

## Joint Bid Conduct Agreement

Project Agassi

Dated 25 November 2020

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This Agreement is dated 25 November 2020

## Parties

- (1) **TOWERBROOK CAPITAL PARTNERS (U.K.) LLP**, an English limited liability partnership with its principal place of business at 1, St James's Market, Carlton Street, London, SW1Y 4AH, UK ("**Towerbrook**"); and
  - (2) **WARBURG PINCUS INTERNATIONAL LLC**, a Delaware limited liability company with a place of business at 33 Almack House, 28 King Street, London, SW1Y 6QW, United Kingdom ("**Warburg Pincus**"),
- (the "**Parties**" and each a "**Party**").

## Introduction

- (A) The Parties have been engaging in discussions with a view to making a potential joint bid under the Code for the entire issued and to be issued share capital of the Target (the "**Joint Bid**").
- (B) The Parties have agreed in principle certain cost sharing arrangements with Centerbridge Advisors III, LLC in respect of costs, fees and expenses incurred or accrued up to 23:59 (GMT) on 22 September 2020 in relation to the Joint Bid as set out in more detail in a form of agreement shared between the Parties prior to the date hereof (the "**CB Cost Sharing Arrangements**").
- (C) This joint bid conduct agreement (the "**Agreement**") sets out the terms and conditions of an agreement between the Parties in connection with the conduct and the implementation of the Joint Bid, the terms and conditions of which are or will be contained in the Joint Bid Documentation, pursuant to and in accordance with the Code.
- (D) Warburg Pincus is entering into this Agreement and participating in the Joint Bid on behalf of its Funds and Towerbrook is entering into this Agreement and participating in its capacity as manager of its Funds.

In consideration for the mutual undertakings contained herein, the Parties hereby agree as follows:

## Agreement

### 1 Interpretation

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

"**2.7 Announcement**" has the meaning given in Clause 2.2;

"**2.8 Announcement**" means an announcement of a statement of an intention not to make the Joint Bid by or on behalf of the Parties in accordance with Rule 2.8 of the Code;

"**Acting in Concert**" shall have the meaning given in the Code;

"**Affiliate**" means, in respect of a Party, any person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with that Party from time to time and includes any funds and/or vehicles managed and/or advised by that Party or its Affiliates within the meaning of the foregoing but excludes: (a) any portfolio or investee companies in which any such funds and/or vehicles directly or indirectly hold an interest or investment; (b) such funds or vehicles which engage primarily in investment in

debt and/or debt securities; and (c) any other person that is not involved, directly or indirectly, in the private equity business of that person and has not received information in respect of the Joint Bid;

**“Agreed Form”** means, in relation to a document, such document in the terms agreed between the Investors as confirmed by their respective lawyers in writing via email;

**“Agreement”** has the meaning given in Recital (D);

**“Applicable Law”** means all applicable laws or regulations, any order of a court of competent jurisdiction or any competent tax, governmental, judicial authority or body, or any rule, order, request, law or requirement of any supervisory or regulatory authority or body (including the Panel and any relevant stock exchange on which such Party’s securities are admitted to trading) ;

**“BidCo”** means Basing BidCo Limited, a Jersey incorporated private company incorporated by the Parties in relation to the proposed Joint Bid having its registered office at 3rd Floor 44 Esplanade St Helier Jersey JE4 9WG;

**“BidCo Board”** means the board of directors of BidCo;

**“Budget”** means the budget for the Joint Bid Costs as agreed between the Parties from time to time;

**“CB Cost Sharing Arrangements”** has the meaning given to it in Recital (B);

**“Code”** means the City Code on Takeovers and Mergers;

**“Concert Parties”** means, in respect of a Party, collectively, any persons Acting in Concert with such Party from time to time (as may be agreed with the Panel), provided that, for the purpose of this Agreement only, no Party or its Affiliates shall be deemed to be Concert Parties of the other Parties or their respective Affiliates;

**“Conditions”** means any conditions to the implementation of the Joint Bid as set out in more detail in any document setting out the offer terms for the Joint Bid (whether implemented by way of a scheme of arrangement (as that term is defined in the Companies Act 2006) under Part 26 of the Companies Act 2006 or by way of a contractual takeover offer);

**“Confidential Information”** has the meaning given to it Clause 10.3;

**“ConsortiumCo”** means Basing ConsortiumCo Limited a Jersey incorporated private company incorporated by the Parties in relation to the proposed Joint Bid in which the Investors (or their respective Affiliates) intend to subscribe for, or otherwise acquire, securities on the Investment Date as contemplated in the Structure Paper;

**“Consortium Agreement”** has the meaning given in Clause 2.3(k)(ii);

**“Consortium Agreement Term Sheet”** means the term sheet for the Consortium Agreement in the Agreed Form between the Parties;

**“Constitutional Documents”** has the meaning given in Clause 2.3(k)(ii);

**“Control”** with respect to a person (a) ownership of more than 50 per cent of the voting securities of such person, (b) the right to appoint, or cause the appointment of, more than 50 per cent of the members of the board of directors (or similar governing body) of such person or (c) the right to manage, or direct the management of, on a discretionary basis, the business, affairs and/or assets of such person, and a general partner of a limited partnership

is deemed to Control such limited partnership and a permanent investment manager of a fund is deemed to Control such fund (and the terms “**Controlling**” and “**Controlled**” shall have meanings correlative to the foregoing);

“**Co-operation Agreement**” means the agreement dated on or around the date hereof between BidCo and the Target relating to, among other things, the implementation of the Joint Bid;

“**Departing Party**” has the meaning given in Clause 10.3;

“**Disclosing Party’s Underlying NDA**” has the meaning given to it in Clause 10.4;

“**ECL**” has the meaning given to it in Clause 4.1;

“**Effective Date**” means the date upon which the Joint Bid: (i) becomes effective (if implemented by way of a Scheme of Arrangement under part 26 of the Companies Act 2006); or (ii) becomes or is declared wholly unconditional (if implemented by way of a takeover offer);

“**Equity Commitment**” has the meaning given in Clause 2.6;

“**FCA**” means the Financial Conduct Authority;

“**Financing**” has the meaning given in Clause 2.3(e);

“**Financial Advisors**” means Goldman Sachs International and Credit Suisse International, financial advisors to the Parties in respect of the Joint Bid;

“**Funds**” means:

- (a) in respect of Towerbrook, funds managed or advised by Towerbrook or its Affiliates (and “**Towerbrook Funds**” shall have the meaning correlative to the foregoing); and
- (b) in respect of Warburg Pincus, funds managed or advised by Warburg Pincus or its Affiliates (and “**Warburg Pincus Funds**” shall have the meaning correlative to the foregoing);

“**GFSC**” means the Gibraltar Financial Services Commission;

“**Group**” means BidCo and any JVCo, together with the Target Group;

“**HoldCo**” means Basing HoldCo Limited, a Jersey incorporated private company incorporated by the Parties in relation to the proposed Joint Bid having its registered office at 3rd Floor 44 Esplanade St Helier Jersey JE4 9WG;

“**Initial Commitments**” has the meaning given in Clause 4.1;

“**Initial Investments**” has the meaning given in Clause 4.1;

“**Initial Investors**” has the meaning given in Clause 4.1;

“**Investment Date**” has the meaning given in Clause 4.1;

“**Investors**” has the meaning given in Clause 4.1;

“**Joint Bid**” has the meaning given in Recital (A);

“**Joint Bid Committee**” has the meaning given in Clause 2.8;

“**Joint Bid Costs**” means, subject to Clause 9, costs, fees and expenses incurred by (or on behalf of) any JVCo or by any Party for the benefit of both Parties but excluding, for the

avoidance of doubt, Towerbrook Costs and Warburg Pincus Costs (save as otherwise agreed);

**“Joint Bid Documentation”** means the documents identified in Clause 2.3(k);

**“JVCo”** means BidCo, MidCo, HoldCo, TopCo, ConsortiumCo and any other entities incorporated by the Parties in relation to the proposed Joint Bid, the top entity(ies) of which shall be the ConsortiumCo(s);

**“Linklaters”** means Linklaters LLP, in their capacity as legal advisers to both Parties in respect of the Joint Bid;

**“Losses”** means all losses, liabilities, costs (including reasonable and properly incurred legal costs and experts’ and consultants’ fees), charges, expenses, actions, proceedings, claims and demands;

**“MidCo”** means Basing MidCo Limited, a Jersey incorporated private company incorporated by the Parties in relation to the proposed Joint Bid having its registered office at 3rd Floor 44 Esplanade St Helier Jersey JE4 9WG;

**“Offer Period”** means an offer period in respect of the Target in accordance with the Code;

**“Panel”** means the Panel on Takeovers and Mergers;

**“Permitted Syndictee”** has the meaning given in Clause 6.4;

**“Permitted Syndication”** has the meaning given in Clause 6.4;

**“Potential Syndictee”** has the meaning given in Clause 6.5;

**“PRA”** means the Prudential Regulation Authority;

**“Regulator”** has the meaning given in Clause 3.3;

**“Relevant Date”** means, in respect of any Party, the date that is six months after the earlier of: (i) the date on which such Party withdraws from the Joint Bid in accordance with Clauses 3.3 or 8.1 below; and (ii) the date on which this Agreement terminates or is terminated in accordance with Clause 8.3;

**“Relevant Proportion”** means, in respect of any Party, the proportion that the Initial Commitment of the Initial Investor(s) of such Party bears to the aggregate of all Initial Commitments being 50% each;

**“Remaining Party”** has the meaning given in Clause 8.2(b);

**“Representatives”** means, in respect of any Party, the partners, directors, managers, officers and employees of such Party and such Party’s Affiliates;

**“Restricted Syndictee”** means: (a) any person who (as a result of such syndication) would: (i) cause the Group to become subject to any regulatory regime that would impose adverse restrictions or obligations on the Group; (ii) be acquiring or increasing control over (within the meaning of section 178 and 422 of the Financial Services and Markets Act 2000) any member of the Target Group that is authorised or regulated by the FCA, the PRA and/or the GFSC; (iii) be required to be registered, licensed, approved or authorised by any Regulator; (iv) be required (or require BidCo or any Party) to make an anti-trust, foreign investment or regulatory filing not contemplated by the 2.7 Announcement; (v) be reasonably likely to cause a material delay in, or jeopardise receipt of, any approval or clearance that is required to acquire or operate the Group or undertake any transaction or arrangement approved by

the BidCo Board or the board of any other JVCo; or (vi) otherwise be reasonably likely to have any materially adverse effect on the regulatory or legal position of the Group; (b) any person who is subject to insolvency proceedings or analogous events; or (c) any person who is not (prior to such syndication) an existing limited partner or investor in any of the Warburg Pincus Funds or the Towerbrook Funds;

**“Structure Paper”** means the summary tax structure paper relating to the Joint Bid prepared by PricewaterhouseCoopers LLP dated on or prior to the date of this Agreement in the Agreed Form;

**“syndication”** means any syndication, transfer or assignment (and **“syndicate”**, **“transfer”** and **“assign”** and related words and expressions shall have meanings correlative to the foregoing);

**“Syndication Interests”** has the meaning given in Clause 6.4;

**“Target”** means the publicly listed company code-named AGASSI;

**“Target Group”** means Target and its subsidiaries;

**“Target Group Refinancing”** means the payment of any amounts in respect of the repayment, refinancing, redemption or replacement of any existing indebtedness or commitments in respect of the equivalent principal amount of the Class B2 Secured Notes maturing in July 2022 issued by AA Bond Co Limited and, correspondingly, an equivalent principal amount in respect of the related loan agreement between, *inter alios*, AA Bond Co Limited and AA Senior Co Limited and any existing indebtedness or commitments in respect of the equivalent principal amount of the Class A5 Secured Notes maturing in January 2022 issued by AA Bond Co Limited and any associated fees, costs, taxes and expenses (including any breakage costs, redemption premium, make-whole costs and fees) and any other transaction costs related thereto or incurred or charged, or to be incurred or charged, in connection therewith (in each case including any VAT and/or any other applicable tax thereon);

**“Target Securities Interests”** means an “interest in securities” (as such term is defined in the Code) in the Target (including for these purposes, securities carrying subscription or conversion rights relating to the Target’s shares or securities, or derivatives or contracts for differences referenced to the Target’s shares or securities);

**“Topco”** means Basing TopCo Limited, a Jersey incorporated private company incorporated by the Parties in relation to the proposed Joint Bid having its registered office at 3rd Floor 44 Esplanade St Helier Jersey JE4 9WG;

**“Towerbrook Costs”** means all costs, fees and expenses incurred in relation to advice specific only to Towerbrook and its Affiliates which shall be for the sole account of Towerbrook; and

**“Warburg Pincus Costs”** means all costs, fees and expenses incurred in relation to advice specific only to Warburg Pincus and its Affiliates which shall be for the sole account of Warburg Pincus.

**1.2** Clause headings shall not affect the interpretation of this Agreement.

**1.3** Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

- 1.4** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5** References to Clauses are to the clauses of this Agreement, references to Recitals are to the recitals of the introduction to this Agreement and references to Rules are to rules of the Code.
- 1.6** The words including, include, in particular and words of similar effect shall not be deemed to limit the general effect of the words that precede them and the *ejusdem generis* rule of construction shall not apply to this Agreement.

## **2 Conduct of the Joint Bid**

- 2.1** The Parties shall agree and implement a strategy for making the Joint Bid.
- 2.2** The Parties shall, prior to release of any announcement under Rule 2.7 in connection with the Joint Bid (the “**2.7 Announcement**”), incorporate BidCo and the JVCos for the purpose of the proposed Joint Bid, and shall, as required, agree in good faith any further matters in relation to the JVCos, including their ownership structure, to obtain a mutually acceptable and beneficial structure for the Joint Bid, and for holding any shares in Target acquired by BidCo pursuant to the Joint Bid. All JVCos are and shall continue to be until the Effective Date, unless otherwise agreed in writing by the Parties, owned (directly or indirectly) by the Parties in the Relevant Proportions.
- 2.3** Subject always to the provisions of Clause 8, the following shall require the consent of both Parties and the Parties agree to work together in good faith towards reaching unanimous agreement in relation thereto:
- (a) the pricing and other offer terms including the manner of announcement and implementation of the Joint Bid (and any pricing strategy or revisions relating thereto);
  - (b) the manner and timing of all discussions with Target, its management (including in relation to any management incentivisation) and any of its shareholders and any of its stakeholders (including employee representatives, pension trustees, and, in the context of the Joint Bid, any of its lenders, customers and/or suppliers);
  - (c) the general conduct of the Joint Bid (including the purchase of any Target Securities Interests in connection with the Joint Bid) and the obtaining of any consents, approvals or permissions relating to it;
  - (d) the Budget;
  - (e) the debt financing of the Joint Bid (the “**Financing**”), including the selection and appointment of financing banks, arrangers and other advisers;
  - (f) the appointment or instruction of any advisers to or on behalf of any JVCo (but, for the avoidance of doubt, this shall not apply to any appointment or instruction given to advisers acting on behalf of any Party where the work undertaken pursuant to such appointment or instruction does not give rise to the incurrence of Joint Bid Costs);
  - (g) the structure of the Joint Bid, including as to its form and its terms and conditions, and any pre-conditions;



- (h) the Structure Paper;
- (i) the actual or purported waiver, treating as satisfied, invocation or amendment of any condition or of any pre-condition to the Joint Bid, the extension of any acceptance period of the Joint Bid or similar and/or the revision of terms of the Joint Bid, or the lapsing or withdrawal of the Joint Bid;
- (j) the giving of any consent to the Target under Rule 21.1 or other Rules;
- (k) the definitive documentation required to implement the Joint Bid, including:
  - (i) any offer letters to be submitted to the board of Target from time to time and any discussions with the board of Target;
  - (ii) a consortium agreement relating to ConsortiumCo (the “**Consortium Agreement**”) and the articles of association or other constitutional documents (and any shareholder debt instruments) of each JVCo (the “**Constitutional Documents**”) and the Parties shall use reasonable endeavours to negotiate and agree the Consortium Agreement and the Constitutional Documents prior to the Effective Date, the terms of which shall be consistent with the Consortium Agreement Term Sheet;
  - (iii) a shareholders’ agreement relating to TopCo (the “**TopCo Shareholders’ Agreement**”);
  - (iv) the public documents required or desirable to publish and implement the Joint Bid, including the 2.7 Announcement and the scheme or offer document;
  - (v) any irrevocable undertakings and/or letters of intent to be provided by Target shareholders and/or directors in respect of the Joint Bid;
  - (vi) the documents required for the Financing;
  - (vii) the ECL;
  - (viii) subject to Linklaters and the Financial Advisors corresponding with each of the Panel, the PRA, the FCA and/or the GSFC, in each case to the extent they consider reasonably necessary in connection with the Joint Bid, any regulatory filings or correspondence to be made by or on behalf of BidCo (including, any written correspondence with and/or submissions to the Panel); and
  - (ix) any other agreements as may be determined, required or desirable to announce and implement the Joint Bid;
- (l) the incorporation of any new JVCo and the corporate governance arrangements of BidCo and any other JVCo, including board composition of any JVCo, in particular appointing one or more persons from each Party to facilitate and take responsibility under the Code (together with such other persons as may take responsibility under the Code) for each Party as may be agreed with the Panel prior to the 2.7 Announcement;
- (m) any decision relating to Target’s management;

- (n) any decision regarding the seeking or making of an application to cancel the admission to trading of Target, and the re-registration of Target as a private limited company;
- (o) any decision regarding any remedies or divestitures that might be required by a regulatory or governmental authority in connection with the Joint Bid concerning the Target, including all matters regarding the negotiations and terms and conditions of any such remedies or divestitures. For the avoidance of doubt, where such decision concerns the asset(s) of any Party other than the Target, such decision shall be made at the sole discretion of that Party (and if such decision concerns an asset in which more than one Party is invested, the decision shall be made only with the consent of all relevant Parties);
- (p) any strategy for the syndication of the Financing;
- (q) subject always to the requirements of the Code or other Applicable Law to which the Parties are directly or indirectly subject and Clause 2.5, the timing of the release of the public documentation contemplated by Clause 2.3(k)(iii) or any other announcement in connection with the Joint Bid;
- (r) subject to Linklaters and the Financial Advisors corresponding with the Panel to the extent they consider reasonably necessary in connection with the Joint Bid, the submission of any regulatory filings or notifications; and
- (s) the scope and implementation of due diligence on Target.

**2.4** No Party shall, and each Party shall procure that none of its Concert Parties (including, so far as it is within its powers, any JVCo) shall:

- (a) prior to any public announcement in respect of the Joint Bid, liaise, negotiate, or otherwise communicate with any third party in connection with the Joint Bid, where to do so would either make such third party one of the six persons within the scope of the “rule of six” or would otherwise breach the “rule of six” relating to the Joint Bid in the context of Rule 2.2(e) and Practice Statement 20 in respect of the Code;
- (b) make a 2.7 Announcement until the Parties have agreed in writing to the timing, form and content of such 2.7 Announcement;
- (c) subject to Clause 2.5 below, make any other public announcement or external communication in connection with the Joint Bid, whether formal or informal, until the Parties have consented in writing to the timing, form and content of such announcement or communication (such consent not to be unreasonably withheld or delayed); or
- (d) save to the extent required by law or regulation, by any order of a court of competent jurisdiction or any competent tax, governmental, judicial authority or body, or requested or required by any supervisory or regulatory authority or body (including, but not limited to, the Panel, any relevant stock exchange on which such person’s securities are admitted to trading, any rating agencies, the PRA, the FCA and/or the GFSC, the London Stock Exchange, the European Commission, the Court of Justice of the European Union, the Competition and Markets Authority, the Secretary of State for Business, Energy and Industrial Strategy and the Competition Appeal Tribunal), liaise, negotiate, or otherwise communicate with Target or its shareholders

or advisers, any regulatory authority or exchange or government body in each case with respect to the Joint Bid,

in all cases without the prior consent of both Parties. Notwithstanding the foregoing, the Financial Advisors and/or Linklaters (as appropriate) shall be entitled to communicate with the Panel on behalf of BidCo and the Parties (together as joint bidders) to the extent they consider reasonably necessary to do so in relation to their relevant responsibilities in connection with the Joint Bid. In addition, each of the Parties may communicate with the Panel solely on its own behalf and in relation to its own position under the Code, provided that to the extent such communications may impact the Joint Bid or the position of any other Party (under the Code or otherwise), the relevant Party shall first notify the Financial Advisors and Linklaters in writing, and shall keep each of them reasonably informed, of such communications and shall give each of them the opportunity to participate in such communications.

- 2.5** To the extent any public announcement or external communication is required by the Panel or the Code to be made concerning the Joint Bid on an urgent basis, the Parties shall use best endeavours to discuss the terms and contents of such and promptly make relevant representatives available on short notice for such purpose but, subject to the foregoing, such announcement or external communication may be made without the prior consent of one or both Parties.
- 2.6** Without prejudice to such withdrawing Party's obligations that otherwise subsist under this Agreement, if a Party has withdrawn from the Joint Bid in accordance with Clause 3.3 or Clause 8.1 it shall have no further obligations pursuant to Clauses 2.1 to 2.8 (inclusive), Clause 3 and Clause 4 and its consent (where applicable) shall not be required for the purposes of such Clauses and Clauses 8.2(b), 10 (save in respect of any Confidential Information to the extent relating to such withdrawing Party only) and 11.1. Further, if (and for the duration of the period for which) a Party is in material breach of this Agreement or any Joint Bid Documentation (including in respect of the Equity Commitment of its Initial Investor(s) under the ECL (as defined therein) (an "**Equity Commitment**")), such Party's consent shall not be required for the purpose of Clauses 2.1 to 2.8 (inclusive), 8.2(b), 10 (save in respect of Confidential Information to the extent relating to such withdrawing Party only) and 11.1, and any director of the breaching Party appointed to the BidCo Board or the board of any other JVCo shall not be entitled to attend any meeting of that board or vote on any resolution of that board.
- 2.7** Each Party undertakes to share with the other Party any material information available to them relating to Target or the Joint Bid (including to the extent provided by any adviser in connection with the Joint Bid) from time to time, including information which is reasonably required for: (i) public disclosure as required by the Code; (ii) in connection with any regulatory filings required in any jurisdiction; (iii) in connection with any cash confirmation process; or (iv) in connection with the Financing, but excluding, in respect of any Party, any such material information which (a) relates to that Party only or which that Party is not permitted (under Applicable Law or any agreement with any third party) to share with the other Party; or (b) is otherwise not permitted by (or conflicts with) Clause 10. Any commercially sensitive information (including Confidential Information) relating to any of the Parties required for any regulatory filings and/or approvals, shall be provided on a counsel to counsel basis.

- 2.8** The Parties agree that a bid committee (the “**Joint Bid Committee**”) shall be formed immediately following the execution of this Agreement. The Joint Bid Committee shall be comprised of one representative appointed by each Party (the “**Joint Bid Committee Members**”) who shall, unless written notification (including by email) is provided of an alternative appointment, be:
- (a) Alexander Walsh as the Towerbrook representative; and
  - (b) James O’Gara as the Warburg Pincus representative.
- 2.9** All decisions of the Joint Bid Committee require the unanimous approval of the Joint Bid Committee Members other than as expressly provided in Clause 6.5(c).
- 2.10** Each Party agrees that all consents, approvals, authorities or agreements required to be given by it pursuant to the terms of this Agreement (including the matters referred to in Clauses 2.3 and 11.1) or otherwise in connection with the Joint Bid shall be referred to the Joint Bid Committee and shall be deemed to have been given by any Party if approved in writing by its Joint Bid Committee Member.

### **3 Regulatory filings**

- 3.1** The Parties confirm they will continue to refine their analysis as to any anti-trust or other regulatory filings or interactions which may be mandatory or advisable for the Joint Bid and shall collaborate around obtaining necessary or appropriate information from Target.
- 3.2** The Parties shall work together in good faith with the intention of obtaining clarity between themselves on any mandatory or advisable filings and, in due course, on the process for making such filings.
- 3.3** Each Party agrees that, in the event that the FCA, the PRA, the GFSC or any other regulatory authority or governmental entity (other than the Panel) which has jurisdiction in relation to the regulation of financial services and markets, insurance, fair competition, anti-trust, merger control, consumer protection, fair trading, monopolies, foreign investment or public interest (a “**Regulator**”) is prepared to grant its approval of the Joint Bid subject to a Party and/or its respective group offering (and not withdrawing) certain undertakings and/or commitments (including divestments and/or behavioural remedies), that Party (in consultation with the other Party) shall use reasonable efforts to engage with such Regulator and try to agree, to the mutual satisfaction of that Party and the Regulator, the terms of such undertakings and/or commitments as soon as reasonably practicable provided that, if such Party and the Regulator are unable to reach agreement on a mutually acceptable set of undertakings and/or commitments in accordance with the foregoing, that Party shall offer to withdraw from the Joint Bid, and in the case of any such withdrawal, the provisions of Clause 8.2 shall apply. For the avoidance of doubt and notwithstanding the foregoing, no Party shall be required or under any obligation to provide any undertaking to a Regulator in connection with the Joint Bid.
- 3.4** Each Party shall promptly share, subject to and in compliance with Applicable Law, such information regarding its Affiliates and its Affiliates’ portfolio companies, the JVCos, the markets it operates in and the Joint Bid as is reasonably required for the purposes of drafting filings for or notifications to any Regulators, in each case in connection with the Joint Bid and the satisfaction of the Conditions, subject to (where necessary) execution by each Party of engagement letters, “hold harmless” letters and confidentiality undertakings that may reasonably be required by advisers or other third party sources of information.

- 3.5** Each Party shall not, and shall procure that none of its Affiliates or representatives shall, take any action that could reasonably be expected to materially adversely affect the satisfaction of the Conditions and obtaining from any Regulator any approval required in connection with the Joint Bid or take any action which would result in either Party or their Affiliates or the JVCos being in breach of the provisions of, and/or the undertakings given in, the Co-Operation Agreement (as defined in the 2.7 Announcement).

#### **4 Bid financing**

- 4.1** Subject to the Consortium Agreement, at the Effective Date (or at such other date as is mutually agreed between the Parties in writing) (the “**Investment Date**”), in respect of Towerbrook and Warburg Pincus and their respective Funds (the “**Initial Investors**” and, together with any Permitted Syndicatee(s) to whom any commitment to fund any part of any Equity Commitment under the ECL is syndicated as part of any Permitted Syndication prior to the Investment Date in accordance with Clause 6.4, the “**Investors**”), respectively, shall commit (directly or indirectly) to BidCo such amount of cash funding as will be sufficient in aggregate with net cash proceeds available under the Financing to satisfy payment of all cash consideration due pursuant to the Joint Bid, the Joint Bid Costs and the Target Group Refinancing, such commitments to be made in the percentages set out below (the “**Initial Commitments**”):

- (a) Towerbrook: 50 per cent; and
- (b) Warburg Pincus: 50 per cent,

and, subject to the terms of this Agreement, shall contribute some or all of such cash funding (the “**Initial Investments**”) to subscribing (directly or indirectly) for securities in BidCo (provided that the Initial Investor(s) of each Party will hold 50 per cent of the voting rights) *pari passu* in all respects and such Initial Investments will be made in securities of the same type and class, at the same price per security, and in the same proportions as between each such type and class. In connection with the Initial Commitments, the Initial Investors shall provide and be party to an equity commitment letter to the BidCo in a form reasonably satisfactory to the Financial Advisors (the “**ECL**”).

- 4.2** The Parties shall co-operate in good faith to ensure that BidCo will have Financing in place in relation to the Joint Bid as is required in order to comply with its obligations under the Code and that all cash funding is available as required to satisfy the cash confirmation process.
- 4.3** If one or more of the Initial Investors (directly or indirectly) contributes cash funding to the JVCos pursuant to Clause 4.1 and in accordance with the ECL, and the ECL subsequently terminates as a result of the expiry of the term of the ECL, the Parties shall procure (without limitation, but exercising such rights as they have in BidCo or any JVCo, and/or by instructing any director appointed to the BidCo Board by that Party to vote in favour of any relevant resolution) that BidCo promptly returns such cash funding to the Initial Investors in the amounts and proportions as contributed by or on behalf of each Initial Investor in accordance with the terms of the ECL.
- 4.4** If either Party fails to satisfy its obligations under the ECL (the “**Defaulting Party**”) without prejudice to any other remedies that the other Party (as applicable) (the “**Non Defaulting Party**”) may have in respect of such failure:

- (a) the Non-Defaulting Party may terminate this Agreement immediately upon giving written notice to the Defaulting Party;
- (b) the Non-Defaulting Party may enforce the rights of BidCo under the Defaulting Party's ECL, on behalf of BidCo;
- (c) the Defaulting Party shall, upon the Non-Defaulting Party's written election, immediately transfer, and shall procure that its Affiliates immediately transfer, to the Non-Defaulting Party, or as it may direct, any shares or other securities directly or indirectly held in BidCo and/or any of the JVCos held by the Defaulting Party or such Affiliate (provided, however, that if the Defaulting Party transfers shares or other securities directly or indirectly held in BidCo and/or any of the JVCos to the Non-Defaulting Party pursuant to this provision, the Non-Defaulting Party shall refund the Defaulting Party any amounts previously funded by the Defaulting Party, subject to a reasonable right of set-off to cover Losses reasonably related to the default); and
- (d) the Defaulting Party shall indemnify the Non-Defaulting Party for any Losses incurred or suffered as a result of the Defaulting Party's failure to satisfy its obligations under the ECL, including Losses arising from any failure by BidCo to implement the Joint Bid resulting directly or indirectly from the Defaulting Party's failure to fund its Equity Commitment.

## **5 Standstill**

- 5.1** Each Party confirms that, having made reasonable enquiry (acknowledging that it would not be reasonable to make a direct enquiry of certain Concert Parties until the existence of a possible Joint Bid is publicly announced), neither it nor any of its Concert Parties is considered to hold any Target Securities Interests, and each Party will in respect of its Concert Parties confirm this definitively as soon as practicable after the date of the 2.7 Announcement (or earlier to the extent the existence of a possible Joint Bid is publicly announced). For the avoidance of doubt: (a) this Clause 5.2 shall not permit nor require any Party to make any disclosure of Confidential Information to any Concert Party who is not already aware of the Joint Bid or who does not need to be informed for the purpose of the Joint Bid; and (b) the above representation and warranty is limited to the actual awareness of each Party of the Target Securities Interests of its Concert Parties as at the date of this Agreement.
- 5.2** Except pursuant to the Joint Bid, from the date of this Agreement until the Relevant Date, no Party shall and each Party shall procure that neither any of its Concert Parties (as from the date referred to in Clause 5.6) nor (so far as it is within its powers) any JVCo shall:
- (a) either alone or acting in concert with others acquire or offer to acquire, or cause another person to acquire or to offer to acquire, any Target Securities Interests; or
  - (b) enter into an agreement or arrangement (whether conditional or otherwise) to do any of the matters set out in Clause 5.3(a).
- 5.3** Except for transfers to JVCos in connection with the Joint Bid, no Party shall, and each Party shall procure that neither any of its Concert Parties nor (so far as it is within its powers) any JVCo shall, from the date of this Agreement until the earlier of (i) the date on which such Party withdraws from the Joint Bid in accordance with Clauses 3.3 or 8.1; and (ii) the date on which this Agreement terminates or is terminated in accordance with Clause 8.3, sell, transfer or otherwise dispose of any Target Securities Interests or enter into an agreement

or arrangement (whether conditional or otherwise) to do the same provided that this shall not apply in respect of any positions held in any debt securities prior to the date of this agreement held by either Party subject to the trading of such securities being carried out in accordance with applicable insider dealing and market abuse laws and subject to there being customary information barriers in place in relation to such interests.

**5.4** If the Parties make a 2.8 Announcement:

- (a) the Parties (including, once incorporated, any JVCo) will each comply with the terms of any announcement made under that Rule. For the avoidance of doubt, this Clause 5.5 is without prejudice to the provisions of Rule 2.8 of the Code to the extent applicable to the Parties;
- (b) no Party shall (and each Party shall procure that none of its Concert Parties (including, so far as within its power, any JVCo) shall), either alone or acting in concert with others acquire or offer to acquire, any Target Securities Interests or enter into an agreement or arrangement as a result of which it or any person may acquire any Target Securities Interests, in each case only to the extent that (i) the Parties are considered to be Acting in Concert or (ii) such action would result in the other Party or BidCo being required to make a mandatory offer for Target; and
- (c) the Parties agree that as at the date the Parties are released or granted dispensation from the restrictions imposed on them by Rule 2.8 in respect of making an offer for Target, they will discuss in good faith the merits of cooperating together with a view to making an offer for Target within 12 months of the date the Parties are released or granted dispensation from the restrictions imposed on them by Rule 2.8.

**5.5** Each Party agrees that it shall take all actions within its power to serve (or procure the service of) stop dealing notices to its Concert Parties as soon as practicable following the date of the 2.7 Announcement (or earlier to the extent the existence of a possible Joint Bid is publicly announced, and to the extent that any Concert Party has not already been sent a stop dealing notice prior to that date).

**6 Exclusivity, non-solicit and syndication**

**6.1** Each Party warrants to the other that neither it, nor any of its Affiliates, is a bidder, acquirer, lender to any person, or otherwise an interested party in, any other bid or proposal in relation to the possible acquisition of some or all of the assets or share capital of Target and that neither it nor any of its Affiliates is otherwise a part of, nor has agreed formally or informally to take part in or lend to, any form of partnership, joint venture, consortium or similar arrangement with/of any other party or parties making or contemplating making an offer for some or all of the assets or share capital of Target.

**6.2** Each Party undertakes to the other Party (or Remaining Party, if applicable), from the date of this Agreement:

- (a) until the earlier of: (i) the date on which such Party withdraws from the Joint Bid in accordance with Clauses 3.3 or 8.1; and (ii) the date on which this Agreement terminates or is terminated in accordance with Clause 8.3, to work with the other Party (or Remaining Party, if applicable) on an exclusive basis to further the Joint Bid; and

- (b) until such Party's Relevant Date, to not, and to procure that none of its Affiliates nor its or their Representatives or any of its Funds, except as part of the Joint Bid, directly or indirectly be involved as an equity investor or as the provider of any other form of financing or otherwise perform any other substantive role or service (or enter into discussions or agree formally or informally to do the same) in respect of any acquisition of Target or any other transaction in relation to Target having a similar effect,

in each case, other than with the prior written consent of the other Party (or Remaining Party, if applicable).

**6.3** Each Party undertakes to the other Party (or Remaining Party, if applicable), from the date of this Agreement until the date falling one year from the date of such Party's Disclosing Party's Underlying NDA, that it and its Affiliates shall not, alone or with others, solicit for employment or employ any person who is now employed by any member of the Target or any of its group undertakings and who is, in relation to that member's business, a senior or key employee and/or who is involved in the negotiations relating to the Joint Bid or, with respect to such Party or its Affiliates, is specifically identified to that Party or that Affiliate (as the case may be) in any part of the Confidential Information, other than with the prior written consent of the other Party (or Remaining Party, if applicable). The foregoing restriction shall not apply to the employment of any person following an unsolicited approach by that person at his or her own instigation or independently in response to an advertisement placed in the national, local or trade press or in response to an approach made by a headhunter without the person having first been identified to the headhunter by or on behalf of such Party or any of its connected persons.

**6.4** Without prejudice to any transfer rights agreed in the Consortium Agreement, each of Towerbrook and Warburg Pincus shall be entitled to syndicate (or agree to syndicate): (a) from the date on which the Scheme of Arrangement under part 26 of the Companies Act 2006 in relation to the Joint Bid is approved by Target shareholders (or becomes or is declared unconditional as to acceptances (if implemented by way of a takeover offer)) but prior to the earlier of the Investment Date or the date of termination of this Agreement, any of its Initial Investors' commitment to fund its Equity Commitment under the ECL; and (b) from the Investment Date but prior to the date of termination of this Agreement, any indirect interest held by any Investor or Affiliate of any Investor in ConsortiumCo securities, (as applicable, the "**Syndication Interests**"), to a Potential Syndicatee, in each case, without the consent of any other Party (a "**Permitted Syndication**", and such syndicatee, a "**Permitted Syndicatee**"), provided that:

- (a) no syndication of (or agreement to syndicate) any indirect interest in ConsortiumCo securities is permitted to any Restricted Syndicatee;
- (b) such Party retains all voting and other control rights (including all rights exercisable by such Party (or on its behalf) on the board of ConsortiumCo or such other board as may control the Group from time to time, or as an indirect shareholder in ConsortiumCo) in connection with such Syndication Interests;
- (c) any Permitted Syndicatee to whom any Initial Investor syndicates any part of such Initial Investor's commitment to fund its Equity Commitment under the ECL shall make any contribution of cash pursuant to such commitment on the Investment Date to ConsortiumCo indirectly and shall in no event acquire any direct interest in ConsortiumCo securities;



- (d) the Towerbrook Funds maintain direct economic ownership of (and do not syndicate pursuant to any Permitted Syndication in respect of) at least 50.01% of its Initial Investment;
- (e) the Warburg Pincus Funds maintain direct economic ownership of (and do not syndicate pursuant to any Permitted Syndication in respect of) at least 50.01% of its Initial Investment;
- (f) the relevant Party complies with the terms of Clause 6.5 (and procures the same in respect of any Potential Syndicatee); and
- (g) each relevant Initial Investor remains primarily responsible in respect of its full Equity Commitment given under the ECL at the date of the 2.7 Announcement.

**6.5** In connection with any Permitted Syndication:

- (a) prior to any approach being made to any person pursuant to Clause 6.4, Towerbrook and Warburg Pincus shall together agree separate lists of potential syndicatees applicable to: (i) Towerbrook; and (ii) Warburg Pincus (which shall be limited to existing limited partners or investors in any of the Warburg Pincus Funds or the Towerbrook Funds, and each such persons, a “**Potential Syndicatee**”) and, once such lists are agreed, provide such lists to the board of directors of BidCo for information only, provided that no Potential Syndicatee shall be an existing shareholder of the Target;
- (b) Towerbrook and Warburg Pincus shall be entitled to approach and discuss the Joint Bid with any of their respective Potential Syndicatees, provided that: (i) such Potential Syndicatee shall have executed (A) a non-disclosure agreement with customary provisions regarding the use of Confidential Information and in accordance with any applicable Code requirement; and (B) applicable hold harmless letters prior to the disclosure to it of any reports prepared in connection with the Joint Bid by advisers to the Parties; (ii) any disclosure of Confidential Information to a Potential Syndicatee pursuant to this Clause 6 is made in accordance with the terms of Clause 10 of this Agreement; (iii) the Potential Syndicatee provides customary ‘know your customer’ and anti-money laundering information and documents relating to itself as reasonably requested by the Parties; and (iv) Towerbrook and Warburg Pincus complying with any relevant provisions of the Code applicable to any equity syndication in an Offer Period;
- (c) following completion of any Permitted Syndication, each Permitted Syndicatee shall have information rights limited to receipt of: (i) the annual audited consolidated financial statements of the Group, within 120 days after the accounting period to which they relate, and quarterly consolidated financial statements of the Group, within 60 days after the quarter to which they relate; and (ii) other information in relation to the Group to the extent approved by the Joint Bid Committee or the BidCo Board upon request by either Towerbrook or Warburg Pincus (or its Joint Bid Committee Member), acting reasonably and provided that the member of the BidCo Board or Joint Bid Committee Member of Towerbrook or Warburg Pincus (as applicable) shall not be permitted to vote in respect of such request; and
- (d) each of Towerbrook and Warburg Pincus shall keep the other Party reasonably informed of the identity and progress in respect of any Permitted Syndication.

**6.6** Except in relation to any Permitted Syndication, each Party hereby undertakes that it will not, and shall procure that its Affiliates will not, prior to the Effective Date, directly or indirectly syndicate, assign or transfer (or agree to syndicate, assign or transfer) any right or interest granted to each such Party under this Agreement in relation to the Joint Bid, including any interest in BidCo and/or any other JVCo, to any actual or potential additional co-investor for it to participate in the Joint Bid together with such Party or its Affiliates without the prior written consent of the other Party. Any such syndication, assignment or transfer (or agreement thereof) after the Effective Date shall be subject to the terms of the Consortium Agreement.

## **7 Warranties, undertakings and acknowledgements**

**7.1** Each Party warrants to the other Party that:

- (a) it has the requisite power and authority to enter into this Agreement and there is no agreement, commitment or other understanding that:
  - (i) would preclude or restrict such Party from entering into and performing this Agreement or any agreement contemplated by this Agreement to be entered into by such Party, including the making of a Joint Bid and consummation of a transaction if successful; or
  - (ii) would require any Party to allow any other person to elect to participate in the transactions contemplated by this Agreement; and
- (b) this Agreement when executed will constitute valid, binding and enforceable obligations of such Party; and
- (c) it has obtained the necessary internal approvals required to enter into this Agreement; and
- (d) it has taken legal advice as to the implications of the Code as it applies to the Joint Bid, and in particular, the scope of Rule 9 and the consequences of transgression of Rule 9 to the transgressing Party.

**7.2** Each Party undertakes, in connection with the Joint Bid, to:

- (a) comply with, and to procure that its Representatives and Affiliates comply with:
  - (i) the rules and principles of the Code and/or any rulings of the Panel; and
  - (ii) with all other Applicable Laws (including the Market Abuse Regulation (596/2014), Companies Act 2006, the Financial Services and Markets Act 2000 and the Financial Services Act 2012); and
- (b) procure (so far as within its power) that each JVCo complies with the rules, principles, laws and regulations referred to in Clause 7.2(a).

**7.3** Each Party warrants that it is not relying on any other Party:

- (a) for its due diligence concerning, or evaluation of, the Target or its assets or businesses;
- (b) for its decision with respect to making any investment decision in respect of the proposed acquisition of the Target; or

- (c) with respect to tax or other economic considerations involved in the proposed acquisition of the Target.

In making any determination as regards acquiring the Target, each Party may make such determination in its sole and absolute discretion, taking into account only such Party's own views, self-interest, objectives and concerns. No Party shall have any duty of care or fiduciary, equitable or other duty or obligation to the other Party except as expressly set forth herein and, insofar as it is owed any such duty or obligation (whether in contract, tort or otherwise) by any such other Party, it hereby waives, to the fullest extent permitted by law, any rights which it may have in respect of such duty or obligation.

- 7.4** Each Party acknowledges that notwithstanding any other provision of this Agreement, nothing in this Agreement shall require any Party to act or refrain from acting in a manner which would cause it or its Affiliates to be in breach of any Applicable Law (including, for the avoidance of doubt, the Code or the Listing Rules published by the FCA in its capacity as the UK Listing Authority).

## **8 Withdrawals and termination**

- 8.1** Prior to any 2.7 Announcement, a Party may withdraw from the Joint Bid upon giving written notice to the other Party. Each Party will also notify the other Party promptly if its investment committee or equivalent approving body ceases to be supportive of the Joint Bid, and the other Party may deem such notice to constitute a notice of withdrawal from the Joint Bid under this Clause 8.1.

- 8.2** If a Party withdraws from the Joint Bid in accordance with Clauses 3.3 or 8.1 above (the "**Departing Party**"):

- (a) the Departing Party shall cease to have any rights under this Agreement (save for any right under Clause 10 in respect of Confidential Information to the extent relating to such withdrawing Party) but shall remain subject to the applicable obligations set out in Clauses 1 (*Interpretation*), 5 (*Standstill*), 6.2(b) (*Exclusivity*), 6.3 (*Non-solicit*), 9 (*Costs*), 10 (*Confidentiality*), 11 (*Assignment and other dealings*), 12 (*Amendments and waivers*), 13 (*Invalidity*) and 16 (*Governing law and jurisdiction*); and
- (b) the remaining Party (the "**Remaining Party**") shall be entitled to progress and complete the bid for the Target without the involvement of the Departing Party.

- 8.3** Save for the obligations set out in Clauses 1 (*Interpretation*), 4.4 (*Bid Financing*), 5 (*Standstill*), 6.2(b) (*Exclusivity*), 6.3 (*Non-solicit*), 7 (*Warranties undertakings and acknowledgements*), 8 (*Withdrawals and termination*), 9 (*Costs*), 10 (*Confidentiality*), 11 (*Assignment and other dealings*), 12 (*Amendments and Waivers*), 13 (*Invalidity*) and 16 (*Governing law and jurisdiction*), and to the accrued rights of any Party, which shall each survive termination of this Agreement, the provisions of this Agreement shall terminate upon the earliest of the following to occur of:

- (a) subject to the Investment Agreement being agreed and signed by all parties thereto, the Effective Date;
- (b) a 2.8 Announcement is made;
- (c) following a 2.7 Announcement, the Joint Bid lapses or is withdrawn;

- (d) any competing offer in relation to Target having become effective or unconditional in all respects;
- (e) 30 November 2021, if a 2.7 Announcement has not been made by such date; and
- (f) the Parties agreeing in writing to terminate this Agreement.

## **9 Costs**

- 9.1** Save for where the Joint Bid is completed, the Parties acknowledge and agree that Joint Bid Costs incurred or accrued up to 23:59 (GMT) on 22 September 2020 shall be borne equally between the Parties or, if the Joint Bid is completed, by the JVCos. The Parties further acknowledge and agree to use reasonable endeavours to recover costs and expenses incurred or accrued up to 23:59 (GMT) on 22 September 2020 in relation to the Joint Bid from Centerbridge Advisors III, LLC (or its affiliates) in accordance with the CB Cost Sharing Arrangements and, to the extent any such costs and expenses are recovered, they shall be split and reimbursed to the Parties in equal proportions.
- 9.2** Joint Bid Costs shall only be incurred in accordance with the Budget or otherwise with the prior agreement of the Parties and the Budget may not be amended without the prior approval of the Parties.
- 9.3** If the Joint Bid is completed, the JVCos will pay all Joint Bid Costs. Each Party will, to the extent required, pay any Joint Bid Costs payable prior to the Effective Date *pro rata* in the Relevant Proportions by way of loan to any JVCo or such other method as the Parties may agree.
- 9.4** Notwithstanding the terms of any engagement letter between any Party or any JVCo, on one hand, and any adviser, on the other hand, and irrespective of the proportions in which any adviser seeks to recover or actually recovers from the Party or any one of them, if the Joint Bid is not completed all Joint Bid Costs will be paid by each Party *pro rata* in the Relevant Proportions and, to the extent necessary, each Party shall take all such steps as may be necessary to give effect to such agreed proportionate sharing of liability (including, if required, contributing its share of Joint Bid Costs to any JVCo).
- 9.5** Any costs, fees and expenses incurred by a Party in connection with the Joint Bid without the prior written approval of the other Parties shall be for that Party's account.
- 9.6** Subject to Clause 9.7 below, if a Party becomes a Departing Party, the Departing Party will only be responsible for the Joint Bid Costs which are accrued up to the date of withdrawal (whether or not by then invoiced) *pro rata* to its Relevant Proportion (immediately prior to such withdrawal) or as otherwise agreed between the Parties. Any Departing Party will pay such share of the Joint Bid Costs on demand from time to time following presentation to such Party of each relevant invoice. Subject to the following sentence, a Departing Party shall not be responsible for any "tail fees" or similar of any advisers to or on behalf of any JVCo providing financial advisory services which are incurred in connection with the Joint Bid or otherwise. If any Party or their respective Affiliates (acting alone outside the scope of this Agreement) takes any action after the termination of the appointment of any such advisers which results in any "tail fees" or similar becoming payable to such adviser then such Party alone shall be liable in full for the payment of such fees.
- 9.7** If a Remaining Party (or any of its Affiliates) completes the acquisition of, or any similar transaction involving, the Target or a controlling interest in its business, either alone or by

jointly pursuing it with another person, then a Departing Party shall be reimbursed by such Remaining Party for all Joint Bid Costs previously paid by the Departing Party (in accordance with Clause 9.6) after its date of withdrawal in accordance with Clause 9.1, provided such acquisition is completed within 12 months of the Departing Party's withdrawal.

## **10 Confidentiality**

- 10.1** In connection with the Joint Bid, each Party (the "**Disclosing Party**"), as applicable, has agreed to make available to the other Party (the "**Receiving Party**"), as applicable, and the other Party's Representatives (as defined below) certain confidential and proprietary information.
- 10.2** Each Receiving Party agrees to treat any information furnished to it or its Representatives, in relation to the Joint Bid or the Disclosing Party and its Affiliates, by or on behalf of the Disclosing Party or its Representatives, whether before or after the date of this Agreement, together with the analyses, compilations, studies or other documents or records prepared by the Receiving Party or any of its Representatives based on such information (hereinafter collectively referred to as the "**Evaluation Material**") strictly confidential, and shall not disclose the Evaluation Material without the prior written consent of the Disclosing Party or as provided herein.
- 10.3** Each Party confirms to the other Party that it has entered into a confidentiality agreement with the Target with respect to the Joint Bid (the "**Disclosing Party's Underlying NDA**").
- 10.4** Each Party will not, and will direct its Representatives not to, disclose to any person (i) the existence of this Agreement or its terms and conditions and that the Evaluation Material has been made available to the Disclosing Party or its Representatives, (ii) that discussions or negotiations are taking place concerning the Joint Bid between the Parties or (iii) any terms, conditions or other facts with respect to the Joint Bid, including the status thereof (hereinafter, collectively referred to as "**Joint Bid Information**", together with the Evaluation Material, the "**Confidential Information**") without the prior written consent of the other Party or as provided herein. Each Party (as defined below) will be deemed a Disclosing Party with respect to the other Party with respect to the Joint Bid Information, provided that such Party will be deemed a Disclosing Party with respect to Joint Bid Information that is specific to such Party if such Party becomes a Departing Party (as defined below).
- 10.5** Notwithstanding Clauses 10.2 to 10.4 above.
- (a) each Receiving Party may disclose Confidential Information to its Affiliates, and its and its Affiliates' respective members, partners, directors, managers, officers, employees, consultants, financing sources and professional advisors (those who receive Confidential Information, collectively, its "**Representatives**");
  - (b) each Disclosing Party may disclose Confidential Information to the Receiving Party and its Affiliates and its and their respective Representatives and to their advisers to the extent such recipient of Confidential Information needs to know such Confidential Information for the purpose of evaluating the Joint Bid;
  - (c) consent is hereby given in respect of the disclosure by each Disclosing Party of Confidential Information to Centerbridge Advisors III, LLC and its Affiliates and its and their respective Representatives on or prior to 22 September 2020 to the extent such recipient of Confidential Information needed to know such Confidential Information for the purpose of evaluating the Joint Bid at such time; and

(d) Towerbrook agrees to use its reasonable endeavours to enforce its rights in respect of Confidential Information pursuant to any agreement entered into prior to the date hereof with Centerbridge Advisors III, LLC and/or any of its Affiliates.

**10.6** Subject to Clause 10.8 below, each Receiving Party shall use the Confidential Information for the purpose of evaluating the Joint Bid and for no other purpose. In addition, each Receiving Party shall be responsible for any breach of the terms of this Agreement by any of its Representatives; provided that such Receiving Party will not be responsible for any breach by any of its third-party Representatives who has agreed to be bound by this Agreement by the execution of a separate undertaking to so abide for the benefit of the Disclosing Party.

**10.7** Without prejudice to the terms of each Disclosing Party's Underlying NDA which may, inter alia and notwithstanding the terms of this Agreement, require confidential information to be kept confidential, the term "Confidential Information" does not include, with respect to any Receiving Party, information which (i) was or becomes publicly available other than as a result of a breach of this Agreement by such Receiving Party or its Representatives, (ii) was or becomes available to such Receiving Party or its Representatives from a source other than the Disclosing Party or its Representatives, provided that such source was or is not known by such Receiving Party or its Representatives at the time of disclosure to be bound by a confidentiality agreement with the Disclosing Party or its Affiliates, (iii) was within such Receiving Party's or its Representatives' possession prior to its being furnished to such Receiving Party or its Representatives by or on behalf of the Disclosing Party or (iv) is or was independently developed by such Receiving Party or its Representatives or on its behalf without violating any of such Receiving Party's obligations under this Agreement.

**10.8** Each Receiving Party shall inform the Disclosing Party as soon as practicable after becoming aware of a breach of this Agreement by such Receiving Party or its Representatives.

**10.9** Notwithstanding any other provision of this Agreement, to the extent either Party becomes a Departing Party, each Party shall thereafter nonetheless be entitled to use the Confidential Information for the purposes of pursuing, evaluating and implementing a potential refinancing of or investment in the Company (whether individually or with other parties), which in any such case (a) does not involve the purchase of existing shares in the Company and (b) is not a take private transaction, each of which shall remain subject to the provisions of this Agreement, and provided that, save as permitted by this Agreement, such Party does not include such Confidential Information in any public document or announcement.

**10.10** Defined terms used in this Clause 10 shall have the meaning given to them in this Clause 10.

## **11 Assignment and other dealings**

**11.1** This Agreement is personal to the Parties and no Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, other than with the prior written consent of the other Party.

**11.2** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the Parties, constitute any Party as the agent of the other, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## **12 Amendments and waivers**

**12.1** No amendment to, or waiver of any of the provisions of, this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

**12.2** Except as expressly provided in this Agreement, no failure, delay or omission by any party in exercising any right or remedy provided by law or relating to this Agreement shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

## **13 Invalidity**

Each of the provisions of this Agreement is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect under the law of any jurisdiction, it shall have no effect in that respect and the Parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

## **14 Counterparts**

This Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment shall be an effective mode of delivery.

## **15 Third party rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement may enforce any provision of it.

## **16 Governing law and jurisdiction**

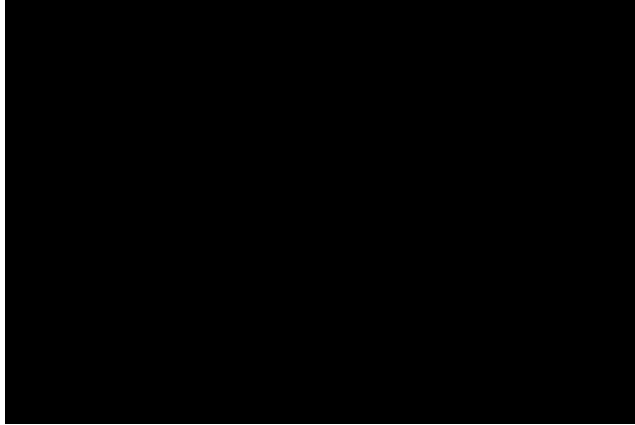
**16.1** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

**16.2** The English courts shall have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this Agreement including, without limitation disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, termination or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgment delivered by an English court exercising jurisdiction pursuant to this clause and each Party to it submits to the exclusive jurisdiction of the courts of England and Wales.

**Signatures**

This Agreement is signed by duly authorised representatives of the Parties:

**SIGNED**  
for and on behalf of  
**WARBURG PINCUS**  
**INTERNATIONAL LLC**



**SIGNED** )  
for and on behalf of )  
**TOWERBROOK CAPITAL PARTNERS** )  
**(U.K.) LLP** )

Signature: .....

Name: .....



**Signatures**

This Agreement is signed by duly authorised representatives of the Parties:

**SIGNED** )  
for and on behalf of )  
**WARBURG PINCUS** )  
**INTERNATIONAL LLC** )

Signature: .....

Name: .....

**SIGNED** )  
for and on behalf of )  
**TOWERBROOK CAPITAL PARTNERS** )  
**(U.K.) LLP** )

Signature:

Name:

