - (ii) the Finance Documents,have been complied with;
- (c) where a transfer is made to a New Lender incorporated overseas which does not have a branch in the UK, such New Lender irrevocably appoints an agent for service of process in relation to any proceedings before the English courts in connection with the Guarantee Documents, that is confirmed in advance in writing by UK Export Finance as acceptable; and
- (d) the New Lender has provided a Lender Letter of Undertaking to UK Export Finance, issued by it in its capacity as New Lender and in form and substance confirmed in writing by UK Export Finance as acceptable.

15.3 Transfer fee

- 15.3.1 The Existing Lender shall procure that the New Lender shall, on or before the date upon which a transfer takes effect and it becomes party to the Guarantee Documents, pay to UK Export Finance a transfer fee as agreed with UK Export Finance.
- 15.3.2 Clause 15.3.1 above shall not apply if the transfer was requested by UK Export Finance under the Guarantee Documents.

15.4 Procedure for transfer

15.4.1 Subject to the conditions set out in Clause 15.2 (*Conditions of transfer*), a transfer of the Guarantee Agreement will be effected in accordance with this Clause 15.4 upon the execution by UK Export Finance of a Guarantee Transfer Certificate, delivered to it by the Existing Lender confirming, among other things, that the New Lender will assume the same obligations to:

- (a) UK Export Finance (in respect of the Guarantee Documents); and
- (b) each Borrower (in respect of the Finance Documents),

as it would have been under if it had been the Lender at the date of execution of, respectively, the Guarantee Documents and the Finance Documents.

15.4.2 Notwithstanding the other provisions of this Clause 15, UK Export Finance shall only execute a Guarantee Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws or internal policies in relation to the transfer to such New Lender.

15.4.3 On the Guarantee Transfer Date:

- (a) UK Export Finance and the Existing Lender shall be released from further obligations towards one another under the Guarantee Documents and their respective rights against one another under the Guarantee Documents shall be cancelled (being the **Discharged Guarantee Rights and Obligations**); and
- (b) UK Export Finance and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Guarantee Rights and Obligations only insofar as that UK Export Finance and the New Lender have assumed and/or acquired the same in place of UK Export Finance and the Existing Lender.

15.4.4 UK Export Finance confirms that the terms of this Guarantee Agreement shall continue in full force and effect and it shall not be released by any transfer by the Existing Lender in accordance with this Guarantee Agreement.

16 Business Days

Any payment under a Guarantee Document which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

17 Set-off

Both UK Export Finance and the Lender may set off any undisputed matured obligation due from one of them to the other under any of the Guarantee Documents against any undisputed matured obligation owed by them to the other Party under any of the Guarantee Documents, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Party setting off the amounts may convert either obligation at the Spot Rate determined by UK Export Finance for the purpose of the set-off.

18 Communications

18.1 Claim Notices

18.1.1 The Lender must deliver a Claim Notice substantially in the form set out in Schedule 1 (*Claim Notice*) or, if UK Export Finance has specified a different form to the Lender (with at least ten (10) Business Days' notice), in substantially that most recent form, and executed on behalf of the Lender by one or more authorised signatories.

18.1.2 To effect delivery, a Claim Notice must be posted to the address set out in Clause 18.3 (*Addresses*), and/or emailed to the following address:

claims@ukexportfinance.gov.uk,

or such other address as UK Export Finance specifies from time to time to the Lender with at least ten (10) Business Days' notice.

18.2 Communications in writing

Any communication or notice to be made under or in connection with the Guarantee Documents shall, unless otherwise agreed by UK Export Finance, be made in writing and, unless otherwise stated, may be made by letter or email (and, unless expressly agreed otherwise by the Parties, to avoid doubt, not by fax).

18.3 Addresses

18.3.1 The address or email (and the department or officer, if any, for whose attention the communication is to be made) of UK Export Finance for any communication, notice or document to be made or delivered under or in connection with any of the Guarantee Documents is as follows:

UK Export Finance

Address: UK Export Finance

1 Horse Guards Road
London
SW1A 2HQ

Email: UPP@ukexportfinance.gov.uk

Attention: Head of UPP Division

or any substitute address, email or department or officer as UK Export Finance notifies to the Lender in writing by not less than ten (10) Business Days' notice.

18.3.2 The address or email (and the department or officer, if any, for whose attention the communication is to be made) of the Lender for any communication, notice or document to be made or delivered to the Lender under or in connection with any of the Guarantee Documents shall be as confirmed in the Guarantee Letter.

18.4 Delivery

Communications served in accordance with this Clause 18 will be deemed served on the Business Day of delivery provided delivery is before 5.00pm on a Business Day. Otherwise delivery will be deemed to occur on the next Business Day. An email will be deemed delivered when sent unless an error message is received.

18.5 English language

18.5.1 Any communication or notice given under (or in connection with) any of the Guarantee Documents must be in English.

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

- (a) in English; or
- (b) if not in English, and if so required by UK Export Finance, 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.

19 Day count convention

Any interest, commission or fee accruing under a Guarantee Document will accrue from day to day, and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days (except when the currency of the Defaulted Amount is one in respect of which interest is normally calculated using a year of three hundred and sixty five (365) days, in which case it shall accrue from day to day on that basis).

20 Partial invalidity and breach of law

20.1 Partial invalidity

If, at any time, any provision of a Guarantee Document is or becomes illegal, invalid or unenforceable in any respect under any law of any relevant 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.

20.2 No breach of law

Without prejudice to Clause 22.6 (*No obligation to act unlawfully*), no provision of a Guarantee Document shall oblige either Party to act unlawfully, in breach of any requirement of any court or any regulatory body, or contrary to any regulation in relation to the supply of information.

21 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of either Party, any right or remedy under a Guarantee Document shall operate as a waiver of any such right or remedy

or constitute an election to affirm any of the Guarantee Documents. No election to affirm any Guarantee Document on the part of either Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Guarantee Document are cumulative and not exclusive of any rights or remedies provided by law.

22 Confidentiality and Records

22.1 Confidential Information

Subject to Clause 22.2 (*Disclosure by UK Export Finance*), UK Export Finance will:

- (a) treat all Confidential Information and Guarantee Confidential Information it receives as confidential and not disclose it to any other person without the prior written permission of the Lender; and
- (b) not use or exploit the Lender's Confidential Information or Guarantee Confidential Information in any way except for the purposes related to the Guarantee Agreement.

22.2 Disclosure by UK Export Finance

Notwithstanding Clause 22.1 (*Confidential Information*), UK Export Finance may disclose Confidential Information and/or Guarantee Confidential Information, which it receives from the Lender:

- (a) to UK Export Finance's employees, agents, consultants, advisers and contractors, any of UK Export Finance's insurers and/or reinsurers and any other party with whom UK Export Finance may potentially enter into insurance or reinsurance arrangements (including their agents, brokers and consultants);
- (b) to any successor body or company to which UK Export Finance transfers or proposes to transfer all or any part of its business;
- (c) to any person to whom information is required or requested to be disclosed:
 - (i) by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (ii) in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or
 - (iii) by an international organisation of which UK Export Finance or the United Kingdom is a member;
- (d) to any other UK government department and otherwise to the extent that UK Export Finance deems disclosure to be necessary or appropriate in connection with carrying out its public functions and duties;
- (e) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which UK Export Finance has used its resources;

- (f) to the Serious Fraud Office, the National Crime Agency or any other governmental authority in accordance with UK Export Finance's financial crimes compliance policies, where UK Export Finance has reasonable grounds to believe that any other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (g) publishing in UK Export Finance's annual report (on its website or elsewhere), provided that the disclosure is limited to: the details of the names of the Buyer and the Supplier and the country in which the Supply Contract is to be performed, a short description of the items supplied under the Supply Contract, the type and amount of UK Export Finance support provided and the potential environmental and/or social impact category that UK Export Finance has assigned to the Supply Contract; or
- (h) to any person with the consent of the Lender (such consent not to be unreasonably withheld or delayed).

22.3 UK Export Finance Guarantee Agreement

The Lender may disclose the Guarantee Agreement (or any of its constituent parts) to any person to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under the Guarantee Agreement without any prior consent of UK Export Finance.

22.4 Freedom of information

22.4.1 Each Party acknowledges that UK Export Finance is subject to the requirements of the Information Legislation, and will:

- (a) provide all necessary assistance and cooperation, as reasonably requested by UK Export Finance, to enable UK Export Finance to comply with its obligations under the Information Legislation;
- (b) transfer to UK Export Finance all Requests for Information relating to the Guarantee Agreement, Supply Contract or the Finance Documents that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
- (c) provide UK Export Finance with a copy of all information held (or deemed to be held) by UK Export Finance requested in the Request for Information which is in its possession or control in the form that UK Export Finance requires within five (5) Business Days (or such other period as UK Export Finance may reasonably specify) of UK Export Finance's request for such information; and
- (d) not respond directly to a Request for Information, unless authorised in writing to do so by UK Export Finance.

22.4.2 Each Party acknowledges that UK Export Finance may be required under the Information Legislation to disclose information concerning any Party (including Confidential Information and commercially sensitive information) without consulting or obtaining consent from that Party. Notwithstanding this, if UK Export Finance receives a request under the Information Legislation to disclose information concerning any Party, UK Export Finance will endeavour, in accordance with any relevant guidance issued under the Information Legislation, and to the extent that it is lawful for UK Export Finance to do so, to:

- (a) prior to the making of a disclosure pursuant to the Information Legislation, provide the relevant Party with details of the request received and give that Party an opportunity to make representations on the applicability of any exemption in the Information Legislation in relation to the information which has been requested;
- (b) consider any such representations received from that Party; and
- (c) if UK Export Finance determines that disclosure pursuant to the Information Legislation is required, advise that Party of the scope and content of any disclosure in advance of disclosing that information.

22.4.3 UK Export Finance will be responsible for determining in its absolute discretion whether any information relating to any Party is exempt from disclosure in accordance with the Information Legislation.

22.5 Entire agreement

This Clause 22 constitutes the entire agreement between the Parties in relation to the obligations of UK Export Finance under the Guarantee Document regarding Guarantee Confidential Information and Confidential Information and supersedes any previous agreement, whether express or implied, regarding Guarantee Confidential Information and Confidential Information.

22.6 No obligation to act unlawfully

Nothing in this Clause 22, or in any other provision of the Guarantee Agreement relating to the supply of information, obliges either Party to act:

- (a) unlawfully;
- (b) in breach of any requirement of any regulatory or investigatory body; or
- (c) in breach of any duty of confidence,

save that the Lender shall ensure that there is no contractual duty of confidentiality binding on it (including in any of the Finance Documents) that would prevent or restrict it from providing documents and information to UK Export Finance concerning any aspect of the Finance Documents or any Guaranteed Borrower Payments.

23 Amendments in writing

No purported amendment to the terms of any Guarantee Document shall be effective unless recorded in writing and signed on behalf of the Parties.

24 Counterparts

Each Guarantee 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 Guarantee Document.

25 Governing law

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

26 Enforcement

26.1 Jurisdiction

- 26.1.1 The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with any of the Guarantee Agreement (including a dispute relating to the existence, validity or termination of any of the Guarantee Agreement or any non-contractual obligation arising out of or in connection with any of the Guarantee Agreement) (a **Dispute**).
- 26.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

26.2 Service of process

26.2.1 If the Lender is:

- (a) incorporated; or
- (b) has its centre of main interest,

in a jurisdiction outside England and Wales, it will irrevocably appoint an agent for service of process in relation to any proceedings before the English courts in connection with any Guarantee Document and provide proof of such appointment (to the reasonable satisfaction of UK Export Finance).

- 26.2.2 The Lender agrees that, following such appointment, the failure by an agent for service of process to notify the Lender of the process will not invalidate the proceedings concerned.
- 26.2.3 Without prejudice to any other mode of service allowed under any relevant law, any Service Document relating to proceedings before the English courts may be served on the Lender at its agent for service of process or otherwise at the applicable address under Clause 18 (*Communications*). That service may be made by pre-paid first class recorded delivery post or any other method allowed by law.
- 26.2.4 If the Lender wishes to change its address for service to a different address in England or Wales, it may do so by giving UK Export Finance at least twenty (20) Business Days' written notice of its new address for service.
- 26.2.5 In this Clause, **Service Document** means any claim form, application notice, judgment, order or other notice of legal process relating to the Guarantee Agreement.
- 26.2.6 If any person appointed as an agent of the Lender for service of process is unable (for any reason) to act as agent for service of process, the Lender shall within ten (10) Business Days appoint another agent (on terms acceptable to UK Export Finance). Failing this, UK Export Finance may appoint another agent of the Lender for this purpose.

Schedule 1 – Claim Notice

From: **[**insert name of Lender**]** (the Lender)¹

To: **The Secretary of State acting by the Export Credits Guarantee Department operating as UK Export Finance (UK Export Finance)**

Date: **{**}**

CLAIM NOTICE

Dear Addressee,

Guarantee Letter dated [insert] with reference number [insert Guarantee Letter reference number] incorporating the UKEF Guarantee Standard Terms and Conditions (together the Guarantee Agreement) between the Lender and UK Export Finance

1. We refer to the Guarantee Agreement. This is a Claim Notice.
2. Pursuant to clause 4 (*Guarantee and interest on Defaulted Amounts*) of the Guarantee Agreement, we hereby request that UK Export Finance pays us the following sum of **{**insert currency and amount**}** which we confirm corresponds to Applicable Losses in relation to the following Facility Agreement:

{insert full details of the guaranteed transaction and the Applicable Losses**}**
3. We confirm the relevant Guaranteed Borrower Payment, in relation to which a Borrower Default has occurred, was due on [insert date].

For and on behalf of
[insert name of Lender**]**
acting by:

.....

¹ Please ensure this Claim Notice is delivered to UK Export Finance in accordance with Clause 18.1 (*Claim Notices*). Please note a soft copy should be emailed and a hard copy posted to UK Export Finance.

Schedule 2 – Form of Assignment

Note to UKEF: As UK Export Finance is not a party to the underlying Facility Agreement, the efficacy of any assignment is dependent on the terms of the underlying Facility Agreement and the governing law of that Facility Agreement.

To be confirmed whether further requirements need to be inserted (noting the addition of the Prescribed Steps in the Guarantee Letter).

Parties:

- (a) [the Lender] (the **Assignor**); and
- (b) UK Export Finance (the **Assignee**).

Dated: _____

Assignment made pursuant to the guarantee letter dated [insert] with reference number [insert Guarantee Letter reference number] incorporating the Guarantee Standard Terms and Conditions (together the Guarantee Agreement)

Claim[s] dated [to be inserted][reference][and.....]

Dear Addressee,

1. Terms defined in the Guarantee Agreement have the same meaning in this Assignment unless given a different meaning in this Assignment. In the event of any inconsistency between the Guarantee Agreement and this Assignment, the Guarantee Agreement will prevail. The term "Clause" refers to a clause in the Guarantee Agreement.
2. Pursuant to Clause 13.3 (*Assignment of Guaranteed Borrower Payments*), the Assignor assigns absolutely to the Assignee all of its rights, title and interests in and to, and/or relating to, the Guaranteed Borrower Payments corresponding to [the][each] Claim (including any corresponding rights, title and interest in and to under the Finance Documents, including (but not limited to) any rights to Default Interest in relation to such Guaranteed Borrower Payments) of the Assignor under the Facility Agreement as specified in Appendix 1 (*Rights to be assigned and obligations to be released and undertaken*).
3. The proposed transfer date is [^{**}] (the **Transfer Date**).
4. With effect from the Transfer Date, the Assignee shall have all the rights, title and interests in and to, and, or relating to, the Guaranteed Borrower Payments corresponding to [the][each] Claim.
5. This Assignment is an Assignment under Clause 13.3 (*Assignment of Guaranteed Borrower Payments*).
6. This Assignment 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 this Assignment.
7. This Assignment and any non-contractual obligations arising out of or in connection with it are governed by English law.

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

Yours faithfully,

The Assignor

For and on behalf of
[Name of Lender]

Signature: _____

Name: _____

Position: _____

Date: _____

Acknowledged and agreed to by:

The Assignee

For and on behalf of
UK Export Finance

Signature: _____

Name: _____

Position: _____

Date: _____

Appendix 1 – Rights to be assigned

[insert relevant details]

[Address, email address and attention details for notices and account details for payments]

[Assignor]

[Assignee]

By:

By:

This Assignment is accepted by UK Export Finance and the Transfer Date is confirmed as [].

[Other confirmations to be included as required.]

Schedule 3 – Form of Transfer

Agreement

Dated

Between

- (1) ** [Transferor], a company incorporated under [the laws of England and Wales] with registered number ** having its registered office at ** (the **Transferor**);
- (2) ** [Transferee], [[His Britannic Majesty's]²/[The]³ Secretary of State acting through the Export Credits Guarantee Department operating as UK Export Finance whose office is at 1 Horse Guards Road, London SW1A 2HQ] [a company incorporated under [the laws of England and Wales] with registered number ** having its registered office at **]⁴ (the **Transferee**); and
- (3) ** [Borrower], a company incorporated under [the laws of England and Wales] with registered number ** having its registered office at ** (the **Borrower**).

Recitals

- A By a loan agreement dated ** (the **Loan Agreement**) between the Transferor and the Borrower, the Transferor has agreed to make a loan (the **Facility**) of up to [£**] available to the Borrower upon the terms and subject to the conditions therein contained.
- B Prior to the date of this Agreement, the Transferor has made loans to the Borrower under the Loan Agreement [in the aggregate principal amount] of [£**], which loans [together with accruing interest on them] are outstanding at the date of this Agreement and the Schedule contains details of those loans together with current interest rates and Interest Periods relating thereto. The Transferor is obliged on the terms and conditions of the Loan Agreement to make further loans to the Borrower in the principal amount of up to £** .
- C [The Transferee][UK Export Finance] has entered into a guarantee agreement dated ** with the Transferor in relation to the Borrower's obligations under the Loan Agreement (the **Guarantee Agreement**). Pursuant to clause 11 (*Purchase of commitments or Loans*) of the Guarantee Agreement, the [Transferee][UK Export Finance] may procure the purchase of all or any part of the Transferor's outstanding undrawn commitment and/or loans at par by way of transfer. This Agreement is entered into to effect such a transfer.
- D The Transferor has agreed, with effect from the Commencement Date, to release and discharge the Borrower from its obligation to repay to the Transferor the Transferred Loan and the Borrower has agreed, with effect from the Commencement Date, in consideration of such release and the payment by the Transferee to the Transferor of the amount of the Transferred Loan, to repay the Transferred Loan and to pay interest, fees, costs and other

² Use where the Lender is based outside the UK.

³ Use where the Lender is based in the UK.

⁴ To be confirmed at the time of the transfer whether it will be to UK Export Finance or a UKEF SPV.

sums to the Transferee as provided for in the Loan Agreement and in accordance with the terms thereof.

- E The Borrower has agreed, with effect from the Commencement Date, to release and discharge the Transferor from its liabilities and obligations under the Loan Agreement upon the terms that the Transferee undertakes, with effect from the Commencement Date, to perform the Transferor's obligations under the Loan Agreement and to be bound by the terms of the Loan Agreement.

Now it is hereby agreed as follows:

1 Definitions and interpretation

- 1.1 Unless otherwise defined in this Agreement, expressions defined in the Guarantee Agreement shall have the same meanings in this Agreement.

In this Agreement (unless otherwise provided) the following definitions apply.

Commencement Date means ** (being the date on which this Agreement is to become effective).

Transferred Commitment means £** (being the undrawn part of the Facility at the date of this Agreement).

Transferred Loan means £** (being the aggregate principal amount of the loans made by the Transferor to the Borrower under the Loan Agreement and outstanding at the date of the Agreement and details of which are set out in the Schedule).

- 1.2 Clause headings are for convenience of reference only and shall not affect the construction of this Agreement.

- 1.3 In this Agreement (unless otherwise provided):

- (a) references to Clauses and Schedules are to be construed as references to the Clauses of, and Schedules to, this Agreement, references to sub-Clauses shall unless otherwise specifically stated be construed as references to the sub-Clauses of the Clause in which the reference appears;
- (b) references to the Loan Agreement or to any other document or agreement are to be construed as references to the Loan Agreement or such other document or agreement as is in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- (c) words importing the singular shall include the plural and vice versa;
- (d) references to a person shall include that person's assigns or transferees or successors in title and shall be construed as including references to an individual, firm, partnership, joint venture, company, corporation, unincorporated body of persons or any state or any agency thereof;
- (e) references to any statute or statutory provision include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include

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 1 – Loan details

Advance	Drawdown Date	Interest Rate*	Next Roll-Over Date
**	**	**	**

*exclusive of the margin

SIGNED as a deed by **)
[Transferor] acting by a)
director in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
.....

SIGNED as a deed by **)
[Transferee] acting by a)
director in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
.....

SIGNED as a deed by **)
[Borrower] acting by a)
director in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
.....

Schedule 4 – Form of Guarantee Transfer Certificate

To: [His Britannic Majesty's]⁵/[The]⁶ Secretary of State acting through the Export Credits Guarantee Department operating as UK Export Finance (**UK Export Finance**)

From: [*The Existing Lender*] (the **Existing Lender**) and [*The New Lender*] (the **New Lender**)

Dated:

Dear Addressee,

Guarantee letter dated [*insert*] with reference number [*insert Guarantee Letter reference number*] incorporating the Guarantee Standard Terms and Conditions dated [*date*] and entered into between (i) UK Export Finance and (ii) [*insert name of Existing Lender*] (the Existing Lender) (together the Guarantee Agreement)

- 1 We refer to the Guarantee Agreement. This is a Guarantee Transfer Certificate. Terms defined in the Guarantee Agreement have the same meaning in this Guarantee Transfer Certificate unless given a different meaning in this Guarantee Transfer Certificate.
- 2 We refer to clause 15.4 (*Procedure for transfer*) of the Guarantee Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with clause 15.4 (*Procedure for transfer*) of the Guarantee Agreement, all (but not part only) of the Existing Lender's rights and obligations under the Guarantee Agreement.
 - (b) The proposed Guarantee Transfer Date is [] (or such other date as may be agreed between UK Export Finance, the Existing Lender and the New Lender).
 - (c) The New Lender's address for notices for the purposes of clause 18.3 (*Addresses*) of the Guarantee Agreement [and the name and address of the New Lender's process agent for the purposes of clause 26.2 (*Service of process*) of the Guarantee Agreement]⁷ are set out in the Schedule.
- 3 With effect from the Guarantee Transfer Date:
 - (a) UK Export Finance and the Existing Lender shall be released from further obligations towards one another under the Guarantee Documents and their respective rights against one another under the Guarantee Documents shall be cancelled (being the **Discharged Guarantee Rights and Obligations**); and
 - (b) UK Export Finance and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Guarantee Rights and Obligations only insofar as that UK Export Finance and the New Lender have assumed and/or acquired the same in place of UK Export Finance and the Existing Lender.

⁵ Use where the New Lender is based outside the UK.

⁶ Use where the Lender is based in the UK.

⁷Include unless the New Lender is incorporated in England and Wales.

- 4 This Guarantee Transfer Certificate 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 this Guarantee Transfer Certificate.
- 5 This Guarantee Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 6 This Guarantee Transfer Certificate has been entered into on the date stated at the beginning of this Guarantee Transfer Certificate.

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]]⁸

⁸Include unless the New Lender is incorporated in England and Wales.

SIGNATURE PAGE TO GUARANTEE TRANSFER CERTIFICATE

For and on behalf of

For and on behalf of

[Existing Lender]

[New Lender]

By:

By:

This Guarantee Transfer Certificate is accepted by UK Export Finance and the Guarantee Transfer Date is confirmed as [].

UK Export Finance

By:

[NOTE TO NEW LENDER: UK Export Finance will have no liability towards any New Lender under the Guarantee Documents unless the New Lender has provided a Lender Letter of Undertaking (in form and substance satisfactory) to UK Export Finance.]