

IMPORTANT

This document is for lawyers who are familiar with transactions of this type involving the Pension Protection Fund (the "PPF"). It is not a comprehensive guide to the legal and practical issues that may arise on a deal-specific basis.

Explanatory Notes

1 Master version

This is the master version of the PPF Precedent Loan Note Instrument. It documents the terms upon which the PPF may be prepared, inter alia, to take a loan note or loan notes as part of a package of measures in a restructuring.

It should be used in conjunction with the PPF Precedent Shareholders' Agreement (master version) and the PPF Precedent Articles of Association.

Where more than one type of loan note is proposed, separate loan note instruments should be prepared from this precedent to document each different type.

2 Possible amendments

The amendments set out below are not exhaustive. Further amendments may be advisable on a deal-specific basis.

It should be noted that the references to specific clauses in the Loan Note Instrument may change depending on which clauses are deleted. Any renumbered clauses will need to be tracked through the document.

2.1 Guarantee

This loan note document contains a form of guarantee at the back of it. This can be used i) where the trustees/PPF take a note that has no guarantee or security – in which case references to the security and the guarantee in the loan note document can simply be removed (and the relevant schedule deleted), ii) where the trustees/PPF only take a guarantee (but no debenture) to secure the loan note, and iii) where the issuer of the note gives a debenture but there is no guarantee – in which case references to the guarantee in the loan note document can be removed (as can schedule 2) but references to the security should be retained. If however, the trustees/PPF want the loan note to be secured by both a guarantee and debenture (from the guarantor and/or the note issuer), they should use the loan note document (deleting schedule 2 but keeping references to the guarantee and the security as appropriate) in conjunction with the separate guarantee and debenture document.

2.1.1 **Guarantee by bank or other suitable third party**

The PPF Precedent Loan Note Instrument provides for a Guarantor to guarantee the Company's obligations.

On a deal-specific basis, consider whether it is appropriate for:

- (a) transfer of a Note to be subject to the Guarantor's prior written consent (see Clauses 14.1, 14.7 and Schedule 2 paragraph 22); and
- (b) either principal and interest, or principal only, to be guaranteed (see Schedule 2 paragraphs 1, 2 and 7, Schedule 3 paragraph 3). Schedule 2 in this precedent assumes that both principal and interest are guaranteed (and this is the PPF's preferred position).

2.1.2 **No Guarantee**

In cases where a Guarantee is not proposed:

Cover sheet	<i>Delete</i> "Guaranteed" from title and "*** (as Guarantor)" from parties list.
Parties	<i>Delete</i> the description of the Guarantor.
Recitals	<i>Delete</i> "Guaranteed" in Recital A. <i>Delete</i> Recital (C).
Definitions	<i>Delete</i> "Guarantee", <i>Delete</i> reference to "Guaranteed" in the definitions of "Liabilities" and "Note", <i>Delete</i> reference to "the Guarantor" in the definition of "Intercreditor Agreement" (if used).
Clause 8.1.5	<i>Delete</i> "Guarantor".
Clause 8.2	<i>Delete</i> "the Guarantor".
Clause 14.1	<i>Delete</i> "Subject to the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed),".
Clause 14.7	<i>Delete</i> "the Guarantor has not given its prior written consent to such transfer; and/or".
Clause 14.11	<i>Delete</i> in full.
Clause 17	<i>Delete</i> entire clause.
Clause 18.1	<i>Delete</i> "the Guarantor".

Clause 20.1	<i>Delete</i> references to "the Guarantor" in paragraphs (a) and (b).
Schedule 1	<i>Delete</i> references to "Guaranteed" in first paragraph and third paragraph, and reference to "the Guarantor" in third paragraph.
Schedule 2	<i>Delete</i> entire Schedule.
Schedule 3	<i>Delete</i> entire Schedule.
Schedule 4	<i>Delete</i> references to "Guaranteed" in the heading, note description and paragraph 1.
Execution block	Include execution block for the Company only.

2.2 **Security**

2.2.1 Loan Note is secured

The PPF Precedent Loan Note Instrument provides for security to be given by the Company.

This may vary on a deal-specific basis, for example a Note may be:

- unsecured;
- contractually subordinated to the Company's existing current and future senior debt;
- secured with a fixed charge over all the assets of the Company (and each member of its group);
- secured with a floating charge over all the assets of the Company (and each member of its group);
- secured with a first ranking legal mortgage over any real property;
- secured with a first ranking charge over any shares in any subsidiaries;
- secured by way of a share pledge over all the shares held by the Company in certain other companies; or
- a combination of the above or granted subject to another form of security (such as security with a second or subsequent ranking charge).

The PPF Precedent Loan Note Instrument includes certain definitions and clauses which will need to be tailored on a deal-specific basis:

Definitions	"Bank[s]" "Facility Agreement", "Intercreditor Agreement", "Liabilities" (and further definitions contained therein), "Loan", "Obligor", "Pension Scheme Debenture" and "Redemption Date".
Recitals B and D	References to the Facility Agreement and the Intercreditor Agreement.
Clauses 2.3 and 3	Intercreditor Agreement language.
Clause 5	Security.
Clause 7.2	Redemption of Note.
Clause 8.1	Accelerated repayment: Use of Obligor in paragraphs 8.1.1 to 8.1.4 and amend paragraphs 8.1.5 and 8.1.6.
Clause 14.1	Transfer of Note: Consider need for Deed of accession pursuant to any Intercreditor Agreement.
Schedule 4	Paragraph 2 reference to "Intercreditor Agreement".

The following consequential amendments should also be made where security is given (on the terms above or otherwise):

Cover sheet	Use "Secured" in title.
Recital (A)	Use "Secured".
Recital (D)	Use Recital (D)
Definitions	Use "Secured" in definition of "Note",
Clause 2.3	Use "secured obligation" and amend rest of clause as appropriate.
Schedule 1	Use "Secured" in paragraphs 1 and 3.
Schedule 4	Use "Secured" in the heading, note description and paragraph 1.

2.2.2 **Loan Note is unsecured**

Where a Note is to be unsecured, the same definitions/concepts which may need to be tailored on a deal-specific basis set out in paragraph 2.2.1 above should still be considered. In addition, the following consequential amendments should also be made:

Cover sheet	Use "Unsecured" in title. Possibly <i>Delete</i> "This instrument is subject to the terms of the Intercreditor Agreement (as defined in this Instrument)" – as the definition of the Intercreditor Agreement is wide enough to refer to a subordination agreement, this reference may need to be retained in certain cases.
Recital (A)	Use "Unsecured".
Recital (D)	<i>Delete</i> in full.
Definitions	Use "Unsecured" in definition of "Note", <i>Delete</i> or amend where not relevant: "Intercreditor Agreement", "Liabilities", "Loan", "Obligor", "Pension Scheme Debenture".
Clause 2.3	Use "Unsecured" and amend rest of clause as appropriate.
Clause 3	<i>Delete</i> entire clause if appropriate (eg there is no subordination agreement governing the priority of unsecured debt).
Clause 5	<i>Delete</i> entire clause.
Clause 8.1	Paragraphs 8.1.1 to 8.1.4 use "Group Company".
Schedule 1	Use "Unsecured" in paragraphs 1 and 3.
Schedule 4	Use "Unsecured" in the heading, note description and paragraph 1.

2.3 Conversion Right

2.3.1 Note is convertible

The PPF Precedent Loan Note Instrument provides for a Note to be convertible into equity at the option of a Noteholder.

It should be considered on a deal-specific basis whether these should be convertible into Ordinary Shares (i.e. with voting rights etc.) or A Ordinary Shares (i.e. without voting rights etc.).

The following consequential amendments should also be made:

Cover sheet	Use "Convertible" in title.
Recital (A)	Use "Convertible".
Definitions	Include "A Ordinary Share" and "Conversion Shares" (amended as appropriate and applicable). Use "Convertible" in definition of "Note".
Clause 4	Use clause in full, specifying multiples and whether conversion is into A Ordinary Shares or Ordinary Shares.
Clause 6.1	Use "converted" in first sentence.
Clause 7.1	Use "converted" in first sentence.
Clause 8.1	Use "converted" in first sentence.
Clause 11.1	Use all references to "converted" and "convertible".
Schedule 1	Use "Convertible" in paragraphs 1, 3 and 6.
Schedule 2	Use references to "conversion" and "converted" as appropriate.
Schedule 3	Consider whether to include last sentence in paragraph 4.1.
Schedule 4	Use "Convertible" in the heading, note description and paragraph 1.

2.3.2 **Note is not convertible**

Where the Notes are not convertible:

Cover sheet	<i>Delete</i> "Convertible" in title.
Recital (A)	<i>Delete</i> "Convertible".
Definitions	<i>Delete</i> "A Ordinary Share" and "Conversion Shares". <i>Delete</i> "Convertible" from definition of "Note".
Clause 4	<i>Delete</i> entire clause.
Clause 6.1	<i>Delete</i> "converted" in first sentence.
Clause 7.1	<i>Delete</i> "converted" in first sentence.

Clause 8.1	<i>Delete</i> "converted" in first sentence.
Clause 11.1	<i>Delete</i> all references to "converted" and "convertible".
Schedule 1	<i>Delete</i> "Convertible" in paragraphs 1, 3 and 6.
Schedule 2	<i>Delete</i> references to "conversion" and "converted" as appropriate.
Schedule 3	Consider whether to include last sentence in paragraph 4.1.
Schedule 4	<i>Delete</i> "Convertible" in the heading, note description and paragraph 1.

2.4 **Rate of interest**

2.4.1 Fixed rate

Where a fixed rate of interest is proposed:

Cover sheet	<i>Delete</i> "Variable" in title.
Recital (A)	<i>Delete</i> "Variable".
Definitions	<i>Delete</i> "Variable" from definition of "Note".
Clause 6	Include Clause 6 in full.
Schedule 1	<i>Delete</i> "Variable" in paragraphs 1 and 3.
Schedule 4	<i>Delete</i> "Variable" in the heading, note description and paragraph 1.

2.4.2 Variable rate

Where a variable rate of interest is proposed:

Cover sheet	<i>Delete</i> "Fixed" in title.
Recital (A)	<i>Delete</i> "Fixed".
Definitions	<i>Delete</i> "Fixed" from definition of "Note".
Clause 6	Include Clause 6 in full other than in Clause 6.1 <i>Delete</i> "over the Bank of England's base rate at the opening of business on the Interest Payment Date in respect of the Interest Period ending on and including that

date".

Schedule 1

Delete "Fixed" in paragraphs 1 and 3.

Schedule 4

Delete "Fixed" in the heading, note description and paragraph 1.

3 Execution by the PPF

Please note the PPF is a statutory corporation rather than a Companies Act 2006 company. The PPF executes deeds by affixing its seal in the presence of one authorised signatory.

**Deed relating to the issue of [•] [Convertible][Variable] OR [Fixed] Rate
[Guaranteed] [Un]Secured Loan Note 20[•]**

Dated

(1) [•] Limited (the Company)

[(2) [•] (as Guarantor)]¹

**[This instrument is subject to the terms of the Intercreditor Agreement (as defined
in this instrument)]²**

¹ Delete if no Guarantor
² Delete if not appropriate

Loan Note Instrument

Dated ****

Made by

- (1) **[•] Limited** registered in [England and Wales] [Scotland] under number [•] whose registered office is at [•] (the "**Company**")[]; and
- (2) **[•] Limited** registered in [England and Wales] [Scotland] under number [•] whose registered office is at [•] (the "**Guarantor**").³

Background

- (A) The Company has by resolution of its board of directors passed on [•] 20[•] created a [£[•] [convertible] [variable][fixed] rate [guaranteed] [un]secured loan note 20[•]to be constituted by this Instrument.⁴
- (B) [Subject to the terms of this Instrument, [the Bank[s]] are to subscribe for Notes representing [£[•]] . [The aggregate subscription price for the Notes will be satisfied by [the Bank[']s[']] agreement to apply and treat as discharged [£[•]] of the [£[•]] receivable owed by Company to [the Banks] pursuant to the [Facility Agreement] (as defined below).] Immediately following issue and allotment of the Notes, [the Bank[s]] shall execute the Transfer Instrument (as defined below) by way of deed of gift and transfer [certain of] such Notes representing [£[•]] to the Pension Scheme Trustees.]⁵
- (C) [The Guarantor has agreed to guarantee the Company's obligations under this Instrument and to provide certain undertakings, in each case on and subject to the provisions of this Instrument.]⁶
- (D) [The Company has agreed to secure the payment of the principal money, interest thereon and other sums due pursuant to the Note payable by the Company subject to the terms and conditions of this Instrument (such security to rank in accordance with the terms of the [Intercreditor Agreement] (as defined below)).]⁷

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Instrument the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"2006 Act" means the Companies Act 2006 including any statutory modification or any re-enactment thereof for the time being in force.

³ Delete if no Guarantor.

⁴ Delete as appropriate.

⁵ Delete and amend as appropriate.

⁶ For use where Guarantor only.

⁷ For use where there is an intercreditor; but also consider if there is a subordination agreement; amend as applicable.

["**A Ordinary Share**" means an A non-voting ordinary share of [£1] each in the capital of the Company for the time being.]⁸

"**Articles**" means the articles of association of the Company from time to time in force.

"**Assessment Period**" means an assessment period for the purposes of section 132 of the Pensions Act.

"**Assumptions**" has the meaning set out in Clause 1.3 (PPF)

["**Bank[s]**" means [●].]

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open in London for the transaction of general business.

"**Certificate**" means a certificate for a Note issued in accordance with [Clause 10] and in the form or substantially in the form of Schedule 1.

"[**Conversion Shares**" means the [A] Ordinary Shares of £[●] each in the share capital of the Company.]⁹

"**Default Interest**" means interest accruing on an Overdue Amount.

"**Directors**" means the directors for the time being of the Company.

"**Encumbrance**" means any mortgage, charge, pledge, option, attachment, restriction, assignment, security interest, title retention, preferential right, equity or trust arrangement, lien (other than a lien arising by operation of law), right of set-off, hypothecation, encumbrance or any security interest whatsoever howsoever created or arising, including any analogous security interest under local law.

"**Event of Default**" has the meaning given in [Clause 8.1]

["**Facility Agreement**" means the [*describe facility agreement*] dated on or about the date of this Instrument and entered into between[, amongst others,] the Company and the [Bank[s]].]¹⁰

"**Group**" means the Company together with its holding company or companies and any subsidiary or subsidiary undertaking of the Company or any such holding company, from time to time, and **Group Company** shall be construed accordingly.

["**Guarantee**" means the guarantee given by the Guarantor in the terms of [Clause 17] and Schedule 2.]¹¹

["**Intercreditor Agreement**" means the [*describe intercreditor agreement or relevant subordination document*] to be entered into on the date of this Instrument between, amongst others, the Company, [the Bank[s]], [other relevant creditors] the Pension Scheme Trustees, [and] the PPF [and the Guarantor].]¹²

⁸ Delete if not Convertible

⁹ Delete if not Convertible

¹⁰ Conform to terms of the Facility Agreement (or similar agreement) or delete if appropriate.

¹¹ Delete if no Guarantor; amend if guarantee is provided by the separate Guarantee and Debenture.

¹² Delete if appropriate; otherwise conform to terms of deal.

"Interest Payment Date" means the last day of each calendar month.

"Interest Period" means the period from and including the date of the first day of each calendar month up to and including the Interest Payment Date for that month, except that the first interest payment pursuant to this Instrument will be paid in respect of the period from and including the date of the first issue of a Note to the first Interest Payment Date.

"Issue Date" means the date of this Instrument.

"Liabilities" means the [Senior Liabilities], the [Ancillary Liabilities] or the [Guaranteed] Loan Note Liabilities (in each case, as those terms are defined in the [Intercreditor Agreement]).¹³

"Loan" has the meaning given in the [Facility Agreement].¹⁴

"Maturity Date" means [●] [*insert month*] 20[●] or, if such date is not a Business Day, the next succeeding Business Day.

"Note" means a [£[●]] [convertible] [variable] [fixed] rate [guaranteed] [un]secured loan note 20[●] of the Company constituted by this Instrument or, as the case may be, the amount of such a loan note for the time being issued and outstanding.

"Noteholder" means a person whose name is entered in the Register as holder of Note(s).

"Obligor" means the Company or any of its subsidiary undertakings (as defined in section 1162 of the 2006 Act) [which has provided a guarantee] [and/or] [security] pursuant to the [Pension Scheme Debenture].¹⁵

"Ordinary Share" means an ordinary share of [£1] in the capital of the Company for the time being.

"Overdue Amount" has the meaning given in [Clause 6.3].

"Pensions Act" means the Pensions Act 2004 and its underlying regulations.

"Pension Scheme" means [*name of Pension Scheme*] established by a deed dated [*insert date*] between [*insert parties*] [(as amended)], which is administered by the Pension Scheme Trustees.

"Pension Scheme Debenture" means the [mortgage] debenture [and guarantee] executed by the Company [and others] on or about the date of this Instrument in favour of the Pension Scheme to secure, amongst other things, [all] liabilities of the Company under this Instrument and the Note(s).¹⁶

"Pension Scheme Trustees" means [*name of Trustee*] of [*insert address of Trustee*] and [*name of Trustee*] of [*insert address of Trustee*] [**OR Where a Corporate Trustee** [*Corporate Trustee*] registered in [England and Wales]

¹³ N.B. Conform to terms of the Intercreditor Agreement (or equivalent). *Delete* if appropriate.

¹⁴ N.B. Conform to terms of the Facility Agreement (or equivalent). *Delete* if not applicable.

¹⁵ Conform to terms of the Intercreditor Agreement (or equivalent). *Delete* if appropriate.

¹⁶ Conform to terms of the Pension Scheme Debenture (or equivalent). *Delete* if no security given.

[Scotland] under number [●] whose registered office is at [●], and any other person who is a trustee of the Pension Scheme from time to time.

"Pensions Regulator" means the UK Pensions Regulator, a body corporate established pursuant to the Part I of the Pensions Act.

"PPF" means the Board of the Pension Protection Fund, a statutory corporation established by the Pensions Act.

"PPF Creditor Rights" means the rights and powers in relation to the debts owed to the Pension Scheme Trustees which pass to the PPF by virtue of section 137 and/or section 161 of the Pensions Act.

"Qualifying Insolvency" means a qualifying insolvency event for the purposes of section 127 of the Pensions Act.

"Redemption Date" means a date on which the Company makes a repayment of principal of the Loan in accordance with the terms of the [Facility Agreement].¹⁷

"Register" means the register of Noteholders kept by the Company pursuant to [Clause 12].

"Shareholders' Agreement" means the agreement entered into on or around the date of this Instrument between the Company, the PPF, the Pension Scheme Trustees [and the Bank[s]][other relevant parties] as from time to time amended.

"Transaction Documents" means the [Shareholders' Agreement, Articles of Association,] Loan Note, the Loan Note Instrument[, the Intercreditor Agreement] and this Deed, [and] and "Transaction Document" means any of them.¹⁸

"Transfer" means any sale, assignment, pledge, transfer, grant of lease or other disposition of any legal, equitable or other interest or the creation of an Encumbrance, whether by operation of law or otherwise

"Transfer Instrument" means an instrument of transfer for a Note transferred in accordance with [Clause 14] and in the form or substantially in the form of [Schedule 4.]

1.2 Interpretation

In this Instrument (unless otherwise defined or the context otherwise requires):

- 1.2.1 any words and expressions defined in the 2006 Act shall have the same respective meanings;
- 1.2.2 reference to a statute or a statutory provision includes reference to:
- 1.2.3 the statute or statutory provision as modified or re-enacted or both from time to time; and
- 1.2.4 any subordinate legislation made under the statute or statutory provision (as modified or re-enacted or both from time to time);

¹⁷ Conform to terms of the Facility Agreement; delete if not needed

¹⁸ Conform to terms of deal.

- 1.2.5 references to this Instrument are references to this Instrument, as varied, novated, supplemented or replaced from time to time;
- 1.2.6 reference to a Clause or Schedule is to a clause of, or schedule to this Instrument, and reference to a paragraph is to a paragraph of a Schedule to this Instrument;
- 1.2.7 the Schedules to this Agreement are an integral part of this Agreement and references to this Agreement include references to such Schedules
- 1.2.8 the contents list, headings and any descriptive notes are for ease of reference only and shall not affect the construction or interpretation of this Instrument;
- 1.2.9 reference to the "**parties**" to this Instrument and the Noteholder(s) includes their respective permitted assigns, legal successors and personal representatives;
- 1.2.10 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa), and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of the same have a separate legal personality);
- 1.2.11 reference to any English legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any jurisdiction other than England and Wales, be deemed to refer to what most nearly approximates in that jurisdiction to that reference;
- 1.2.12 a body corporate shall be deemed to be associated with another body corporate if it is a holding company or a subsidiary of a holding company of that other body corporate;
- 1.2.13 "**redemption**" includes purchase and repayment and the words "**redeem**" and "**redeemed**" shall be construed accordingly;
- 1.2.14 "**in writing**" includes any communication made by letter or facsimile transmission but does not include e-mail or other forms of electronic communication; and
- 1.2.15 the *ejusdem generis* rule does not apply to the interpretation of this Instrument. The words "**include**", "**including**" and "**in particular**" indicate examples only. They do not limit the general nature of any preceding words. A phrase starting with the words "**or other**" or "**otherwise**" is not limited by any preceding words where a wider interpretation is possible.

1.3 PPF

- 1.3.1 This Instrument is being provided in the context of a restructuring of the [Company][Group] involving, among others, the PPF; and the Parties acknowledge that the PPF has made the following assumptions (the "**Assumptions**") in the context of that involvement:

- (a) the Pensions Regulator has given its clearance for the proposed restructuring of the Company [and the Group Companies];¹⁹
- (b) the Pension Scheme is an Eligible Scheme; and
- (c) [on or before [DATE],] ²⁰ a Qualifying Insolvency will occur in relation to every Employer in relation to the Pension Scheme triggering an Assessment Period and the PPF Creditor Rights in relation to the whole of the Pension Scheme.

1.3.2 The Parties further acknowledge that:

- (a) the PPF has made the Assumptions without having made any enquiries in relation to the Assumptions, and without passing any opinion on or acknowledging whether or not the Assumptions (or any of them) are true or correct; and
- (b) nothing in this Deed, any other Transaction Document, or otherwise shall be construed so as to create any obligation on the PPF to confirm that an Assessment Period has commenced or to assume responsibility for the Pension Scheme or any part of it.

1.3.3 The Parties agree that, if an Assessment Period commences in relation to the Pension Scheme (or any part of it), then unless and until:

- (a) the Board ceases to be involved with the Pension Scheme pursuant to section 149 of the Pensions Act; or
- (b) subsection 154(1) of the Pensions Act applies to the Pension Scheme,

the PPF may exercise any of the rights or powers of the Pension Scheme Trustees under this Instrument, any other Transaction Document, or otherwise.

2 Amount and status of Note

- 2.1 The principal amount of the Note is limited to [£[•]]. The Note shall be issued at par subject to and with the benefit of the provisions of this Instrument. All the obligations and covenants contained in this Instrument shall be binding on the Company and any Noteholder and all persons claiming through them.
- 2.2 Subject to any other agreement in writing between the Company and the initial Noteholder, the initial Note shall be issued on the Issue Date.
- 2.3 Each Note is a direct, unconditional and [un]secured obligation of the Company for the due and punctual payment of the principal and interest and performance of the Company's obligations with respect to each Note[, and each Note will rank [[*pari passu*] with all other unsecured and unsubordinated obligations of the Company] **OR**

¹⁹ Delete if not other group companies. Check this accurately reflects all of the parties who should be seeking clearance.

²⁰ It may be necessary to impose a deadline in some cases.

[pursuant to the terms of the Intercreditor Deed], except to the extent provided by law].

3 [Intercreditor Agreement]²¹

This Instrument is subject to the terms of the Intercreditor Agreement.]

4 [Conversion of Notes]²²

- 4.1 The Notes constituted by this Instrument shall be convertible into [A] Ordinary Shares in the Company (the "**Conversion Right**").
- 4.2 The Conversion Right shall entitle a Noteholder to [●] [A] Ordinary Shares for each [£[●]] of converted Note [(being a multiple of [£[●]])].
- 4.3 A Noteholder may exercise its Conversion Right in whole or in any series of parts.
- 4.4 So long as any part of a Note remains outstanding, a Noteholder may at any time on or before the Maturity Date upon giving not less than ten Business Days' written notice to the Company (a "**Conversion Notice**") require the Company to allot and issue [A] Ordinary Shares credited as fully paid up to such Noteholder in full satisfaction and discharge of such part of such Note as is specified in the Conversion Notice.
- 4.5 Forthwith upon the receipt by the Company of a Conversion Notice, a meeting of the board of Directors shall be convened, subject to receipt of the relevant Certificate(s) (or an indemnity in respect thereof in a form reasonably satisfactory to the Company) (which requirement may be waived by the Company in its absolute discretion) (the "**Conversion Date**").
- 4.6 On the Conversion Date the relevant Conversion Shares shall be created (if necessary) and allotted and issued to such Noteholder credited as fully paid whereupon the Company shall cancel the Certificate of the Noteholder concerned to the Company and, in the case of a conversion of part of a Note included in the Certificate, free of charge issue a fresh Certificate for the balance of such Note not converted to the relevant Noteholder.
- 4.7 If there is more than one Noteholder such conversion by the Company pursuant to this [Clause 4] shall be made on a pro rata basis by reference to the amount of such Note held by each Noteholder and by the Noteholders in aggregate.
- 4.8 Any Note (or any part of it) converted by the Company shall be cancelled and the Company shall not be obliged to re-issue the same.
- 4.9 Interest accrued on the amount of a Note (or any part of it) converted into Conversion Shares calculated up to and including the date of the allotment and issue of the Conversion Shares shall be payable to the relevant Noteholder but thereafter interest shall cease to be payable to the relevant Noteholder on the proportion of the Note so converted.

²¹ *Delete entire clause if appropriate.*

²² *Delete entire clause if appropriate.*

- 4.10 The Conversion Shares issued and allotted pursuant to this [Clause 4] shall be issued free from any Encumbrance and will rank *pari passu* with the other [A] Ordinary Shares in issue for all dividends and other distributions in respect of the financial year or accounting period of the Company in which the conversion falls provided that the record date for such dividends or other distributions falls after the date on which conversion takes place and provided further that such dividends or other distributions are not in respect of any earlier financial year or accounting period. In all other respects, the Conversion Shares issued on conversion will rank *pari passu* and form one class with the other [A] Ordinary Shares in issue on the conversion date and will carry the rights and obligations set out in the Articles.
- 4.11 Fractions of Conversion Shares will not be issued on conversion and the number of Conversion Shares to be issued to a Noteholder upon an exercise of a Conversion Right shall be rounded up to the nearest whole number.
- 4.12 Any taxes and capital, stamp, issue and registration duties and all other expenses arising on conversion (including any taxes or capital or stamp duties payable by the Company in respect of the allotment and issue of Conversion Shares) shall be borne by the Company.
- 4.13 The Company covenants:
- 4.13.1 at all times to keep available for issue free from pre-emptive rights out of its unissued share capital such number of Conversion Shares as the Company requires to satisfy the conversion rights in full; and
- 4.13.2 not to make any issue of Conversion Shares or take any other action to the extent that the effect would be that on conversion it would be required to issue Conversion Shares at a discount.
- 4.14 As soon as practicable after the Conversion Date, the Company will procure that the relevant number of Conversion Shares are allotted to and registered in the name of the relevant Noteholder (or its nominee) as holder(s) of the relevant number of Conversion Shares in the Company's share register. A share certificate or share certificates representing such Conversion Shares shall be made available for collection at the registered office of the Company or, if so requested in writing by the relevant Noteholder, such share certificate or share certificates shall be posted by the Company at the risk of the relevant Noteholder (but free of charge to such Noteholder) to the address specified in writing by such Noteholder.
- 4.15 A Noteholder will become the holder of record of the number of Conversion Shares issuable to it upon conversion with effect from the date it is registered as such in the Company's register of members.]

5 [Security²³

The Company shall grant[, and the Company shall procure that each other [Obligor] shall grant,] the [Pension Scheme Debenture] to secure the Company's performance of its obligations under this Instrument.]

²³ Delete entire clause if no security given, or conform to reflect security.

6 Interest

- 6.1 Until such time as each Note is repaid, purchased, [converted,] or cancelled by the Company in accordance with the provisions of this Instrument, the Company shall pay to each Noteholder interest on the outstanding principal amount of a Note at the rate of [●] per cent. per annum [over the Bank of England's base rate at the opening of business on the Interest Payment Date in respect of the Interest Period ending on and including that date]²⁴.
- 6.2 Interest shall be paid in instalments in arrears on each Interest Payment Date in respect of the Interest Period ending on and including that date.
- 6.3 If the Company fails to pay any amount payable by it under this Instrument on the due date (the unpaid balance being an "**Overdue Amount**"), then default interest shall accrue on the Overdue Amount from (and including) the due date to (but excluding) the date such Overdue Amount is paid in full, both before and after judgment. Default interest shall be payable on an Overdue Amount at a rate equal to [●] per cent. per annum above the rate specified in [Clause 6.1]. Overdue Amounts and default interest on Overdue Amounts shall each be payable on demand and if not paid, shall each be compounded and added to the principal amount of a Note on the next Interest Payment Date.
- 6.4 Interest shall accrue on a Note from day to day on the basis of a 365 day year.
- 6.5 Interest shall cease to accrue on a Note as from the due date for repayment of a Note except where the Company refuses or fails to pay the principal and interest payable in respect of a Note when it is due to do so (in which case, the provisions of [Clause 6.3] shall apply as if such amount were an Overdue Amount).
- 6.6 If any payment of principal or interest in respect of a Note would otherwise fall to be made on a day which is not a Business Day, payment shall be postponed to the next day which is a Business Day and no further interest or other payment will be made as a consequence of any such postponement.

7 Redemption of Note

- 7.1 To the extent not previously repaid, purchased, [converted] or cancelled by the Company in accordance with the provisions of this Instrument, each Note will be redeemed, at par on the Maturity Date, together with any interest accrued on the full principal amount repaid (and any amounts not paid) up to and including the date of redemption.
- 7.2 [On each Redemption Date the Company shall redeem at par such percentage of the principal amount outstanding under each Note as is equal to the percentage of the [Loan] being repaid on that Redemption Date in accordance with the terms of the [Facility Agreement], together with any accrued interest under each Note.]²⁵
- 7.3 The Company shall be entitled, upon giving not less than ten Business Days' and not more than thirty Business Days' prior notice in writing to any Noteholder, to redeem at any time at par the whole or any part of any Note and on the expiry of the notice

²⁴ Include where variable only.

²⁵ Conform to terms of agreement; delete if appropriate.

any Note (or part of any Note) in respect of which notice has been given shall be so redeemed. If the Company redeems part only of a Note, any such redemption shall be in an amount of not less than [£[●]]. For the avoidance of doubt, any Noteholder may waive any of the requirements contained in this [Clause 7.3].

- 7.4 The Company may at any time purchase a Note by tender or by private treaty or otherwise by agreement with the relevant Noteholder at any price which may be agreed, whether at par or above or below par.

8 Accelerated repayment

- 8.1 Notwithstanding any other provisions of this Instrument, a Note (so far as not previously repaid, purchased, [converted] or cancelled) shall on written demand by the relevant Noteholder become immediately repayable in full at par together with interest accrued up to and including the date of repayment upon any of the following events:

8.1.1 if an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or substantially the whole of the undertaking, property or assets of [a Group Company] [an Obligor];

8.1.2 if an administrator is appointed in respect of [a Group Company] [an Obligor];

8.1.3 if an order is made or an effective resolution is passed for the winding up of [a Group Company] [an Obligor];

8.1.4 if any step is taken with a view to the suspension of payments, a moratorium or a composition, compromise, assignment or similar arrangement with any creditors of [a Group Company] [an Obligor];

8.1.5 if the [Bank[s]] [Guarantor] take[s] any step to accelerate any of the [Liabilities] or otherwise declare the [Liabilities] prematurely payable takes any step to enforce any security in respect of the [Liabilities];²⁶

8.1.6 if the Company defaults for a period of more than 14 days in the payment when due of any principal or interest due on a Note or any part of it[, or any amount due under the [Pension Scheme Debenture]]; or²⁷

8.1.7 if, whether by a single or a series of transactions over a period of time, 30 per cent. or more of the issued Ordinary Shares are Transferred to a person (other than the PPF) who is not a shareholder of the Company at the date of this Agreement,

(each an "**Event of Default**").

- 8.2 The Company shall give notice to each Noteholder, the PPF (if not a Noteholder at the relevant time), and [the Bank[s]] [and] [the Guarantor] as soon as reasonably practicable upon becoming aware of any Event of Default.

²⁶ Conform to terms of the Facility Agreement (or similar).

²⁷ Amend if no security given.

9 Payments

- 9.1 All payments by the Company to a Noteholder, whether in respect of principal or interest, shall be made in freely transferable, cleared sterling funds (without set-off, deduction or counterclaim) to such account as such Noteholder may have specified to the Company in writing for this purpose and payment to that account shall be a complete discharge to the Company.
- 9.2 All payments of moneys under this Instrument shall be made after deduction of tax, if any, required by law to be deducted.

10 Certificates

- 10.1 The Company shall issue a duly executed Certificate for each Note. The Certificate shall be in the form or substantially in the form set out in Schedule 1 and the provisions of this Instrument shall be attached to each Certificate.
- 10.2 Each Noteholder shall be entitled without charge to one Certificate for each Note that it holds.
- 10.3 If any Certificate is defaced, worn out, lost or destroyed the Company may issue a new Certificate on such terms (if any) as the Directors may reasonably require as to indemnity and evidence of defacement, wearing out, loss or destruction, provided that if any such new Certificate is sought by the Pension Scheme Trustees or the PPF under this Clause [10.3], they shall not be required to provide any indemnity. In the case of defacement or wearing out, the defaced or worn out Certificate shall be surrendered and cancelled before the new Certificate is issued. In the case of loss or destruction, any person other than the Pension Scheme Trustees or the PPF availing himself of the provisions of this Clause shall also pay to the Company (if demanded) all reasonable out of pocket expenses incidental to the reasonable investigation of evidence of loss or destruction. There shall be entered in the Register particulars of the issue of any new Certificate and any indemnity.

11 Surrender and cancellation

- 11.1 Subject to [Clause 14.10], if any Note or any part of it is to be [converted,] transferred, repaid or purchased, it shall only be [converted,] transferred, repaid or purchased against surrender of the Certificate for cancellation. The relevant Noteholder shall deliver up the Certificate to the Company at its registered office or such other place in the United Kingdom as the Company may from time to time notify to each Noteholder for this purpose. If the Certificate includes any part of a Note not [convertible,] transferable, repayable or not to be purchased on the occasion on which it is so delivered, a fresh Certificate for the balance of such Note not [converted,] transferred, repaid or purchased on that occasion shall be issued free of charge to such Noteholder on delivery of the original Certificate to the Company. Such a Certificate or Certificates shall be made available for collection at the registered office of the Company or, if so requested in writing by the relevant Noteholder, such Certificate or Certificates shall be posted by the Company at the risk of the relevant Noteholder (but free of charge to such Noteholder) to the address specified in writing by the relevant Noteholder.

- 11.2 If a Noteholder fails to deliver up the Certificate for cancellation in accordance with [Clause 11.1] the Company shall be entitled to place the principal amount or purchase moneys (as applicable) on deposit in its bank account to be held on trust for such Noteholder until the earlier of:
- (a) such time as the Certificate is delivered for cancellation (in which case any such amount deposited, together with all such interest accruing on it, will immediately be paid to the relevant Noteholder); and
 - (b) the date falling three years from the date on which the Company made the deposit (in which case, the Company may retain any such amount deposited, together with all such interest accruing on it).
- 11.3 If a Note (or any part of it) is redeemed by the Company under the provisions of this Instrument, it or the relevant part shall be cancelled and shall not be re-issued.

12 Register of Noteholders

- 12.1 The Company shall at all times maintain a register ("**Register**") at its registered office or at such other place in the United Kingdom as the Company may from time to time notify to each Noteholder for this purpose in which shall be entered:
- 12.1.1 the names and addresses of the holder for the time being of each Note;
 - 12.1.2 the amount of the holding;
 - 12.1.3 the date(s) upon which the person was registered as holder of a Note;
 - 12.1.4 the serial number of each Certificate issued and its date of issue; and
 - 12.1.5 the date on which a person ceased to be a Noteholder.
- 12.2 The Company shall promptly enter in the Register each change to the information specified in [Clause 12.1].
- 12.3 Each Noteholder shall notify the Company of any change of its name or address and the Company upon receiving such notification shall alter the Register accordingly. Furthermore, upon being notified by the PPF or the Pension Scheme Trustees that the PPF has assumed responsibility for the Pension Scheme or any part thereof under section 161 of the Pensions Act, the Company shall alter the Register to record appropriate details in accordance with clause [12.1].
- 12.4 The Register shall at all reasonable times during business hours be open for inspection by a Noteholder or by any person authorised in writing by a Noteholder.
- 12.5 Each Noteholder (or any person authorised in writing by a Noteholder) may at any time and from time to time request a copy of the Register (or any part of it) and upon such request the Company shall provide a copy as soon as reasonably practicable.

13 Title of Noteholder

The Company shall recognise the registered holder of a Note as the sole absolute owner of such Note and as alone entitled to receive and give effectual discharge for

any moneys payable in respect of such Note. The Company shall not be bound to take notice or see to the execution of any trust whether express or implied or constructive to which a Note or any part of it may be subject and shall not be affected by any notice it may have whether express or constructive of the right title interest or claim of any other persons to or in such Note or such moneys.

14 Transfer of Note

- 14.1 [Subject to the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed),]²⁸ a Note shall be transferable in whole or in part by an instrument in writing in the usual or common form (or in any other form as the Directors may approve) which shall be signed by the transferor[, provided that the transferor shall procure that any transferee of a Note who is not already a party to the [Intercreditor Agreement] shall sign a deed of accession to the [Intercreditor Agreement].]²⁹
- 14.2 The transferor will be deemed to remain the owner of a Note until the name of the transferee is entered in the Register in respect of such Note.
- 14.3 Every instrument of transfer must be delivered to the registered office of the Company or at such other place in the United Kingdom as the Directors may from time to time appoint for registration notify to each Noteholder for this purpose, accompanied by the Certificate for such Note (together with such other evidence as the Directors may reasonably require to prove the title of the transferor or his right to transfer such Note and, if the instrument is executed by some other person on a Noteholder's behalf, the authority of that person to do so). The Company may retain all instruments of transfer.
- 14.4 The Company shall issue to the transferee free of charge a Certificate endorsed with its name as Noteholder upon registration of a transfer of a Note.
- 14.5 No fee shall be charged for the registration of any transfer or for the registration of any power of attorney or other document relating to or affecting the title of a Note.
- 14.6 The instrument of transfer shall not include any loan notes or loan stock not constituted by this Instrument.
- 14.7 [The Company shall not register any transfer of a Note if the Guarantor has not given its prior written consent to such transfer.]
- 14.8 The Company shall retain all instruments of transfer which are registered.
- 14.9 Unless the transferee is already a party to the [Intercreditor Agreement], the name of the transferee will only be entered in the Register if it executes a deed of accession to the [Intercreditor Agreement] and provides a copy of the duly executed deed of accession to the Company. If the transferee fails to do so the Company shall continue to treat the transferor as the relevant Noteholder.³⁰

²⁸ The standard position is that Guarantor will have no veto rights over the transfer of any Notes

²⁹ Conform to terms of Intercreditor Agreement or *Delete* if appropriate.

³⁰ Conform to terms of Intercreditor Agreement or *Delete* if appropriate.

14.10 The Company acknowledges and agrees that in the event that the PPF assumes responsibility for the Pension Scheme or any part thereof for the purposes of section 161 of the Pensions Act:

14.10.1 the PPF may exercise any of the rights or powers of the Pension Scheme Trustees under this Instrument or a Note or otherwise;

14.10.2 it will, upon receipt of notification from the PPF or the Pension Scheme Trustees that the PPF has assumed responsibility for the Pension Scheme or any part thereof:

(a) issue to the PPF free of charge a Certificate or Certificates (as appropriate) endorsed with the PPF's name as Noteholder and an instrument of transfer shall not be required under clause 14.1 (although may be provided at the PPF's option), and

(b) the corresponding Certificate[s] endorsed with the Pension Scheme Trustees' name as Noteholder shall be deemed cancelled upon the issuance of such Certificate or Certificates; and

14.10.3 nothing in this [Clause 14] shall purport to restrict that or any other assignment or transfer of rights, obligations or liabilities, by operation of law or otherwise from the Pension Scheme Trustees to the PPF.

14.11 [The Guarantor consents to:

14.11.1 [the transfer of the initial Note from the [Bank[s]] to the Pension Scheme Trustees on or shortly after the date of this Instrument by way of the Transfer Instrument in the form or substantially in the form set out in [Schedule 4]; and]³¹

14.11.2 any transfer or assignment (by operation of law or otherwise) of a Note from the Pension Scheme Trustees to the PPF in the event that the PPF assumes responsibility for the Pension Scheme for the purposes of section 161 of the Pensions Act.]

15 Insolvency of Noteholder

Any person entitled to a Note by reason of the insolvency of a Noteholder or otherwise by operation of law may be registered as the holder of such Note upon such evidence of its title being produced as the Directors may reasonably require. The Company may in its sole discretion retain any payments on such Note until the person entitled to be registered under this [Clause 15] has been duly registered under the provisions of this Instrument.

16 Restricted Territories

16.1 Neither this Instrument nor any Note or Certificate, nor any part or copy of them, may be:

(c) taken or transmitted into the United States of America, Australia, Canada, Japan, the Republic of Ireland or the Republic of South Africa (each a

³¹ Include if appropriate

Restricted Territory, together **Restricted Territories**), their territories or possessions;

- (d) distributed to any U.S. person (as defined in Regulation S under the United States Securities Act of 1933 (as amended)); or
- (e) distributed to any individual outside a Restricted Territory who is a resident thereof;

in any such case for the purpose of offer for sale or solicitation or invitation to buy or subscribe any securities or in the context where its distribution may be construed as such offer, solicitation or invitation, in any such case except in compliance with any applicable exemption.

16.2 The distribution of this Instrument, any Note or Certificate, or any part or copy of them, in or to persons subject to other jurisdictions may be restricted by law and persons into whose possession this Instrument, any Note or Certificate comes should inform themselves about, and observe, any such restrictions.

16.3 Any failure to comply with these restrictions may constitute a violation of the laws of the relevant jurisdiction.

17 [Guarantee³²

Payment of principal and interest in respect of each Note is irrevocably and unconditionally guaranteed by the Guarantor on the terms and subject to the limitations set out in Schedule 2.]

18 Alteration of this Instrument

18.1 The provisions of this Instrument and the conditions on which a Note is held may only be altered, abrogated or added to with the consent in writing of the Company [, the Guarantor] and of the relevant Noteholder(s).

18.2 The Company shall endorse on this Instrument a memorandum of the execution of any deed supplemental to this Instrument.

19 Contracts (Rights of Third Parties) Act 1999

Save for the PPF, a party who is not a Noteholder or a party to this Instrument shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any terms of this Instrument provided that this does not affect any right or remedy of such third party which exists or is available otherwise than pursuant to that Act.

20 Notices

20.1 Any notice to be given pursuant to the terms of this Instrument must be given in writing to the party due to receive such notice at:

- (f) (in the case of the Company [, the Guarantor] or a Noteholder which is a company) its registered office from time to time; and

³² Delete entire clause if no Guarantor.

(g) (in the case of a Noteholder [or the Guarantor] who is an individual or not a company) to such address as such Noteholder [or the Guarantor] shall notify to the other parties;

or, in each case, to such other address for service or facsimile number as the relevant party may notify to the other parties from time to time.

20.2 Documents required to be delivered pursuant to this Instrument (including Certificates) must be delivered personally or sent by first class pre-paid post (air mail if overseas) and shall be deemed to be given in the case of personal delivery on delivery and in the case of posting (in the absence of evidence of earlier receipt) within forty eight hours after posting (four Business Days if sent by air mail).

21 Governing Law and jurisdiction

21.1 This Instrument shall be governed by, and construed in accordance with, English Law.

21.2 The parties to this Instrument and the initial Noteholder irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Instrument and each agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Schedule 1
Form of Certificate

[•] Limited (the "Company")

(Incorporated in England and Wales under the Companies Acts [1985][2006])

Certificate No	Nominal Amount of Note
-----------------------	-------------------------------

[•]	£[•]
-----	------

Issue of a [£[•]] [Convertible] [Guaranteed] [Variable] [Fixed] Rate [Un]Secured Loan Note 20[•]

Created and issued pursuant to the Company's Articles of Association and a Resolution of its Board of Directors passed on [•] 20[•].

This is to certify that [*name of Noteholder*] of [*address*] is the registered holder of [£[•]] in principal amount of the [Convertible] [Guaranteed] [Variable] [Fixed] Rate [Un]Secured Loan Note 20[•] which Note is constituted by a deed entered into by the Company [and the Guarantor] on and dated [•] 20[•] (the "**Instrument**") and issued with the benefit of and subject to the provisions contained in the Instrument.

Terms defined in the Instrument have the same meaning when used in this Certificate.

The Notes are repayable and bear interest in accordance with the terms and conditions contained in the Instrument.

The Note is transferable only in accordance with the Instrument. No transfer of the Note represented by this Certificate will be registered unless accompanied by this Certificate. The Note is [convertible and] redeemable in accordance with the terms and conditions contained in the Instrument, a copy of which is attached to this Certificate.

Neither this Certificate or Note nor any part or copy of them may be:

- (a) taken or transmitted into the United States of America, Australia, Canada, Japan, the Republic of Ireland or the Republic of South Africa (each a "**Restricted Territory**"), their territories or possessions;
- (b) distributed to any U.S. person (as defined in Regulation S under the United States Securities Act of 1933 (as amended)); or
- (c) distributed to any individual outside a Restricted Territory who is a resident thereof,

in any such case for the purpose of offer for sale or solicitation or invitation to buy or subscribe any securities or in the context where its distribution may be construed as such offer, solicitation or invitation, in any such case except in compliance with any applicable exemption. The distribution of this Note or Certificate or any part or copy of them in or to persons subject to other jurisdictions may be restricted by law and persons into whose possession this Certificate comes should inform themselves about, and observe, any such restrictions. Any failure to comply with these restrictions may constitute a violation of the laws of the relevant jurisdiction.

Delivered by the Company as a deed this [•] day of [•] 20[•].

Executed as a **deed** by **[•] Limited**
acting by a director in the presence of:

_____ Director
signature

signature
of witness

print name

name

print name of witness

address

Schedule 2
[Guarantee³³

1 Guarantee and indemnity

1.1 The Guarantor irrevocably and unconditionally:

1.1.1 guarantees the due and punctual payment by the Company to the relevant Noteholder of:

- (a) the principal amount and interest payable on each Note registered in the name of such Noteholder, [and
- (b) expenses or other costs incurred in relation to the Notes or any claim arising in relation to the Notes registered in the name of such Noteholder,]

on the terms and subject to the limitations set out in this Guarantee;

1.1.2 undertakes to each Noteholder that whenever the Company does not pay any amount when due under or in connection with any Note the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

1.1.3 agrees with each Noteholder that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Noteholder immediately on demand against any cost, loss or liability such Noteholder incurs as a result of the Company not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Note on the date when it would have been due. The amount payable under this indemnity will not exceed the amount the Guarantor would have had to pay under this Guarantee and in particular subject to the limit in paragraph 9 and subject to paragraph 10, if the amount claimed had been recoverable on the basis of a guarantee.

2 Demand

2.1 Every demand under this Guarantee shall be made to the Guarantor in the manner set out in this paragraph [2] and shall:

2.1.1 be in writing and be signed by or on behalf of the relevant Noteholder;

2.1.2 state:

- (a) the full name and registered address of such Noteholder and the amount the Noteholder is claiming;

³³ Delete entire Schedule if no Guarantor

- (b) that such Note has not been cancelled, repaid, redeemed or repurchased by the Company [or converted into shares or other securities of the Company or any other company];
- (c) that the sum demanded is due and payable by the Company, all conditions and demands necessary in connection with it having been fulfilled and made, and the Company is not contesting the liability in circumstances where the Company is entitled to withhold payment; and
- (d) that the relevant Noteholder has made demand on the Company of the sum outstanding and the Company has failed to pay that sum;

2.1.3 be substantially in the form set out in Schedule 3;

2.1.4 give the name(s) of the account holder(s), the account number and the sort code of the bank account in the United Kingdom in the name of the relevant Noteholder to which the sum demanded is to be paid by the Guarantor;

2.1.5 be served by leaving it or sending it by registered pre-paid post to the registered office of the Guarantor or such other address in the United Kingdom as the Guarantor may notify to each Noteholder in writing from time to time, and

2.1.6 be conclusive evidence (and admissible as such) that any sums stated in the demand are properly due and payable to the relevant Noteholder under the relevant Note and under this Guarantee.

2.2 Payment of any demand complying with the requirements of this Guarantee shall be made by the Guarantor in freely transferable cleared sterling funds to such bank account in the United Kingdom as the relevant Noteholder shall specify in writing to the Guarantor.

2.3 The Guarantor may rely on any demand or other document or information believed by it to be genuine and correct and to have been signed or communicated by the person by whom it purports to be signed or communicated and the Guarantor shall not be liable for the consequences of such reliance and shall have no obligation to verify that the facts or matters stated in the demand are true and correct.

3 Guarantor as primary obligor

Notwithstanding any other term of this guarantee, this Guarantee constitutes the direct obligation of the Guarantor to each Noteholder as independent and primary obligor and not merely as surety, to make payment in accordance with the terms of this Guarantee without reference to the Company and without examination of the liability of the Company in respect of any Note.

4 Set off and withholding

All payments to be made by the Guarantor hereunder to a Noteholder shall be made in full without set off or counterclaim and free and clear of and without any deduction whatsoever except to the extent required by law. The Guarantor will not be required to make any additional payment in the case of deduction required by law.

5 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Company or the Guarantor or any security for those obligations or otherwise) is made by a Noteholder in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.

6 Discharge

Payment by the Guarantor of a claim made in accordance with paragraph 2 shall be deemed a valid payment for all purposes of this Guarantee, and, subject to paragraphs 2 and [16], shall discharge the Guarantor from its liability under the Guarantee to the extent of such payment and the Guarantor shall not be concerned to see to the application of any such payment.

7 Immediate recourse

7.1 The Guarantor waives any right it may have of first requiring any Noteholder to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of this Guarantee or the relevant Note or the Loan Note Instrument to the contrary.

7.2 This Guarantee may be enforced by a Noteholder at any time after the Noteholder has made a demand in writing on the Company for the payment of any principal, interest [expenses or other costs] due or owing to it in respect of each relevant Note, without such Noteholder first taking any proceedings against the Company.

8 Default interest

Default interest shall be applied to all sums of principal, interest and expenses due and payable which remain unpaid at the rate which is []% [over the interest rate on the relevant Note] from the due date until the date such sums are paid and discharged in full.

9 Register of Noteholders

The Company undertakes to deliver to the Guarantor (or procure such delivery of) a copy of the Register or any part of it not later than 5 Business Days following any request from the Guarantor (or persons authorised in writing by it) for a copy to be provided.

10 Continuing guarantee

This Guarantee is a continuing guarantee and shall remain in force notwithstanding the liquidation, administration or dissolution of the Company or the appointment of a receiver or administrative receiver of all or any part of its assets. It will extend to the ultimate balance of sums payable the Company under the Notes, regardless of any intermediate payment or discharge in whole or in part.

11 Waiver of defences

11.1 The obligations of the Guarantor under this guarantee will not be affected by an act, omission, matter or thing which, but for this clause would reduce, release or prejudice any obligations under this Guarantee (without limitation and whether or not known to it or any Noteholder) including:

11.1.1 any time, waiver or consent granted to, or composition with, any Noteholder or other person;

11.1.2 the release of the Company, any other guarantor or any other person under the terms of any composition or arrangement with any creditor of the Company, the Guarantor or [any member of the Group];

11.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Company or the Guarantor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

11.1.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company, the Guarantor or any other person;

11.1.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Note, the Loan Note Instrument or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any principal under any Note or the Loan Note Instrument or other document or security;

11.1.6 any unenforceability, illegality or invalidity of any obligation of any person under any Note or the Loan Note Instrument or any other document or security; or

11.1.7 any insolvency or similar proceedings.

12 Release

This Guarantee is irrevocable in respect of a Note held by a Noteholder, save where a Noteholder gives to the Guarantor a specific written release of the Guarantor's liability in relation to the whole or any part of such Note.

13 Deferral of Guarantor rights

- 13.1 Until all amounts which may be or become payable by the Company or the Guarantor under or in connection with the Notes and this Guarantee have been irrevocably paid in full, the Guarantor shall not exercise any rights which it may have by reason of performance by it of its obligations under the Notes or the Loan Note Instrument or by reason of any amount being payable, or liability arising, under this Guarantee:
- 13.1.1 to be indemnified by the Company;
 - 13.1.2 to claim any contribution from any other guarantor of the Company's obligations under the Notes;
 - 13.1.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Noteholders under the Notes or of any other guarantee or security taken pursuant to, or in connection with Notes in favour of the Noteholders;
 - 13.1.4 to bring legal or other proceedings for an order requiring the Company or any other guarantor of its obligations under the Notes to make any payment, or perform any obligation, in respect of which it has given a guarantee, undertaking or indemnity arising under or in connection with this Guarantee;
 - 13.1.5 to exercise any right of set-off against the Company or any other guarantor of its obligations under the Notes; and/or
 - 13.1.6 to claim or prove as a creditor of the Company or any other guarantor of its obligations under the Notes in competition with any Noteholder.
- 13.2 If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Noteholders by the Company or any other guarantor of its obligations under or in connection with the Notes to be repaid in full on trust for the Noteholders and shall promptly pay or transfer the same to the Noteholders as the Noteholder may direct in writing under a demand.

14 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Noteholder, any right or remedy under this Guarantee shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

15 Appropriations

15.1 Until all amounts which may be or become payable by Company and the Guarantor under or in connection with the Notes have been irrevocably paid in full, each Noteholder (or any trustee or agent on its behalf) may:

15.1.1 refrain from applying or enforcing any other moneys, security or rights held or received by that Noteholder (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and neither the Company nor the Guarantor shall be entitled to the benefit of the same; and

15.1.2 hold in an interest-bearing suspense account any moneys received from either the Company or the Guarantor on account of any liability of the Company or the Guarantor under this Loan Note Instrument and Guarantee.

16 Variation

Any variation of the terms of this Guarantee in relation to a Note shall be considered valid and constituting part of this Guarantee provided such variation shall be made in writing and effected pursuant to Clause [18] of the Loan Note Instrument.

17 Additional security

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Noteholder.

18 Noteholder

19 The person whose name appears on a Certificate relating to a Note as the holder of a Note will be regarded by the Guarantor as exclusively entitled to the benefit of a Note and of this Guarantee and the Guarantor shall not be bound to recognise any trust or equity affecting the title to a Note. All dealings in connection with and payments under a Note or this Guarantee shall be made with and to such person.

20 Benefit of the guarantee

This Guarantee shall enure to the benefit of the original Noteholder and[, provided that the Guarantor has consented to such transfer in writing if so required under the Loan Note Instrument] subsequent Noteholders from time to time resulting from transfer of a Note. [For the avoidance of doubt, the Note shall be freely transferable in accordance with the terms of the Loan Note Instrument and any transfer shall not require the Guarantor's consent.]

21 Governing law

The construction, validity and performance of this Guarantee and all non-contractual obligations arising from or connected with this Guarantee shall be governed by the laws of England. Any matter, claim or dispute arising out of or in connection with this Deed is to be governed by and determined in accordance with English law.

Schedule 3 [Form of demand pursuant to the Guarantee³⁴

To: [•]

Dated [•]

[By hand] [By recorded delivery]

Dear Sirs

Demand

1 This demand is made pursuant to the terms of an Instrument (the "**Instrument**") dated [•] and executed by [•] (the "**Company**") and [•].

2 We are the registered holder of the Note issued under the terms of the Instrument.

Name [•]

Registered address [•]

3 We claim the [principal] amount of £[•] and accrued interest of £ [].

4 We confirm that:

4.1 no part of the Note in respect of which such claim is made has been cancelled, repaid, redeemed or repurchased by the Company [or converted into shares or other securities of the Company or any other company];

4.2 the sum demanded is due and payable by the Company, all conditions and demands necessary in connection with it having been fulfilled and made; and the Company is not contesting the liability in circumstances where the Company is entitled to withhold payment; and

4.3 we have made demand on the Company for the sum now demanded and the Company has failed to pay that sum.

5 Payments under this demand should be made to the registered holder's bank account as follows:

Bank name and address: [•]

Sort code: [•]

Account name(s): [•]

Account number: [•]

6 Please acknowledge receipt of this demand and the enclosed copy Certificate(s) on the enclosed copy of this demand.

³⁴ Delete entire Schedule if no Guarantor

Yours faithfully

.....
for and on behalf of [*Name of Registered Noteholder*]

Acknowledged and received

.....
for and on behalf of [●]

Schedule 4

Form of Transfer Instrument

Instrument of Transfer relating to [•] Limited (company no [•])

[•] [Convertible] [Variable/Fixed] Rate [Guaranteed] [Un]Secured Loan Note 20[•]

Noteholder: [•] **Limited** registered in [England and Wales] [Scotland] under number [•] whose registered office is at [•]

Transferee: [Insert names of Pension Scheme Trustees] as trustees of [Insert name of Pension Scheme]

Note: [£[•]] [Convertible] [Variable] [Fixed] Rate [Guaranteed] [Un]Secured Loan Note 20[•] issued by [•] Limited

Transfer Date: [Insert date] 20[•]

This Instrument of Transfer is executed by the Noteholder pursuant to the loan note instrument constituting a [£[•]] [Convertible] [Variable] [Fixed] Rate [Guaranteed] [Un]Secured Loan Note 20[•] issued by [•] Limited on [Insert date] 20[•] (the "**Loan Note Instrument**").

Subject to the provisions of the Loan Note Instrument [and the Intercreditor Agreement (as defined in the Loan Note Instrument)], the Noteholder transfers the Note [, with the benefit of the security comprised in the Pension Scheme Debenture (as defined in the Loan Note Instrument)] [, with the benefit of the Guarantee comprised in Schedule 2 to the Loan Note Instrument] to the Transferee on the Transfer Date.

Signed as a **deed** by [company name] acting by a director in the presence of:

signature Director

signature
of witness

print name

name
.....
print name of witness

address

Company

Signed as a **deed** by [**•**] **Limited**
acting by a director in the presence of:

_____ Director
signature

signature
of witness

print name

name

print name of witness

address

Guarantor

[Signed as a **deed** by [**•**] **Limited**
acting by a director in the presence of:

_____ Director
signature

signature
of witness

print name

name

print name of witness

address

] ³⁵

[Signed as a **deed** by [***name of company***], a company incorporated in [***territory***], acting by [***full name(s) of person(s) signing***], being [a] person[s] who, in accordance with the laws of that territory, [is][are] acting under the authority of the company

signature

print name

Authorised [***signatory***][***signatories***]

print name

] ³⁶

³⁵ Where Guarantor is a UK company

³⁶ Where Guarantor is not a UK Company

PPF

Executed as a deed and delivered
when dated, by affixing the common
seal of
**THE BOARD OF THE PENSION
PROTECTION FUND**
in the presence of:

*[Common
seal]*

Authorised
Signatory

signature

print name