THE BOARD OF THE Pension Protection Fund

FORM OF CONTINGENT ASSET

type a: GUARANTEE FROM A GROUP COMPANY OR OTHER ACCEPTABLE PERSON

VERSION: 6.0 (JANUARY 2021)

NOTE:

Please refer to the Pension Protection Fund guidance on contingent assets and other documentation on the Pension Protection Fund website www.ppf.co.uk. However, it is your responsibility to obtain legal advice before using the Pension Protection Fund’s standard documentation – you should not rely on the guidance note or on other documentation published by the Pension Protection Fund. The Board accepts no responsibility to trustees/managers or any other person for the efficacy of the standard documentation or for any legal effects that such documentation may have if used in any circumstances.

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| guarantee | |
| DATED [⚫]  By  [GUARANTOR [1]] [AND [GUARANTOR 2]] | |
| FOR  [⚫] and [⚫] as trustees of the [⚫ pension scheme] | |
|  | |
|  | |

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1. **THIS DEED** is dated [⚫]
2. BETWEEN:
3. [**[GUARANTOR]** (registered in [⚫] with number [⚫] (the **Guarantor**)] [**[GUARANTOR 1]** (registered in [⚫] with number [⚫])and **[GUARANTOR 2]** (registered in [⚫] with number [⚫])(each a **Guarantor** and together the **Guarantors**)]–[[1]](#footnote-1); and
4. **[⚫]** and **[⚫]** as trustees ofthe [⚫ pension scheme] and any other person or persons who is or are for the time being a trustee of the [⚫ pension scheme] (each a **Trustee** and together the **Trustees**).
5. **IT IS AGREED** as follows:
6. Interpretation
   1. Definitions
   2. In this Deed:
   3. **Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in [London].

**Companies** means the companies listed in Schedule 1 (Companies) as such schedule may be amended from time to time by the Parties.

* 1. **Creditors’ Process** means any expropriation, attachment, sequestration, distress or execution (or any analogous event in any jurisdiction) which affects [any] [a material part] of the assets of [the] [any] Guarantor, and is not discharged within fourteen (14) days.

1. **Demand** means any demand made on [the] [any] Guarantor[(s)] by the Trustees under Subclause 2.1 (Guarantee and indemnity) in relation to the Guaranteed Obligations of a Company.

**Guaranteed Obligations** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally and in any capacity whatsoever) of each Company to make payments to the Scheme.

* 1. **Implementation Date** has the meaning given to it in Clause 9 (Amendments).
  2. **Insolvency Event** means in respect of any Company:
     1. an 'insolvency event' as defined in Section 121 of the Pensions Act 2004 or regulations made from time to time thereunder; or
     2. the receipt by the Pension Protection Fund of an application or notification from the Trustees or the Pensions Regulator that such Company is unlikely to continue as a going concern, which is purported to be made in accordance with Section 129 of the Pensions Act 2004 or regulations made from time to time thereunder.

##### **Insolvency Proceedings** means in respect of [the] [any] Guarantor:

* + 1. any procedure or step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
    2. a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, administration, dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), or any such resolution is passed;
    3. any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration, dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
    4. any Security Interest is enforced by any person over [any] [a material part] of its assets;
    5. an order for its winding-up, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) is made;
    6. any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or [any] [a material part] of its assets;
    7. its shareholders, directors or other officers or [the] [that] Guarantor itself request(s) or apply/ies to court for the appointment of, or give(s) notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
    8. any other analogous step or procedure is taken in any jurisdiction.
  1. **Material Adverse Effect** means a material adverse effect on:
     1. the ability of [the] [any] Guarantor to perform its payment obligations under this Deed;
     2. the business, operations, property, assets or financial condition of [the] [any] Guarantor or any of its Subsidiaries;
     3. the validity or enforceability of, or the effectiveness, making or ranking of, this Deed; or
     4. the validity or enforceability, or the effectiveness or ranking of, any right or remedy of the Trustees under this Deed.

**Party** means a party to this Deed.

* 1. **Pension Protection Fund** means the Board of the Pension Protection Fund as established under Part 2 of the Pensions Act 2004.
  2. **Pensions Regulator** means the body of that name and referred to as the "Regulator" in the Pensions Act 2004.
  3. **Proposal Date** has the meaning given to it in Clause 9 (Amendments).
  4. **Proposals** has the meaning given to it in Clause 9 (Amendments).

1. **Reservations** means:
   * 1. the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
     2. the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
     3. the statutory time-barring of claims;
     4. defences of set off or counterclaim;
     5. rules against penalties and similar principles;
     6. the fact that security which is described as fixed security may in fact be floating security;
     7. the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void;
     8. the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same grounds and between the same parties have previously been brought before another court; and/or
     9. any steps for perfection not required by the terms of this Deed to be taken,

and any other reservations or qualifications of law contained in any legal opinion delivered to the Trustees in respect of this Deed.

* 1. **Scheme** means the [⚫ pension scheme] (registration number [⚫]).
  2. **Security Interest** means any mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
  3. **Subsidiary** means:
     1. a subsidiary within the meaning of Section 1159 of the Companies Act 2006; and
     2. unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006.
  4. **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
  5. **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this Deed.
  6. **Tax Payment** means a payment made by [the] [a] Guarantor to the Trustees in any way relating to a Tax Deduction or under any indemnity given by [the] [a] Guarantor in respect of Tax under this Deed.
  7. Construction
     1. In this Deed, unless the contrary intention appears, a reference to:
        1. **assets** includes present and future properties, revenues and rights of every description and includes uncalled capital;
        2. an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
        3. a **person** includes any individual, firm, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
        4. 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 of a type with which persons to which it applies are accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
        5. **Sterling** or **£** is a reference to the lawful currency for the time being of the United Kingdom;
        6. a **provision of law** is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
        7. a **Clause,** a **Subclause**, a **Paragraph**, a **Subparagraph** or a **Schedule** is a reference to a clause, a subclause, a paragraph, or a subparagraph of, or a schedule to, this Deed;
        8. a **Party** or any other person includes its successors in title, permitted assigns and permitted transferees and this Deed shall be binding on and enforceable by any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme (and this Subparagraph (viii) shall be in addition to, and not affect, the provisions of the Trustee Act dealing with transfers of assets and liabilities from one trustee to another);
        9. this **Deed** (or any specified provision of it) or any other document shall be construed as a reference to this Deed, that provision or that document as in force for the time being and as amended, restated, varied, supplemented or novated from time to time;
        10. **including** shall not be construed narrowly but be taken as reading **including without limitation**;
        11. a **time of day** is a reference to London time; and
        12. words importing the singular shall include the plural and vice versa.
     2. Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
        1. if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
        2. if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
        3. notwithstanding Subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
     3. Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of this Deed, no consent of any third party is required for any variation (including any release or compromise of any liability) or termination of this Deed. As contemplated by Subparagraph (a)(viii) above, any person who is for the time being a trustee of the Scheme may enforce or enjoy the benefit of any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
     4. If the Trustees consider that an amount paid to them under this Deed is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
     5. The headings in this Deed do not affect its interpretation.
     6. It is intended by the Parties that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

1. Guarantee and indemnity
   1. Guarantee and indemnity
   2. [The] [Each] Guarantor [jointly and severally] irrevocably and unconditionally:
      1. guarantees to the Trustees punctual performance by each Company of all that Company's Guaranteed Obligations;
      2. undertakes with the Trustees that, whenever any Company does not pay any amount when due in respect of that Company's Guaranteed Obligations, the Guarantor shall immediately on demand by the Trustees pay that amount as if [the] [that] Guarantor were the principal obligor; and
      3. indemnifies the Trustees as an independent and primary obligation immediately on demand against any cost, charge, expense, loss or liability suffered or incurred by the Trustees if any payment obligation guaranteed by [the] [that] Guarantor is or becomes unenforceable, invalid or illegal; the amount of the cost, charge, expense, loss or liability under this indemnity will be equal to the amount the Trustees would otherwise have been entitled to recover on the basis of a guarantee.
   3. [*Drafting Note: Parties must select either: (i) Rider 1: containing fixed cap options for pre insolvency and post-insolvency demands, or (ii) Rider 2, containing Section 179 or Section 75 only caps.*]
   4. Continuing guarantee
      1. The guarantee contained in this Deed is a continuing guarantee and will extend to the ultimate balance of all sums payable by each Company in respect of its Guaranteed Obligations.
      2. For the avoidance of doubt, but without prejudice to Clause 9 (Amendments), this Deed shall continue in full force and effect and may not be terminated by [the] [any] Guarantor until all amounts which may be or become payable by any Company to the Scheme have been irrevocably paid in full.
   5. Reinstatement
      1. If any discharge, release or arrangement is made by the Trustees in whole or in part on the faith of any payment, security or other disposition which is avoided, set aside, refunded or reduced under any applicable law or proves to have been invalid or must be restored in insolvency, liquidation, administration or otherwise, without limitation, the liability of [the] [each] Guarantor under this Deed will continue as if the discharge, release or arrangement had not occurred.
      2. The Trustees may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.
   6. Waiver of defences
   7. The liabilities and obligations of [the] [each] Guarantor under this Deed shall remain in full force and effect and will not be affected by any act, omission, neglect, event or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to [the] [any] Guarantor or any Trustee), including:
      1. any time, waiver, consent or other accommodation granted to, or composition with, any person;
      2. any release of any person under the terms of any composition or arrangement;
      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, any person;
      4. 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;
      5. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
      6. any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous, and of whatsoever nature) or replacement of this Deed, any Guaranteed Obligation or any other document or security, including any agreement or document relating to the Scheme;
      7. any unenforceability, illegality, invalidity or non-provability of any obligation of any person under this Deed, any Guaranteed Obligation or any other document or security; or
      8. any insolvency or similar proceedings.
   8. Guarantor intent
   9. Without prejudice to the generality of Clause 2.5 (Waiver of defences), [the] [each] Guarantor expressly confirms that it intends that this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Guaranteed Obligations.
   10. Immediate recourse
   11. [The] [Each] Guarantor waives any right it may have of first requiring any Trustee (or any trustee, agent or appointee on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from [the] [that] Guarantor under this Deed. This waiver applies irrespective of any law to the contrary.
   12. Appropriations
   13. Until all amounts which may be or become payable by any Company to the Trustees have been irrevocably paid in full, each Trustee (or any trustee, agent or appointee on its behalf) may without affecting the liability of [the] [any] Guarantor under this Deed:
       1. refrain from applying or enforcing any other moneys, security or rights held or received by that Trustee (or any trustee or agent on its behalf) in respect of those amounts; or
          1. apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and [the Guarantor shall not] [no Guarantor shall] be entitled to the benefit of the same; and
       2. hold in an interest-bearing suspense account any moneys received from [the] [any] Guarantor or on account of [the] [any] Company's liability to the Trustees.
   14. Non-competition
   15. Unless:
       1. all amounts which may be or become payable by the Companies to the Scheme have been irrevocably paid in full; or
       2. the Trustees otherwise direct,
   16. [the Guarantor will not] [no Guarantor will] exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising, under this Deed:
       * 1. to be indemnified by any Company [or [the] [any] other Guarantor];
         2. to claim any contribution or indemnity from any other guarantor of any Company's obligations or liabilities to make payments to the Scheme or in respect of any payment made or moneys received on account of the Guarantor’s liability under this Deed;
         3. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Trustees in respect of any Company's obligations or liabilities to make payments to the Scheme, or under or pursuant to any other guarantee or security taken by the Trustees pursuant to or in connection with such obligations or liabilities of any Company;
         4. to bring legal or other proceedings for an order requiring any Company [or [the] [any] other Guarantor] to make any payment, or perform any obligation, in respect of any Guaranteed Obligation;
         5. to exercise any right of set-off against any Company [or [the] [any] other Guarantor]; and/or
         6. to claim, rank, prove or vote as a creditor of any Company [or [the] [any] other Guarantor], or its estate in competition with the Trustees (or any trustee or agent on their behalf).
   17. If [the] [any] Guarantor receives any payment, distribution, benefit or security in relation to such rights it shall hold that payment, distribution, benefit or security on trust for the Trustees and immediately pay or transfer the same to the Trustees or in accordance with any directions given by the Trustees.
   18. Additional security
   19. The guarantee contained in this Deed is in addition to and is not in any way prejudiced or affected by, and shall not merge with any other judgment, guarantee, security, right or remedy now or subsequently obtained or held by the Trustees for the discharge and performance of any of the Guaranteed Obligations.
2. Taxes
   1. Tax gross-up
      1. [The] [Each] Guarantor must make all payments to be made by it under this Deed without any Tax Deduction, unless a Tax Deduction is required by law.
      2. If [the] [a] Guarantor is aware or becomes aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the Trustees.
      3. If a Tax Deduction is required by law to be made by [the] [a] Guarantor or the Trustees, the amount of the payment due from [the] [the relevant] Guarantor will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
      4. If [the] [a] Guarantor is required to make a Tax Deduction, [the] [that] Guarantor must make the minimum Tax Deduction required by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.
      5. Within 30 days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the [relevant] Guarantor must deliver to the Trustees evidence satisfactory to them (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.
   2. Value added taxes
      1. Any amount payable under this Deed by [the] [a] Guarantor is exclusive of any value added tax or any other Tax of a similar nature which might be chargeable in connection with that amount. If any such Tax is chargeable, the [relevant] Guarantor must pay to the Trustees (in addition to and at the same time as paying that amount) an amount equal to the amount of that Tax.
      2. If [the] [a] Guarantor is required by this Deed to reimburse or indemnify the Trustees for any cost or expense, [the] [a] Guarantor shall reimburse or indemnify (as the case may be) the Trustees for the full amount of such cost or expense, including such part thereof as a value added tax or any other Tax of a similar nature, save to the extent that the Trustees reasonably determine that they are entitled to a credit or repayment in respect of such Tax from the relevant tax authority.
   3. Stamp taxes
   4. [The] [Each] Guarantor shall pay and, within three (3) Business Days of demand, indemnify the Trustees against any cost, loss or liability that the Trustees incur in relation to all stamp duty, registration and other similar Tax payable in respect of this Deed.
3. Payments
   1. Funds
   2. Payments under this Deed to the Trustees must be made for value on the due date at such times and in such funds as the Trustees may specify to the Guarantor[s] as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.
   3. Currency
   4. Any amount payable under this Deed is payable in Sterling.
   5. No set-off or counterclaim
   6. All payments made by [the] [a] Guarantor under this Deed shall be calculated and must be made without (and be free and clear of any deduction for) set-off or counterclaim.
   7. Business Days

If a payment under this Deed is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

1. Representations
   1. Representations
   2. The representations set out in this Clause 5 are made by [the] [each] Guarantor to the Trustees.
   3. Status[[2]](#footnote-2)
      1. It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of [original] incorporation.
      2. Each of its Subsidiaries is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of [original] incorporation.
      3. It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
   4. Powers and authority
      1. It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
      2. No limit on its powers will be exceeded as a result of the grant of this Deed.
   5. Legal validity
   6. Subject to the Reservations, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.
   7. Non-conflict
   8. The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:
      1. any law or regulation applicable to it or any of its Subsidiaries;
      2. its or any of its Subsidiaries' constitutional documents; or
      3. any document which is binding upon it or any of its Subsidiaries or any of its or its Subsidiaries' assets or constitute a default or termination event (howsoever described) under any such document.
   9. No insolvency
   10. No Insolvency Proceedings or Creditors’ Process have been taken or threatened in relation to it and no Insolvency Event applies to any Company.
   11. No default

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any document which is binding on it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

* 1. Authorisations
  2. All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.
  3. Litigation
  4. No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened against it or any of its Subsidiaries, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.
  5. Times for making representations
     1. The representations set out in this Clause 5 are made by [the] [each] Guarantor on the date of this Deed.
     2. The representations set out in this Clause 5 are deemed to be repeated by [the] [each] Guarantor on 31 March and 1 April of each year so long as:
        1. any Guaranteed Obligations; or
        2. any present and/or future obligations or liabilities of [the] [any] Guarantor under this Deed,

are outstanding.

* + 1. When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

1. Covenants
   1. General

[The] [Each] Guarantor agrees to be bound by the covenants set out in this Clause 6 so long as:

* + 1. any Guaranteed Obligations; or
    2. any present and/or future obligations or liabilities of [the] [any] Guarantor under this Deed,

are outstanding.

* 1. Notification of breach
  2. [The] [Each] Guarantor must notify the Trustees of any breach of any of the provisions of this Deed promptly upon becoming aware of its occurrence.
  3. Authorisations
  4. [The] [Each] Guarantor must promptly obtain, maintain and comply with the terms of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, this Deed.
  5. Compliance with laws
  6. [The] [Each] Guarantor must comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.
  7. Pari passu ranking
  8. [The] [Each] Guarantor must ensure that its payment obligations under this Deed rank at least pari passu with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by laws of general application to companies.
  9. Notifiable events
     1. [The] [Each] Guarantor shall promptly notify the Trustees upon becoming aware that:
        1. any event has occurred in respect of a Company or [the] [a] Guarantor which would (or would if [the] [that] Guarantor were an employer in relation to the Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) require notification to the Pensions Regulator in accordance with Section 69 of the Pensions Act 2004 and any regulations and directions made thereunder;
        2. any representation made or deemed to be made by [the] [a] Guarantor under this Deed is or proves to have been incorrect or misleading when made or deemed to be made; and
        3. any representation made by [the] [a] Guarantor under this Deed would be (if it were deemed to be repeated at any time) incorrect or misleading when made or deemed to be made.
     2. If on or about [28 February][[3]](#footnote-3) of each year, [the] [a] Guarantor is aware that any representation which is to be repeated under Subclause 5.10(b) (Times for making representations) will be or is reasonably likely to be incorrect or misleading when repeated pursuant to Subclause 5.10(b) (Times for making representations), [the] [that] Guarantor shall promptly notify the Trustees.

1. Indemnities
   1. Currency indemnity
      1. [The] [Each] Guarantor must, as an independent obligation, [jointly and severally] indemnify each Trustee against any loss or liability which that Trustee incurs as a consequence of that Trustee receiving an amount under this Deed in a currency other than Sterling.
      2. [The] [Each] Guarantor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency other than Sterling.
   2. Amendment costs

If [the] [any] Guarantor requests an amendment, waiver or consent or delivers any Proposals, the [relevant] Guarantor shall, within three (3) Business Days of demand, reimburse the Trustees for the amount of all costs and expenses (including legal fees) reasonably incurred by the Trustees in responding to, evaluating, negotiating or complying with that request or those Proposals.

* 1. Enforcement and preservation costs

[The] [Each] Guarantor shall, within three (3) Business Days of demand, pay to the Trustees the amount of all costs and expenses (including legal fees) incurred by the Trustees in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted in any jurisdiction by or against the Trustees as a consequence of taking, holding or enforcing this Deed.

* 1. Guarantor default

### [The] [Each] Guarantor shall, within three (3) Business Days of demand, indemnify the Trustees against any cost, expense, loss or liability incurred by the Trustees as a result of any default by [the] [any] Guarantor in the performance of any of the obligations expressed to be assumed by it in this Deed.

1. Changes to the Parties
   1. Assignments and transfers by [the] [a] Guarantor

[The Guarantor may not] [No Guarantor may] assign or transfer any of its rights and obligations under this Deed.

* 1. Assignments and transfers by the Trustees
     1. [The] [Each] Guarantor acknowledges that:
        1. the rights and obligations of the Trustees under this Deed may be transferred in whole or in part to the Pension Protection Fund as a result of the operation of Section 161 of and Schedule 6 to the Pensions Act 2004; and
        2. the rights and obligations under this Deed shall be binding upon and enure for the benefit of any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme.
     2. Each Trustee may at any time and from time to time (without consent of or notice to [the] [any] Guarantor) assign and/or transfer any or all of its rights and/or obligations under this Deed to any person or persons.

9. Amendments

* + 1. Any amendment of this Deed shall be in writing and signed by, or on behalf of, each Party.
    2. [Notwithstanding Paragraph (c) below,][[4]](#footnote-4) the Parties may agree any amendments of any kind to this Deed (including to Subclause 2.2 ([⚫]) [or to Subclause 2.3 ([⚫]))], or to release [the] [any] Guarantor from this Deed, provided any such amendment or release is in writing and signed by, or on behalf of, each Party.

[***Drafting Note:*** *The Parties may agree any version or amendments to paragraphs (c) onwards, or leave these provisions out entirely. If the Parties require the options for amending paragraphs (c) onwards to be more prescriptive, Rider 3 sets out more detailed amendment and release options which may be inserted at paragraphs (c) onwards.*]

[(c) At any time while this Deed remains in force [but no more than [once] in any [12] month period] the Guarantor[s] may submit to the Trustees a written proposal (each a **Proposal**) containing a request to release [the] [any] Guarantor from its the obligations under this Deed in full or to amend Subclause 2.2 ([⚫]) [and/or Subclause 2.3 ([⚫])].

* + 1. The consent of the Trustees to a Proposal must not be unreasonably withheld or delayed, [and without prejudice to the generality of the foregoing the Parties shall take into account the following:
    2. [⚫] [[5]](#footnote-5)]
    3. Subject to Paragraph (d) above, upon notice of consent being delivered by the Trustees to the Guarantor[s], the Parties shall (at the Guarantor['s][s'] expense pursuant to Subclause 7.2 (Amendment costs)) promptly take all steps and execute all documents reasonably specified by the Trustees to implement such Proposal.]

1. Set-off
   1. A Trustee may set off any matured obligation owed to it by [the] [a] Guarantor under this Deed (to the extent beneficially owned by that Trustee) against any obligation (whether or not matured) owed by that Trustee to [the] [that] Guarantor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Trustee may convert either obligation at a market rate of exchange selected by it (acting reasonably) for the purpose of the set-off.
2. Severability, remedies and waivers
   * 1. If a term of this Deed is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect:
        1. the legality, validity or enforceability in that jurisdiction of any other term of this Deed; or
        2. the legality, validity or enforceability in other jurisdictions of that or any other term of this Deed.
     2. No failure to exercise, nor any delay in exercising, on the part of any Trustee, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of any Trustee 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 this Deed are cumulative and not exclusive of any rights or remedies provided by law.
3. Counterparts
   1. This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
4. Certificates and determinations
   1. Any certification or determination by the Trustees of an amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
5. [Parties
   1. For the avoidance of doubt, each Guarantor which executes this Deed will be bound by it even if other intended Guarantors do not do so or are not effectively bound by it.][[6]](#footnote-6)
6. Notices
   1. In writing
      1. Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given in person, by post or fax.
      2. Unless it is agreed to the contrary, any consent or agreement required under this Deed must be given in writing.
   2. Contact details
      1. The contact details of the Guarantor[s] for this purpose are:

[Guarantor 1]:

Address: [ADDRESS]

Fax number: [FAX]

Attention: [ATTENTION].

[[Guarantor 2]:

Address: [ADDRESS]

Fax number: [FAX]

Attention: [ATTENTION].]

* + 1. The contact details of the Trustees are:

Address: [ADDRESS]

Fax number: [FAX]

Attention: [ATTENTION].

* 1. Effectiveness
     1. Except as provided below, any communication in connection with this Deed will be deemed to be given as follows:
        1. if delivered in person, at the time of delivery;
        2. if posted, five (5) days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
        3. if by fax, when received in legible form.
     2. A communication given under Paragraph (a) above but not received on a Business Day or after 5 p.m. on a Business Day will only be deemed to be given on the next Business Day.

1. Language

Any notice given in connection with this Deed must be in English.

1. Governing law
   1. This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
2. Enforcement
   1. Jurisdiction
   2. *[****Drafting note****: the parties must select either OPTION 1 (non-exclusive jurisdiction of the English courts) or OPTION 2 (exclusive jurisdiction of the English courts).]*
   3. OPTION 1
      1. The English courts have non-exclusive jurisdiction to settle any dispute in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed).
      2. The Parties agree that the English courts are the most appropriate and convenient courts to settle any such dispute and accordingly no Party will argue to the contrary.
      3. Notwithstanding Paragraph (a) above, no Trustee shall be prevented from taking proceedings relating to any such dispute in any other courts with jurisdiction. To the extent allowed by law, any Trustee may take concurrent proceedings in any number of jurisdictions.

OPTION 2

* + 1. The English courts have exclusive jurisdiction to settle any dispute in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed).
    2. The Parties agree that the English courts are the most appropriate and convenient courts to settle any such dispute and accordingly no Party will argue to the contrary.
  1. [Service of process
     1. [[The] [Each] Guarantor] [Guarantor [1] [2]] irrevocably appoints [⚫] as its agent under this Deed for service of process in any proceedings before the English courts.
     2. If any person appointed as process agent is unable for any reason to act as agent for service of process, the [relevant] Guarantor must promptly (and in any event within [five (5)] days of such event taking place) appoint another agent on terms acceptable to the Trustees. Failing this, the Trustees may appoint another agent for this purpose.
     3. [[The] [Each] Guarantor] [[Guarantor [1] [2]] agrees that failure by an agent for service of process to notify it of any process will not invalidate the relevant proceedings.
     4. This Subclause 18.2 does not affect any other method of service allowed by any relevant law.][[7]](#footnote-7)
  2. Waiver of immunity
  3. [The] [Each] Guarantor irrevocably and unconditionally:
     1. agrees not to claim any immunity from proceedings brought by a Trustee against it in relation to this Deed and to ensure that no such claim is made on its behalf;
     2. consents generally to the giving of any relief or the issue of any process in connection with those proceedings;
     3. waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
        1. the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
        2. the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues; and
     4. agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.

1. This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of this Deed.

Companies

|  |  |  |
| --- | --- | --- |
| 1. **Company name** | 1. **Registration number** | 1. **Address** |
|  |  |  |

Signatories[[8]](#footnote-8)

1. **Guarantor[s]**
2. EXECUTED as a deed by )
3. [GUARANTOR] )
4. acting by )

[NAME], a Director and

[NAME], a [Director or its Secretary]

**OR**

1. EXECUTED as a deed by )
2. [GUARANTOR] )
3. acting by )

[NAME], a Director, in the presence of:

Witness signature

Witness name

Witness address

1. [EXECUTED as a deed by )
2. [GUARANTOR] )
3. acting by )

[NAME], a Director and

[NAME], a [Director or its Secretary]

**OR**

1. [EXECUTED as a deed by )
2. [GUARANTOR] )
3. acting by )

[NAME], a Director, in the presence of:

Witness signature

Witness name

Witness address]

**Trustees**

[TRUSTEE]

as trustee of the [⚫ pension scheme]

By:

[TRUSTEE]

as trustee of the [⚫ pension scheme]

By:

Rider 1

1. **Fixed Caps**

Parties may agree to limit the amounts recovered under this Guarantee by selecting one the fixed cap options for pre insolvency and post-insolvency demands and amending this document as follows:

1. Insert the following definitions into Subclause 1.1(Definitions):

**Post Insolvency Demand** means any Demand in relation to the Guaranteed Obligations of a Company after an Insolvency Event has occurred in relation to that Company.

**Pre Insolvency Demand** means any Demand in relation to the Guaranteed Obligations of a Company when no Insolvency Event has occurred in relation to that Company.

* 1. **Reference Year** means any period of 12 months ending on [\*\*\*date and month\*\*\*] of each year.[[9]](#footnote-9)

1. Insert a new Subclause 2.2 (Limit on amount recoverable from Pre Insolvency Demands) and

select one of options A, B or C.

2.2 Limit on amount recoverable from Pre Insolvency Demands

[[10]](#footnote-10)OPTION A

The amount which may be recovered from [the] [any] Guarantor[(s)] by the Trustees pursuant to any Pre Insolvency Demand is unlimited.

* 1. OPTION B

The total amount which may be recovered from [the] [any] Guarantor pursuant to a Pre Insolvency Demand shall not exceed [⚫][[11]](#footnote-11)% of the amount specified in Subclause 2.3(a)[(ii)] (Limit on amount recoverable from Post Insolvency Demands), LESS any payment(s) made by [the] [any] Guarantor to the Trustees pursuant to any other Pre Insolvency Demand(s) (whether or not such other Pre Insolvency Demand(s) related to the Company the subject of such first mentioned Pre Insolvency Demand).

OPTION C

The total amount which may be recovered from [the] [any] Guarantor pursuant to a Pre Insolvency Demand shall not exceed [⚫][[12]](#footnote-12)% of the total contributions [in respect of any deficit (as required by Section 226 of the Pensions Act 2004) and ongoing accrual of benefits][[13]](#footnote-13) payable and/or paid to the Scheme by the Companies during the Reference Year in which the debt the subject of such Pre Insolvency Demand arose under the terms of the Schedule of Contributions (as defined in Section 227 of the Pensions Act 2004) [or in accordance with the Scheme's rules,][[14]](#footnote-14) LESS any payment(s) made by [the] [any] Guarantor to the Trustees pursuant to any other Pre Insolvency Demand(s) relating to debts of any Company arising in that Reference Year.

1. Insert a new Subclause 2.3 (Limit on amount recoverable from Post Insolvency Demands) with the following:

2.3 Limit on amount recoverable from Post Insolvency Demands

(a) The total amount which may be recovered from [the] [any] Guarantor pursuant to a Post Insolvency Demand shall not exceed:

**[[15]](#footnote-15)**OPTION 1:

£[⚫].

OPTION 2:

an amount equal to the lower of:

(i) an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at, or as at, the reference date (where **reference date** means the date of the Insolvency Event to which such Post Insolvency Demand relates); and

(ii) £[⚫].

OPTION 3:

an amount equal to the lower of:

(i) an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on the reference date (where **reference date** means the date of (1) the Insolvency Event to which such Post Insolvency Demand relates or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme); and

(ii) £[⚫].

(b) Any payment by [the] [any] Guarantor pursuant to any Post Insolvency Demand shall reduce the amount referred to in Paragraph (a)[(ii)][[16]](#footnote-16) above.

[(c) Any delivery of a Post Insolvency Demand or any payment by [the] [any] Guarantor pursuant to a Post Insolvency Demand shall not alter the manner in which the amount referred to in Paragraph (i) above will be calculated at any time.

(d) In relation to any Post Insolvency Demand, the Trustees shall determine (acting reasonably) at the cost of the Guarantor[s], using such legal, actuarial, financial, accounting, pensions or other professional adviser(s) as the Trustees may select, the amount referred to in Paragraph (a)[(i)] above by reference to Section [179 of the Pensions Act 2004] [75 of the Pensions Act 1995] and shall notify the Guarantor[s] of such determination. The Guarantor[s] shall on demand reimburse the Trustees for any costs and expenses incurred by the Trustees in relation to such determination.][[17]](#footnote-17)

Rider 2

**Fluctuating Caps**

Parties may agree to limit the amounts recovered under this document by selecting one the fluctuating cap options for demands and amending this document as follows:

1. Insert a new Subclause 2.2 (Limit on amount recoverable) and select one of options 1 or 2.

2.2 Limit on amount recoverable

OPTION 1:

(a) The total amount which may be recovered from [the] [any] Guarantor pursuant to a Demand shall not exceed an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at, or as at, the reference date (where reference date means the date such Demand is made).

OPTION 2:

(a) The total amount which may be recovered from [the] [any] Guarantor pursuant to a Demand shall not exceed an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on the reference date (where **reference date** means the date of (1) such Demand is made or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme).

AND FOR EITHER OPTION ADD THE FOLLOWING:

(b) Any delivery of a Demand or any payment by [the] [any] Guarantor pursuant to a Demand shall not reduce the amount referred to in Paragraph (a) above.

(c) In relation to any Demand, the Trustees shall determine (acting reasonably) at the cost of the Guarantor[s], using such legal, financial, accounting, pensions or other professional adviser(s) as the Trustees may select, the amount referred to in Paragraph (a)[(1)] above by reference to Section [179 of the Pensions Act 2004] [75 of the Pensions Act 1995] and shall notify the Guarantor[s] of such determination. The Guarantor[s] shall on demand reimburse the Trustees for any costs and expenses incurred by the Trustees in relation to such determination.

Rider 3

Where the Parties require Clause 9 (Amendments) to include prescriptive options setting out the manner in which amendments to this document or a release of a Guarantor may be considered, this document may be amended as follows:

1. Where the options in Rider 1 (Fixed Caps) and have been selected and Subclause 2.2 (Limit on amount recoverable from Pre Insolvency Demands) and Subclause 2.3 (Limit on amount recoverable from Post Insolvency Demands) have been inserted, (Subparagraph (c) onwards shall be inserted at Clause 9 (Amendments):
   * 1. At any time while this Deed remains in force [but no more than [once] in any [12] month period] the Guarantor[s] may submit to the Trustees a written proposal (each a **Proposal**) to:
        1. amend Subclause 2.3 (Limit on amount recoverable from Post Insolvency Demands) so that the total amount which may be recovered from [the] [any] Guarantor[s] pursuant to a Post Insolvency Demand shall not exceed:
           1. a fixed amount; or
           2. the lower of (I) an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at or as on that date (where **reference date** means the date of the Insolvency Event to which such Post Insolvency Demand relates); and (II) a fixed amount; or
           3. the lower of (I) an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on that date (where **reference date** means (1) the date of the Insolvency Event to which such Post Insolvency Demand relates or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme); and (II) a fixed amount; or
        2. delete Subclause 2.2 (Limit on amount recoverable from Pre Insolvency Demands) and amend Subclause 2.3 (Limit on amount recoverable from Post Insolvency Demands), so that the total amount which may be recovered from [the] [any] Guarantor[s] pursuant to a Demand shall:
           1. not exceed an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at, or as at, the reference date (where reference date means the date such Demand is made); or
           2. not exceed an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on the reference date (where reference date means (1) the date such Demand is made or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme); or
        3. release the obligations of the Guarantor[s] under this Deed in full.
     2. A Proposal may include the matters set out in Paragraph 2 of Schedule 2 (Amendment and Release Criteria) but must specify a date (the **Implementation Date**) with effect from which, if approved by the Trustees, the Proposal is to be implemented. The Implementation Date shall be not less than 30 and not more than 45 Business Days after the date on which the Trustees receive the Proposal (the **Proposal Date**).
     3. If the Trustees determine (acting reasonably) that a Proposal satisfies the criteria set out in Paragraph 3 of Schedule 2 (Amendment and Release Criteria), the Trustees shall promptly notify their consent in writing to the Guarantor[s], save they may withhold their consent if they consider that there are reasonable grounds to do so.
     4. Upon notice of consent being delivered by the Trustees to the Guarantor[s] as contemplated by Paragraph (e) above, the Parties shall (at the Guarantor['s][s'] expense pursuant to Subclause 7.2 (Amendment costs)) promptly take all steps and execute all documents reasonably specified by the Trustees to implement the Proposal so that it is effective from the Implementation Date.
2. Where the options in Rider 2 (Fluctuating Caps) have been selected and Subclause 2.2 (Limit on amount recoverable ) has been inserted, the following Subparagraph (c) onwards shall be inserted at Clause 9 (Amendments):

OPTION A

* + 1. At any time while this Deed remains in force [but no more than [once] in any [12] month period] the Guarantor[s] may submit to the Trustees a written proposal (each a **Proposal**) to:
       1. [amend to Subclause 2.2 (Limit on amount recoverable), so that the total amount which may be recovered from [the] [any] Guarantor[s] pursuant to a Demand shall:
          1. not exceed an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at, or as at, the reference date (where reference date means the date the Demand is made); or
          2. not exceed an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on the reference date (where reference date means (1) the date the Demand is made or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme); or
       2. release the obligations of the Guarantor[s] under this Deed in full.
    2. A Proposal may include the matters set out in Paragraph 2 of Schedule 2 (Amendment and Release Criteria) but must specify a date (the **Implementation Date**) with effect from which, if approved by the Trustees, the Proposal is to be implemented. The Implementation Date shall be not less than 30 and not more than 45 Business Days after the date on which the Trustees receive the Proposal (the **Proposal Date**).
    3. If the Trustees determine (acting reasonably) that a Proposal satisfies the criteria set out in Paragraph 3 of Schedule 2 (Amendment and Release Criteria), the Trustees shall promptly notify their consent in writing to the Guarantor[s], save they may withhold their consent if they consider that there are reasonable grounds to do so.
    4. Upon notice of consent being delivered by the Trustees to the Guarantor[s] as contemplated by Paragraph (e) above, the Parties shall (at the Guarantor['s][s'] expense pursuant to Subclause 7.2 (Amendment costs)) promptly take all steps and execute all documents reasonably specified by the Trustees to implement the Proposal so that it is effective from the Implementation Date.

[[18]](#footnote-18)OPTION B

* + 1. At any time while this Deed remains in force [but no more than [once] in any [12] month period] the Guarantor[s] may submit to the Trustees a written proposal (each a **Proposal**) to amend Subclause 2.2 (Limit on amount recoverable) so that:
       1. where a Demand in relation to the Guaranteed Obligations of a Company when no Insolvency Event has occurred in relation to that Company (a "**Pre Insolvency Demand**") the total amount which may be recovered from [the] [any] Guarantor[s]:
          1. shall not exceed the amount specified in Subclause (ii)[(A)/(B)(II)/(C)(II)] below, LESS any payment(s) made by [the] [any] Guarantor to the Trustees pursuant to any other Pre Insolvency Demand(s) (whether or not such other Pre Insolvency Demand(s) related to the Company the subject of such first mentioned Pre Insolvency Demand); or
          2. shall not exceed the total contributions [in respect of any deficit (as required by Section 226 of the Pensions Act 2004) and ongoing accrual of benefits] payable and/or paid to the Scheme by the Companies during the Reference Year in which the debt the subject of such Pre Insolvency Demand arose under the terms of the Schedule of Contributions (as defined in Section 227 of the Pensions Act 2004) or in accordance with the Scheme's rules, LESS any payment(s) made by [the] [any] Guarantor to the Trustees pursuant to any other Pre Insolvency Demand(s) relating to debts of any Company arising in that Reference Year; and/or
       2. where a Demand in relation to the Guaranteed Obligations of a Company after an Insolvency Event has occurred in relation to that Company (a "**Post Insolvency Demand**") the total amount which may be recovered from [the] [any] Guarantor[s] may be:
          1. a fixed amount; or
          2. the lower of (I) an amount equal to the sum which, if added to the assets of the Scheme, would (on the reference date) result in the Scheme being [⚫] per cent. funded, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted at or as on that date (where **reference date** means the date of the Insolvency Event to which such Post Insolvency Demand relates); and (II) a fixed amount; or
          3. the lower of (I) an amount equal to the entire aggregate liability (on the reference date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on that date (where **reference date** means the date of (1) the Insolvency Event to which such Post Insolvency Demand relates or, if earlier (2) the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the Trustees following the start of the winding up of the Scheme); and (II) a fixed amount; or
       3. release the obligations of the Guarantor[s] under this Deed in full.
    2. A Proposal may include the matters set out in Paragraph 2 of Schedule 2 (Amendment and Release Criteria) but must specify a date (the **Implementation Date**) with effect from which, if approved by the Trustees, the Proposal is to be implemented. The Implementation Date shall be not less than 30 and not more than 45 Business Days after the date on which the Trustees receive the Proposal (the **Proposal Date**).
    3. If the Trustees determine (acting reasonably) that a Proposal satisfies the criteria set out in Paragraph 3 of Schedule 2 (Amendment and Release Criteria), the Trustees shall promptly notify their consent in writing to the Guarantor[s], save they may withhold their consent if they consider that there are reasonable grounds to do so.
    4. Upon notice of consent being delivered by the Trustees to the Guarantor[s] as contemplated by Paragraph (e) above, the Parties shall (at the Guarantor['s][s'] expense pursuant to Subclause 7.2 (Amendment costs)) promptly take all steps and execute all documents reasonably specified by the Trustees to implement the Proposal so that it is effective from the Implementation Date.

1. A new Schedule 2 shall be inserted in the form set out below:

Schedule 2

Amendment and release criteria

1. Definitions
2. In this Schedule:

**C0** means the amount of any Eligible Deficit-Reduction Contributions as at a Reference Date.

**C1** means the amount of any Eligible Deficit-Reduction Contributions as at an Implementation Date.

* 1. **Deemed Value** as at a Measurement Date means:
     1. in respect of a Pension Protection Fund Recognised Arrangement which provides for a person to enter into a guarantee (other than a bank guarantee or letter of credit issued by a Regulated Entity) or for security to be granted, in each case in favour of the Trustees, the amount set opposite the description of that arrangement in the table below or (in the case of security only) the value of the assets which are subject to that security as set out in the most recent Eligible Valuation of those assets, if lower:

|  |  |
| --- | --- |
| * + 1. **Description of arrangement** | **Deemed Value** |
| * + 1. Guarantee or security where the liability of the guarantor or chargor, or the amount recoverable from the guarantor or chargor (or the charged assets), is expressed to be limited to a fixed amount (and where a distinction is made between pre-insolvency and post-insolvency recoveries, the fixed amount associated with post-insolvency recoveries shall be relevant). | * + 1. That fixed amount. |
| * + 1. Guarantee or security where the liability of the guarantor or chargor, or the amount recoverable from the guarantor or chargor (or the charged assets), is expressed to be limited to either (A) an amount equal to the sum which, if added to the assets of the Scheme, would (on a specified date) result in the Scheme being funded to at least a specified percentage, calculated on the basis set out in Section 179 of the Pensions Act 2004, were a valuation on that basis to be conducted on or as at that date or to (B) the lower of the amount referred to in (A) and a fixed amount (“**F**”) (and where a distinction is made between pre-insolvency and post-insolvency recoveries, (F) shall be the fixed amount associated with post-insolvency.) | * + 1. The amount equal to the sum which, if added to the assets of the Scheme, would (on the Measurement Date) result in the Scheme being funded to at least that percentage, calculated on the basis set out in Section 179 of the Pensions Act 2004, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding any Eligible Deficit-Reduction Contributions as at that Measurement Date or, where (B) applies, the lower of such amount and F. |
| * + 1. Guarantee or security where the liability of the guarantor or chargor, or the amount recoverable from the guarantor or chargor (or the charged assets), is expressed to be limited to either (A) an amount equal to the entire aggregate liability (on a specified date) of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75 of the Pensions Act 1995 to have become due on that date or to (B) the lower of the amount referred to in (A) and a fixed amount (“**F**”) (and where a distinction is made between pre-insolvency and post-insolvency recoveries, (F) shall be the fixed amount associated with post-insolvency.). | * + 1. The amount equal to the sum which, if added to the assets of the Scheme, would (on the Measurement Date) result in the Scheme being funded to at least 125 per cent., calculated on the basis set out in Section 179 of the Pensions Act 2004, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding any Eligible Deficit-Reduction Contributions as at that Measurement Date or, where (B) applies, the lower of such amount and F. |

* + 1. in respect of a Pension Protection Fund Recognised Arrangement which is a letter of credit or a bank guarantee issued by a Regulated Entity, the undrawn and unexpired portion of that letter of credit or bank guarantee.

**Deficit-Reduction Contributions** means deficit-reduction contributions made to the Scheme calculated on the basis specified by the Pension Protection Fund in its most recently published policies.

1. **Eligible Deficit-Reduction Contributions** as at a Measurement Date means any Deficit-Reduction Contributions made or to be made to the Scheme between:
   * 1. the date of the most recent Eligible Valuation prior to the Measurement Date; and
     2. the Measurement Date, provided that:

the Eligible Deficit-Reduction Contributions as at a Reference Date shall only include Deficit-Reduction Contributions which were validly certified to the Pension Protection Fund in accordance with its policies no later than six (6) days after that Reference Date; and

the Eligible Deficit-Reduction Contributions as at an Implementation Date shall comprise all Deficit-Reduction Contributions certified by the Scheme Actuary pursuant to Paragraph 2(b) below.

1. **Eligible Valuation** means:
   * 1. in relation to the assets or liabilities of the Scheme, either:
        1. a valuation of those assets and liabilities carried out on the basis set out in Section 179 of the Pensions Act 2004 and which has been provided to the Pension Protection Fund in accordance with Section 179 of the Pensions Act 2004; or
        2. a statement provided to the Trustees by the Scheme Actuary, setting out prudent approximations of the asset and liability figures which would have resulted if the Scheme Actuary had conducted a valuation on the basis set out in Section 179 of the Pensions Act 2004 as at a specific date; and
     2. in relation to an asset charged in favour of the Trustees, a valuation of that asset which complies with all requirements published by the Pension Protection Fund (whether in relation to the date or method of the valuation or otherwise) for the recognition of security over such an asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been certified to the Pension Protection Fund in accordance with those requirements,
   1. and references to "the most recent Eligible Valuation prior to" a date shall mean the Eligible Valuation which was so provided or certified on or prior to, and whose effective date is closest to, that date.
   2. **L0** means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.
   3. **L1** means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to an Implementation Date.

**M0** means the aggregate Deemed Value as at a Reference Date of all Pension Protection Fund Recognised Arrangements which are guarantees in respect of which the Scheme benefited as at that Reference Date, including this Deed but excluding bank guarantees or letters of credit issued by Regulated Entities.

**M1** means the aggregate Deemed Value immediately prior to an Implementation Date of all Pension Protection Fund Recognised Arrangements which are guarantees in respect of which the Scheme benefited immediately prior to that Implementation Date, excluding bank guarantees or letters of credit issued by Regulated Entities.

**M2** means the aggregate Deemed Value as at an Implementation Date of all Pension Protection Fund Recognised Arrangements which are guarantees in respect of which the Scheme will benefit on and following that Implementation Date, excluding bank guarantees or letters of credit issued by Regulated Entities.

**Measurement Date** means the date on which any of the variables in this Schedule is measured.

1. **N0** means the aggregate Deemed Value as at a Reference Date of all Pension Protection Fund Recognised Arrangements which comprise:
   * 1. security over assets; or
     2. bank guarantees or letters of credit issued by Regulated Entities,
   1. in respect of which the Scheme benefited as at that Reference Date.
2. **N1** means the aggregate Deemed Value immediately prior to an Implementation Date of all Pension Protection Fund Recognised Arrangements which comprise:
   * 1. security over assets; or
     2. bank guarantees or letters of credit issued by Regulated Entities,
3. in respect of which the Scheme benefited immediately prior to that Implementation Date.
4. **N2** means the aggregate Deemed Value as at an Implementation Date of all Pension Protection Fund Recognised Arrangements which comprise:
   * 1. security over assets; or
     2. bank guarantees or letters of credit issued by Regulated Entities,
   1. in respect of which the Scheme will benefit on and following that Implementation Date.
5. **Pension Protection Fund Recognised Arrangement** means an arrangement constituted by an agreement in Pension Protection Fund Standard Form which satisfies all criteria specified by the Pension Protection Fund for recognition as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been the subject of a valid certification to the Pension Protection Fund in Pension Protection Fund Standard Form.
   1. **Pension Protection Fund Standard Form** means, in relation to an agreement or a certificate, the standard form of that agreement or certificate most recently published by the Pension Protection Fund prior to the date on which that agreement was entered into or that certificate was given.
   2. **Reference Date** means the 1 April immediately preceding any Proposal Date.
   3. **Regulated Entity** means an entity which satisfies all criteria specified by the Pension Protection Fund for the issuer of a letter of credit or bank guarantee which will be recognised as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004.

**S0** means the assets of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.

**S1** means the assets of the Scheme as set out in the most recent Eligible Valuation prior to an Implementation Date.

* 1. **Scheme Actuary** means the actuary to the Scheme.

1. Content of Proposals
   * 1. In addition to the matters referred to in Subparagraph 9(c) (Amendments), the Proposal may include details of any new Pension Protection Fund Recognised Arrangement(s) that are proposed to come into force on or prior to the relevant Implementation Date.
     2. As part of the Proposal, [the] [a] Guarantor may require the Trustees to take into account any contributions made or to be made to the Scheme between:
        1. the date of the most recent Eligible Valuation prior to the relevant Implementation Date; and
        2. the relevant Implementation Date.

In such circumstances the Trustees shall obtain, at the [Guarantor’s] [Guarantors'] expense and prior to the relevant Implementation Date, a statement from the Scheme Actuary as to the amount of such contributions which qualify as Deficit-Reduction Contributions. Without prejudice to Subparagraph 9(e) (Amendments), the Trustees shall not be required to implement the Proposal unless all the contributions on which such statement is based are actually received in full by the Scheme no later than the relevant Implementation Date.

1. Criteria
   * 1. The Proposal must satisfy all of requirements (i), (ii) and (iii) below:
        1. 

OR

* + 1. 
    2. OR
    3. 
       1. 

OR



OR

* + 1. 
    2. OR
    3. 
       1. where the Proposal include replacing [the] [a] Guarantor, the new guarantor had, on a date falling no more than 5 Business Days prior to the Proposal Date, no greater risk of insolvency than that of the [relevant] Guarantor on that date, based on the measure of insolvency risk then used by the Pension Protection Fund for the calculation of the risk based levy.
    4. For the avoidance of doubt, where the criteria set out in Paragraph (c) above would be satisfied if the Deemed Value of this Deed on and following the relevant Implementation Date were zero, then the Proposal may include the release of the Guarantor[s] from [its] [their] obligations under this Deed in full with effect from the relevant Implementation Date (without prejudice to any obligations and liabilities of the Guarantor[s] which may have accrued as at the Implementation Date).

1. A single guarantee from multiple guarantors is acceptable, provided that all of the guarantors are expressed to be jointly and severally liable for the full amount of the Guaranteed Obligations. The chosen liability cap will be one overall cap applying across all guarantors. If different guarantors are to have different liability caps, then separate guarantees should be used. See the Pension Protection Fund guidance on contingent assets for details of how these arrangements will be treated for levy purposes. [↑](#footnote-ref-1)
2. This clause will require appropriate amendment where a Guarantor is not a limited liability company. [↑](#footnote-ref-2)
3. The purpose of this date is to provide advance warning of any issues that may exist with respect to the representations in advance of the PPF year-end process. This date may be amended as agreed between the parties. [↑](#footnote-ref-3)
4. Delete wording in square brackets where no clause (c) or below is inserted. [↑](#footnote-ref-4)
5. The parties may include the words in brackets if they have, at the time of signing the document, identified future circumstances which they agree would be relevant to any decision by the Trustees following a proposal from the Guarantor(s). [↑](#footnote-ref-5)
6. Not necessary if there is a single guarantor. [↑](#footnote-ref-6)
7. Not necessary for any Guarantor which is incorporated in England and Wales. [↑](#footnote-ref-7)
8. Trustee to ensure each signature block is amended as necessary in order to ensure this document is valid and effective. [↑](#footnote-ref-8)
9. This definition is relevant where the Parties choose to limit the Pre-Insolvency Cap pursuant to Option C in Rider 1 and/or Option B in Rider 3. The Parties should choose a suitable date for the scheme in question. [↑](#footnote-ref-9)
10. Trustees may choose not to have a liability cap on Pre Insolvency Demands, and if so choose Option A. [↑](#footnote-ref-10)
11. This amount must be 100% or higher. Note that the pre and post insolvency caps are independent of each other and so a reduction of the amount available under the cap pre-insolvency would not reduce the amount available under the cap set for a post insolvency scenario. [↑](#footnote-ref-11)
12. This amount must be 100% or higher. [↑](#footnote-ref-12)
13. Text in square brackets optional. [↑](#footnote-ref-13)
14. Text in square brackets optional. [↑](#footnote-ref-14)
15. Choose one of the three fixed cap options for the guarantor's maximum liability under the guarantee. In the case of a non-associated scheme/section, only Option 1 (a fixed monetary cap) may be used. [↑](#footnote-ref-15)
16. This is a reference to the fixed amount element in Paragraph (a) above. Remove[II] if Option 1 is selected. [↑](#footnote-ref-16)
17. Include paragraphs (c) and (d) when either of Options 2 and 3 is selected from paragraph (a). [↑](#footnote-ref-17)
18. This option enables the Trustees to amend the document from allowing floating caps to fixed caps. The amendments to the definitions set out in paragraph 1 of Rider 1 will require consideration for the proposed amendment. [↑](#footnote-ref-18)