

FINANCE LEASE AGREEMENT – STANDARD TERMS & CONDITIONS

1. DEFINITIONS

1.1 In the Agreement:

Agreed Percentage means the agreed percentage specified in the Schedule.

Agreement means the agreement constituted by the Schedule and these Standard Terms and Conditions.

Break Costs means any Loss suffered, incurred or paid by the Lessor in liquidating, cancelling or re-allocating all and any loans, deposits or other funding obtained by the Lessor in connection with the Equipment.

Business Day means a day (other than a Saturday or Sunday) when financial institutions in London are generally open for banking business.

Certificate of Acceptance means the certificate, in the form attached at the Appendix hereto, given or to be given by the Lessee to the Lessor.

Commencement Date means the date specified as such in the Schedule.

Conditions Precedent means each of the conditions specified as such in the Further Conditions Schedule.

Default means an Event of Default or any condition, act or event which is or may become (with the giving of notice, lapse of time, making of any determination, fulfilment of any condition or any combination of the foregoing) an Event of Default.

Default Rate means 5% per annum over Bank of England base rate.

Document Fee means the document fee (if any) specified in the Schedule.

Equipment means the equipment specified in the Schedule of Equipment and where such equipment comprises multiple items of equipment, references to "Equipment" shall be construed as references to all or any individual item of equipment and any replacement equipment as the context so permits.

Event of Default means any event or circumstance specified as such in clause 15.1.

Fees means the fees (if any) specified in the Schedule.

Further Conditions Schedule means the further conditions schedule set out in the Schedule.

Guarantor means the person(s) specified as the provider of any guarantee specified in the Conditions Precedent.

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

Indemnitee means the Lessor and its Holding Companies, Subsidiaries, affiliates, successors, assignees, transferees, directors, officers, servants, agents and employees.

Insurances means all policies and contracts of insurance or such other insurance arrangements which are required to be effected by the Agreement or, where the context permits, are from time to time entered into in respect of the Equipment.

Insurers means the underwriters or insurance companies by which the Insurances are effected.

Lease Period means the aggregate of the Primary Period and the Secondary Period, subject to any earlier termination in accordance with the Agreement.

Lease Rentals means any of the Primary Rental or the Secondary Rental and any amount expressed to be payable by way of additional rental.

Lessee means the lessee specified in the Schedule.

Lessor means LHE Finance Limited (company number 03345518).

Location means the location (if any) specified in the Schedule of Equipment.

Loss means any loss, demand, liability, obligation, claim, action, proceeding, penalty, fine, damage, adverse judgment, order or other sanction, fee and out-of-pocket cost and expense (including any legal fee and related out-of-pocket cost and expense).

Net Proceeds means the gross proceeds of sale of any item of Equipment excluding any VAT and after deduction of all costs and expenses incurred by the Lessor in repossessing, transporting, storing, insuring, selling, maintaining and repairing the Equipment.

Primary Period means the primary period specified in the Schedule.

Primary Rental means the primary rentals specified in the Schedule.

Redelivery Location means the Location (or such other place for the redelivery of the Equipment as may be required by the Lessor).

Rental Payment Date means each date for payment of the Primary Rental specified in the Schedule.

Schedule means the schedule to which these terms and conditions are attached.

Schedule of Equipment means the schedule of Equipment set out in the Schedule.

Secondary Period means the period, following the expiry of the Primary Period, during which the leasing of the Equipment is extended pursuant to clause 2.3.

Secondary Rental means the secondary rental specified in the Schedule.

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

Special Condition means each of the conditions (if any) specified as such in the Further Conditions Schedule.

Standard Terms and Conditions means these Standard Terms and Conditions.

Sterling and £ means the lawful currency of the United Kingdom from time to time.

Subsidiary has the meaning given to such term in section 1159 of the Companies Act 2006.

Supplier means the supplier specified in the Schedule of Equipment.

Supply Contract means any supply contract in relation to the Equipment between the Supplier and the Lessor.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Termination Sum means an amount equal to the aggregate of:

- (a) all arrears of Lease Rentals together with all other amounts which are due (but unpaid) pursuant to the Agreement together with interest thereon at the Default Rate;
- (b) as compensation for the Lessor's financial loss, by way of additional Primary Rental, an amount in respect of the Equipment which is equal to all Primary Rental which would have been due and payable (but for the relevant termination or Total Loss) from the date of such termination or Total Loss to and including the last day of the Primary Period by effluxion of time, each discounted from its due date to the date of actual payment at 2% per annum;
- (c) any Losses suffered by any Indemnitee which may be incurred under any financing, unwinding of any interest swap, forward interest rate agreement or other hedge agreement (including any Break Costs related thereto) in connection with the funding of the leasing of the Equipment; and
- (d) any costs and expenses incurred by the Lessor in locating, repossessing, recovering or restoring the Equipment, or in insuring, maintaining, storing and keeping safe the Equipment.

Total Loss means, in relation to any item of Equipment, an actual or constructive or arranged total loss as a result of such Equipment being lost, destroyed, stolen, confiscated, damaged beyond economic repair or otherwise rendered unfit for use or unable to be used and the date of such Total Loss shall be the date of the loss, destruction, theft, confiscation or damage beyond economic repair or, if later, the date it is declared by the Insurers or otherwise adjudged by such Insurers to be a total loss.

VAT means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Any reference in the Agreement to:

- (a) "the Agreement" or to any other agreement or document shall, unless the context otherwise requires, be construed as a reference to the Agreement or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced;
- (b) the "assets" of any person includes all or any part of its business, operations, undertaking, property, assets, revenues (including any right to receive revenues) and uncalled capital;
- (c) the "Lessor" includes its successors and assigns;
- (d) a "clause" or "Appendix" is a reference to a clause or the appendix to of these Standard Terms and Conditions;
- (e) "including" or "includes" means including or includes without limitation;
- (f) "indebtedness" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (g) a "month" 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 save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next Business Day;
- (h) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing; and

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- (i) a provision of law is a reference to that provision as amended or re-enacted (unless otherwise expressly stated); a "regulation" shall be construed so as to include any regulation, rule, official directive, requirement, international convention, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.3 In the Agreement, words importing the plural include the singular (and vice versa) and section and clause headings are for ease of reference only.
- 2. LEASING OF THE EQUIPMENT**
- 2.1 The Lessor shall lease the Equipment, and the Lessee agrees to take the Equipment on lease, upon and subject to the terms and conditions of the Agreement.
- 2.2 The leasing of the Equipment shall commence on the Commencement Date and shall continue for the Primary Period, unless terminated earlier in accordance with the terms of the Agreement.
- 2.3 Provided that no Event of Default has occurred and not less than thirty (30) days prior to the expiry of the Primary Period or any extension of the leasing pursuant to this clause 2.3, the Lessee may give irrevocable notice to extend the leasing of the Equipment under and on the terms of the Agreement for a period of twelve (12) months commencing on the day following the expiry of the Primary Period or any extension of the leasing pursuant to this clause 2.3, provided that the leasing of the Equipment hereunder shall not exceed the expiry of the useful economic life of the Equipment.
- 2.4 The Lessee and the Lessor shall be entitled to terminate the Secondary Period in relation to the Equipment by giving not less than one (1) month's prior notice in writing to the other party.
- 2.5 If the Secondary Period is still on-going on the 25th anniversary of the Commencement Date, the Lessee shall scrap (and shall be deemed to have scrapped) the Equipment on behalf of the Lessor on such date and the Secondary Period shall expire thereon.
- 2.6 Subject to the terms of the Agreement, the Lessee shall, throughout the Lease Period, be entitled to hold and use the Equipment without interference from the Lessor.
- 2.7 The obligation of the Lessor to lease the Equipment under the Agreement is subject to (i) the Lessor having received payment of all Fees and satisfaction of the Conditions Precedent, (ii) no Total Loss having occurred and (iii) no Default having occurred or which would arise by reason of the commencement of the leasing of the Equipment.
- 3. DELIVERY OF THE EQUIPMENT**
- 3.1 All risk of loss of or damage to the Equipment shall as between the Lessor and the Lessee pass to the Lessee when such risk passes from the Supplier under the terms of the relevant Supply Contract.
- 3.2 Delivery of the Equipment by the Lessor to the Lessee, and acceptance thereof by the Lessee, under the Agreement shall be deemed to take place immediately upon delivery of the Equipment by the Supplier to, and its acceptance by, the Lessee under the Supply Contract. The Lessor hereby appoints the Lessee to be its agent to accept delivery of the Equipment from the Supplier. The Lessee shall immediately before delivery of the Equipment from the Supplier satisfy itself that the Equipment is complete, in good working order, of satisfactory quality, fit for the purpose for which it is required and acceptable in every respect. If it is so satisfied, the Lessee shall accept delivery of the Equipment from the Supplier. The Lessee shall not be entitled for any reason to refuse to accept delivery of any item of Equipment once title in the Equipment has passed to the Lessor under the Supply Contract.
- 3.3 Immediately following such delivery and acceptance by the Lessee, as agent, the Lessee shall deliver to the Lessor a Certificate of Acceptance, duly signed by the Lessee, which shall be conclusive evidence that the Equipment has been accepted under the Supply Contract and the Lessee has taken delivery of, and unconditionally accepted, the Equipment for the purposes of the Agreement and found such Equipment to be complete, in good working order, of satisfactory quality, fit for the purpose for which it is required and acceptable in every respect.
- 3.4 The Lessee shall arrange and be responsible, at its own cost, for the delivery of the Equipment and (if applicable) for the commissioning and testing of the Equipment and shall indemnify the Lessor on demand with respect to any Loss suffered, incurred or paid by the Lessor in connection therewith.
- 4. TITLE**
- The Equipment will belong to the Lessor (or the Lessor's financier or any principal for whom the Lessor is acting as agent) and title and ownership to the Equipment shall remain vested in the Lessor or such other person. The Lessee acknowledges that it has no right, title or interest in and to any part of any item of Equipment except the right to lease the Equipment in accordance with the Agreement.
- 5. DISCLAIMERS AND EXCLUSIONS**
- 5.1 The Lessee and the Lessor agree that there is a risk that the Equipment may not perform as expected and may not be satisfactory. The Lessee and the Lessor agree that such allocation of risk is a matter of agreement between them and have agreed that the Lessee shall bear the risk on the terms set out in the Agreement.
- 5.2 The Lessee acknowledges that:
- the Lessor is not the original manufacturer or supplier of the Equipment;
 - the Equipment was selected by the Lessee;
 - the condition of the Equipment on delivery to the Lessee under the Agreement is the sole responsibility of the Lessee;
 - each item of Equipment is satisfactory to the Lessee and suitable for the business of the Lessee and any intended use of each item of Equipment by the Lessee; and
 - the Lessor has purchased the Equipment solely for the purpose of leasing the Equipment to the Lessee pursuant to the Agreement.
- 5.3 No term, condition, warranty or representation of any kind whatsoever (express or implied) is or has been given by or on behalf of the Lessor in respect of the Equipment. All terms, conditions, warranties and representations (express or implied and whether statutory, collateral hereto or otherwise) relating to the Equipment, its specification, age, quality (satisfactory or otherwise), description or as to its fitness for any purpose are hereby expressly excluded.
- 5.4 The Lessee acknowledges that no person (including any Supplier) not actually in the employ of the Lessor is or is deemed to be the agent or entitled to act on behalf of or make any representation or warranty binding on the Lessor.
- 5.5 No Indemnitee shall be liable (in contract, tort or otherwise) for any Loss of any kind arising directly or indirectly in connection with the Equipment or from any delay in delivery of, or failure to deliver, the Equipment, any defect or deficiency in, or inadequacy or unsuitability of, the Equipment or its use, performance, servicing or repair or from any act or omission (negligent or otherwise) of any Indemnitee, its servants or agents, provided that nothing contained herein shall exclude any liability of any Indemnitee for (a) death or personal injury caused by that Indemnitee's negligence to the extent that such exclusion is prohibited by statute and (b) a breach by the Lessor of any express obligation of the Lessor under the Agreement. Furthermore, no Indemnitee shall have any obligation to supply to the Lessee any replacement for any item of Equipment that is, either on delivery or thereafter, defective, lost, damaged, unusable or unavailable for any reason and the Lessee shall not be entitled to any rebate of, or be released from any obligation to pay, Lease Rentals or any other payments hereunder by reason thereof.
- 5.6 If notwithstanding this clause 5, the law requires terms to be implied into the Agreement, the Lessee and the Lessor agree that the Lessor shall not be liable for any breach of such terms on the basis that, such allocation of risk has not been agreed between the Lessee and the Lessor and, had the Lessor agreed to bear such risk, the increased risk of the Lessor would have been reflected in increased Lease Rentals, failing which the Lessor would not have entered into the Agreement.
- 5.7 If the Lessee does not obtain direct from the Supplier or manufacturer express warranties in relation to the Equipment, the Lessor will (upon the Lessee's request and at the Lessee's cost) transfer as far as is reasonably possible the benefit of any manufacturer and/or Supplier warranties given to the Lessor in relation to the fitness and performance of the Equipment.
- 6. LEASE RENTALS**
- 6.1 On the Commencement Date, the Lessee shall pay the Document Fee to the Lessor.
- 6.2 The Lessee shall throughout the Primary Period pay to the Lessor (without demand) the Primary Rental on each Rental Payment Date.
- 6.3 The Lessee shall throughout the Secondary Period pay to the Lessor (without demand) the Secondary Rental.
- 6.4 No Lease Rentals payable in advance, shall be repayable or recoverable from the Lessor in the event of the termination of the leasing of the Equipment for whatever reason.
- 6.5 If any payment due from the Lessee to the Lessor hereunder is not paid on the due date therefor, the Lessee shall, without prejudice to the Lessor's other rights and remedies, pay on demand interest thereon at the Default Rate (as well after as before judgment or decree) from and including such due date to the date of actual payment or reimbursement. Such interest shall accrue on a daily basis and be compounded monthly.
- 6.6 All payments of Lease Rentals and any other payments due to the Lessor under the Agreement shall be made without prior demand in Sterling, in immediately available funds for value on the due date for payment.
- 6.7 Punctual payment of amounts payable by the Lessee and timely performance by the Lessee of each of its obligations hereunder shall be of the essence and are conditions of the Agreement.
- 6.8 Each payment of Lease Rental to be made by the Lessee shall be made by way of direct debit to the Lessor.
- 6.9 If any payment falls due from the Lessee hereunder on a day which is not a Business Day, payment shall be made on the following Business Day.
- 6.10 The Lessee's obligation to pay Lease Rentals and make other payments in accordance with the Agreement is absolute and unconditional irrespective of any contingency whatsoever including:
- any right of set-off, counterclaim, recoupment, defence or other right which either party may have against the other;

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- (b) any unavailability of the Equipment for any reason including any defect in title, merchantability, fitness for purpose, condition, design, or the ineligibility of the Equipment for any particular use or trade, or the Total Loss or any damage to the Equipment;
- (c) any failure or delay on the part of either party, whether with or without fault on its part, in performing or complying with any terms or conditions of the Agreement;
- (d) any insolvency, bankruptcy, administration, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against the Lessor or the Lessee; or
- (e) any lack of due authorisation of, or other defect in, the Agreement.

7. TAXES AND GROSS UP

7.1 All payments by the Lessee under the Agreement shall be made without set-off or counterclaim whatsoever and free and clear of any Tax, deduction or withholding of any kind save as required by applicable law. If the Lessee is required by law to make any deduction or withholding from any such payment, whether on account of Tax or otherwise, the sum due from it in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lessor receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received had no deduction or withholding been made or been required to be made. The Lessee shall promptly supply the Lessor with evidence satisfactory to the Lessor that the Lessee has accounted to the relevant authority for any sum deducted or withheld.

7.2 The Lessee shall promptly indemnify the Lessor from and against any Loss suffered, incurred or paid by the Lessor for or on account of Tax in relation to any sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under the Agreement or in relation to the Equipment other than any Tax assessed on the Lessor in the jurisdiction in which the Lessor's office through which it will perform its obligations under the Agreement is located if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lessor.

7.3 The Lessee shall pay and, promptly on demand, indemnify the Lessor against any Loss suffered, incurred or paid by the Lessor in relation to any stamp duty, registration and other similar Taxes payable in respect of the Agreement or in relation to the Equipment.

7.4 All amounts payable under the Agreement by the Lessee to the Lessor shall be deemed to be exclusive of VAT. If VAT is chargeable, the Lessee shall pay to the Lessor (in addition to and at the same time as paying the relevant amount) an amount equal to the amount of the VAT.

8. OTHER INDEMNITIES

8.1 The Lessee shall promptly indemnify the Indemnitees against any Loss (including any Break Costs), suffered, incurred or paid by any Indemnitee as a result of or in connection with:

- (a) the occurrence or continuation of any Default, any Indemnitee investigating any event or circumstance which it reasonably believes to be a Default or any accelerated repayment under the Agreement;
- (b) any failure by the Lessee to pay an amount due under the Agreement on its due date;
- (c) any breach by the Lessee of any of its obligations under clause 12;
- (d) the leasing not commencing on the Commencement Date by reason of any of the Conditions Precedent not being satisfied;
- (e) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorized;
- (f) the manufacture, description, fitness for purpose, merchantability suitability, quality, state, appearance, safety, durability, value, design, testing, delivery, import, export, registration, ownership, possession, control, use, operation, leasing, sub-leasing, insurance, maintenance, repair, refurbishment, service, overhaul, modification, change, alteration, loss, damage, storage, removal, re-delivery or otherwise of the Equipment;
- (g) claims that are made on the ground of an infringement of patent or copyright or registered design or other intellectual property right;
- (h) preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of any item of Equipment, or in securing or attempting to secure the release of any item of Equipment;
- (i) the Total Loss of any item of Equipment; and
- (j) the enforcement of, or the preservation of any rights under, the Agreement.

8.2 If an amount due to any Indemnitee from the Lessee in one currency (the first currency) is received by such Indemnitee in another currency (the second currency), the Lessee's obligations to such Indemnitee in respect of such amount shall only be discharged to the extent that the Indemnitee may purchase the first currency with the second currency in accordance with its normal banking practice. If the amount of the first currency which may be so purchased (after deducting any costs of exchange and any other related costs) is less than the amount so due, the Lessee shall indemnify the Indemnitee against the shortfall.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Lessee represents and warrants to the Lessor that:

- (a) it is a company or limited liability partnership duly incorporated and validly existing in its jurisdiction of incorporation and has full power, authority and legal right to own its property and assets and to carry on its business as such business is now being conducted; it has all legal power and authority to enter into the Agreement and perform its obligations under the Agreement and all action (including any corporate and regulatory action) required to authorise the execution and delivery of the Agreement and the performance of its obligations under the Agreement has been duly taken;
- (b) the Agreement constitutes the legal, valid and binding obligations of the Lessee enforceable in accordance with its terms;
- (c) the entry into and performance of the Agreement and the transactions contemplated thereby do not and will not conflict with or result in a breach of (i) any law, judgment or regulation or any official or judicial order, or (ii) the constitutional documents of the Lessee, or (iii) any agreement or document to which the Lessee is a party or which is binding upon it or any of its assets or revenues, nor cause any limitation placed on it or the powers of its directors to be exceeded;
- (d) no consent of, giving of notice to, or registration with, or taking of any other action in respect of, any governmental authority or agency in any relevant jurisdiction or any shareholders, members or creditors of the Lessee is required for or in connection with the execution, validity, delivery and admissibility in evidence in any proceedings of the Agreement, or the carrying out by the Lessee of any of the transactions contemplated hereby;
- (e) no litigation, arbitration or administrative proceeding is currently taking place or pending or, to the knowledge of the Lessee, threatened against the Lessee or its assets which would adversely affect its ability to perform its obligations under the Agreement;
- (f) all payments to be made by the Lessee under the Agreement may be made by the Lessee free and clear of, and without deduction for, Taxes and no deductions or withholdings are required to be made therefrom;
- (g) no corporate action, legal proceeding or other procedure or step has been or is about to be taken in relation to (i) a suspension of payments, moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lessee; (ii) a composition, compromise, assignment or arrangement with any creditor or any member of the Lessee; (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Lessee or any of its assets; or (iv) the enforcement of any Security Interest over any assets of the Lessee;
- (h) the obligations of the Lessee under the Agreement rank at least pari passu with all its other present and future unsecured obligations save for any obligations mandatorily preferred by law;
- (i) no Event of Default has occurred;
- (j) the most recent audited financial statements of the Lessee (including the audited profit and loss account and balance sheet) were prepared in accordance with the applicable laws and regulations of the jurisdiction of incorporation of the Lessee and generally accepted accounting principles and policies consistently applied and show a true and fair view of the financial position of the Lessee as at the end of, and the results of its operations for, the financial period to which they relate, and as at the end of such period, the Lessee had no significant liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by or reserved against in such financial statements and there has been no material adverse change in the business or financial condition of the Lessee since the date of such financial statements; and
- (k) all financial and other information supplied to the Lessor by or on behalf of the Lessee in connection with the Agreement or the matters envisaged therein is true and accurate in all material respects.

9.2 The Lessee shall be deemed to repeat each of the representations and warranties contained in clause 9.1 on the Commencement Date and on each date on which Lease Rentals are payable by the Lessee if made at each such time by reference to the circumstances then existing.

10. GENERAL UNDERTAKINGS

10.1 The undertakings in this clause 10 shall remain in force from the date of the Agreement until all sums outstanding under the Agreement have been paid in full.

10.2 The Lessee shall:

- (a) obtain, comply with the terms of, and maintain in full force and effect all authorisations, approvals, licences and consents required by all applicable law and regulation to enable it lawfully to carry on its business and enter into and perform its obligations under the Agreement and to ensure the legality, validity, enforceability and admissibility in evidence of the Agreement;
- (b) ensure that the Lessor's claims against it under the Agreement do and will rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors other than those whose claims are mandatorily preferred as at the date of the Agreement by applicable law;
- (c) promptly inform the Lessor of the occurrence of any Default and any litigation or proceeding, actual, pending or threatened against the Lessee, which if adversely determined, would have an adverse effect on the financial condition

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- or the business or prospects of the Lessee or upon the ability of the Lessee to perform its obligations under the Agreement;
- (d) without prejudice to the other obligations of the Lessee under the Agreement, at all times comply with the Special Conditions;
 - (e) from time to time at the request of the Lessor, promptly provide the Lessor with such financial and other information as the Lessor may reasonably require;
 - (f) at the request of the Lessor or of HMRC, promptly furnish to HMRC such information and copies of records, information and documents as may be required to be so furnished about the acquisition of the Equipment, the leasing of the Equipment pursuant to the Agreement or the use of the Equipment;
 - (g) take or procure the taking of all necessary steps to safeguard the Lessor's rights in the Equipment and shall not do or permit to be done anything that jeopardises the rights of the Lessor in the Equipment or omit to do anything that would prevent those rights from being jeopardised; and
 - (h) prevent any item of Equipment from being removed from its possession and prevent the (or if already occurred, procure the immediate release from) confiscation, distress, execution, impounding, forfeiture, requisition for title or seizure of any item of Equipment.
- 10.3 The Lessee shall not (without the express prior written consent of the Lessor):
- (a) create or permit to subsist any Security Interest over the Equipment; or
 - (b) sell, transfer, assign or otherwise dispose of (whether by a single transaction or a number of transactions related or not and whether at one time or over a period of time and whether outright, by a sale and repurchase or sale and leaseback arrangement or otherwise) any interest in all or a substantial portion of its assets; or
 - (c) make (whether by acquisition or otherwise) any alteration to the nature of its business or operations or the business as would constitute a substantial alteration to the general nature of such business or operations taken as a whole as carried on as at the date of the Agreement; or
 - (d) pledge the Lessor's credit or hold itself out as having any power to sell, charge or otherwise encumber or to sell or dispose of any item of Equipment or any interest therein.
11. **SUBLEASING AND POSSESSION OF EQUIPMENT**
- The Lessee shall not lease or otherwise part with possession of the Equipment without the express prior written consent of the Lessor (except that the Lessee may deliver possession of the Equipment to a maintenance performer who has been pre-approved by the Lessor).
12. **MAINTENANCE AND OPERATION**
- 12.1 The Lessee shall at its own cost and expense and by its own procurement operate and repair the Equipment whenever required during the Lease Period and it shall pay or procure that there are paid all charges and expenses of every kind and nature whatsoever incidental to its use and operation of the Equipment under the Agreement, including any Taxes.
- 12.2 The Lessee shall during the Lease Period whilst the Equipment is in its possession maintain the Equipment and cause the same to be kept and maintained at all times in a good and safe state of repair, in efficient operating condition and in accordance with:
- (a) best practice consistent with first class operating and management practice; and
 - (b) all standards and regulations and all service intervals recommended by the manufacturer of that item of Equipment.
- 12.3 The Lessee shall:
- (a) keep the Equipment at the Location (unless agreed otherwise by the Lessor in writing) and shall not take the Equipment outside of the United Kingdom, provided that if the Equipment is a motor vehicle, the Lessee may take such motor vehicle anywhere within the European Union for up to 14 days per trip;
 - (b) not cause or permit any item of Equipment to be employed, used or operated in any manner contrary to any law or regulation; and
 - (c) procure that each item of Equipment is employed, used or operated in a skillful, careful and proper manner; only for the purpose for which it was designed and in the normal course of the Lessee's business; in accordance with and subject to all instructions issued by the manufacturer of that item of Equipment and any government agency or authority; and in accordance with and subject to all applicable laws and regulations (including, without limitation, the Health and Safety at Work Act 1974).
- 12.4 The Lessee shall during the Lease Period promptly pay all tolls, dues and other outgoings whatsoever in respect of the Equipment (except those which are being contested in good faith).
- 12.5 The Lessee shall not, without the Lessor's express prior written consent, make additions, alterations or modifications to, or remove any part of, any item of Equipment save where such addition, alteration or modification is (a) required by applicable law or regulation or (b) intended to improve the performance or safety of that item of Equipment and is approved by the manufacturer of the Equipment. Any addition, alteration or modification to any item of Equipment shall become the property of the Lessor free of any Security Interest.
- 12.6 The Lessee agrees not to remove or alter any markings (decals or plates) affixed to the Equipment without the Lessor's prior written consent.
- 12.7 The Lessee, upon request, will provide to the Lessor a detailed listing of the Lessor's Equipment by location, including the name and address and contact details for all physical locations where the Equipment is located. The Lessee shall furnish such information within 15 days of such request.
- 12.8 The Lessee shall permit the Lessor or its representatives to inspect, value and/or test the Equipment and for this purpose the Lessee authorises or shall procure that the Lessor and its representatives are authorised to enter any premises at which the Equipment may from time to time be located. The Lessee acknowledges that the Lessor shall be entitled to affix or cause to be affixed to the Equipment plates or other markings as the Lessor may reasonably require. The Lessee shall not affix or permit to be affixed any other markings to the Equipment inconsistent with or prejudicial to the rights of the Lessor.
- 12.9 The Lessee shall procure that the Equipment remains personal and moveable property even if temporarily annexed to land or buildings. If any item of Equipment becomes fixed to land or buildings, the Lessee shall procure that the owner of, or any other person having an interest in, such land or buildings gives to the Lessor a waiver in writing of any right to that item of Equipment and a right to enter onto such land or buildings to remove that item of Equipment.
13. **INSURANCE UNDERTAKINGS**
- 13.1 The Lessee shall, at its own cost and expense and throughout the Lease Period, keep the Equipment insured in Sterling in accordance with best industry practice:
- (a) against all loss or damage in an amount equal to the new replacement value of the Equipment from time to time;
 - (b) against any third party claims and all public liability risks in an amount agreed by the Lessor; and
 - (c) against such other risks in relation to the Equipment or the Lessee as may be required by law.
- 13.2 The Lessee may be required by the Lessor to effect the Insurances on terms and through brokers and with insurance companies or underwriters approved by the Lessor. If the Lessor is not satisfied with the Lessee's Insurance, the Lessor may take out its own insurance at the Lessee's expense and the Lessee shall reimburse the Lessor for such amount on demand. No shortfall in any Insurance proceeds shall discharge the Lessee's liabilities under the Agreement.
- 13.3 In addition to the terms set out in clause 13.1, the Lessee may be required by the Lessor, throughout the Lease Period, to ensure that the Insurances:
- (a) specify the Lessor as sole loss payee on all of the Insurances and name the Lessor as additional insured;
 - (b) in the case of Insurances against risks referred to in clause 13.1(b), provide that all moneys payable thereunder shall be payable directly to the person who has satisfied such liability, in reimbursement to such person of moneys expended by it in satisfaction of such liability;
 - (c) provide that all payments by or on behalf of the Insurers under the Insurances to the Lessor are made without set-off, counterclaim, deduction or condition;
 - (d) provide that the Lessor may make proof of loss if the Lessee fails to do so; and
 - (e) provide that the Lessor will be given thirty (30) days' prior written notice of the intention of the Lessee or the Insurers to cancel the policy or to alter its terms in any material respect or not to renew the policy or cover on the same terms and no such cancellation of the policy or alteration of its terms in any material respect and no renewal of the policy or cover on the same terms shall occur without the prior written consent of the Lessor.
- 13.4 At least ten (10) days before the expiry of any Insurances, the Lessee shall ensure that appropriate instructions for renewal of such Insurances are given. Where the Lessee proposes, on renewal of the Insurances, to make any change to terms or amounts thereof, or to the identity of the Insurer, the Lessee shall notify the Lessor of such proposed change at least fourteen (14) days before the expiry of any relevant Insurances. Not less than seven (7) days prior to the renewal of any Insurances, the Lessee shall notify the Lessor in writing of the Insurer's notification of renewal of such Insurances (together with a copy of any such notification from the insures) and, if there has been any change to the amount, terms and conditions of the Insurances, of the amounts, terms and conditions of the renewal.
- 13.5 On effecting or renewing any Insurances, the Lessee shall ensure that the Insurer provides the Lessor with copies of all related certificates. Following the occurrence of an Event of Default, the Lessee shall, upon written notice from the Lessor, deposit all slips, cover notes, certificates of entry or other instruments of insurance from time to time issued in respect of the Insurances with such person as the Lessor shall stipulate. The Lessor may contact the Lessee's Insurer and may act as the Lessee's agent to settle any insurance claim concerning the Equipment. The Lessee shall do all things necessary and provide all documents, evidence and information to enable the Lessor to collect or recover any sums that at any time become payable in respect of the Insurances.
- 13.6 The Lessee shall comply with the terms and conditions of the Insurances (including the punctual payment of all premiums and other sums payable in relation to the Insurances), and shall not do, consent or permit any act or omission which might invalidate or render unenforceable the Insurances in whole or in part. The Lessee shall not make or agree to any alteration to any Insurances or waive any right relating to any Insurances without the express prior written consent of the Lessor.

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14. TOTAL LOSS

- 14.1 In the event that any item of Equipment becomes a Total Loss, the Lessee shall immediately notify the Lessor in writing. The Lessee shall ensure that any claim is made promptly and in accordance with the terms of the Insurance policy and shall not agree to settlement of any claim without the prior written consent of the Lessor.
- 14.2 The Lessor may (in its sole and absolute discretion) require the Lessee to (a) replace such Equipment with equipment of the same specification and standard as the Equipment the subject of the Total Loss or (b) pay the Termination Sum to the Lessor within 30 days of the date of the Equipment becoming a Total Loss.
- 14.3 In the event that the Lessor requires the Lessee to pay the Termination Sum in accordance with clause 14.2(b) above, the leasing of the relevant Equipment shall be deemed to have terminated on the date of such Total Loss. If not all of the Equipment is a Total Loss, the Lease Rentals payable after such Total Loss date shall be reduced by an amount being in the same proportion as the relevant Equipment which is a Total Loss bears to the replacement value of all Equipment leased at such time to the Lessee under the Agreement (excluding any Equipment which has been the subject of an earlier Total Loss). The Lessee shall continue to pay Lease Rentals in relation to any Equipment that is a Total Loss until payment of the Termination Sum in relation thereto.
- 14.4 If the Lessor requires the Lessee to replace the Equipment in accordance with clause 14.2(a) above, such substitute equipment shall for all purposes of the Agreement be treated as forming part of the Equipment, with the result that, for all purposes of the Agreement:
- (a) the expenditure incurred in the provision of the lost Equipment shall be treated as having been paid by the Lessor as the expenditure incurred in the provision of the substitute equipment; and
 - (b) any Insurance moneys received by the Lessor in respect of the lost Equipment and any amount paid by the Lessor by way of consideration for the substitute equipment under clause 14.2(a) shall be disregarded.
- 14.5 The Lessee's obligations pursuant to clause 14.4:
- (a) apply regardless of whether or not any Insurance monies are paid or payable to the Lessor or the Lessee as a result of such Total Loss; and
 - (b) are without prejudice to the Lessee's obligations to continue to pay Lease Rental.
- 14.6 In respect of any Equipment which has suffered a constructive, arranged or compromised Total Loss, the Lessor hereby appoints the Lessee (and the Lessee hereby accepts such appointment) as its exclusive sales agent for the purposes of the sale or scrapping of such Equipment.
- 14.7 For the avoidance of doubt, the sale of any item of Equipment pursuant to clause 14.6 shall be without prejudice to the Lessee's obligations to continue to pay Lease Rental under the Agreement.
- 14.8 If the Lessor receives Insurance moneys following the occurrence of a Total Loss after the Termination Sum has been paid to the Lessor in accordance with clause 14.2 (and provided that such proceeds have not already been taken into account in calculating the Termination Sum due under clause 14.2), the Lessor agrees to pay to the Lessee by way of rebate of Lease Rentals, an amount equal to the Agreed Percentage of such Insurance monies received, provided that the aggregate of all amounts payable by the Lessor to the Lessee by way of rebate of Lease Rentals shall not, in any event, exceed an amount equal to the aggregate of all Lease Rentals paid to the Lessor under the Agreement.
- 14.9 In the event that any item of Equipment suffers damage not constituting a Total Loss, the Lessee will promptly repair or make good the same in compliance with clause 12. The Lessor shall apply any Insurance monies received in respect of such loss or damage in reimbursement to the Lessee of the costs of reinstatement or repairs on completion of the same, provided that such proceeds may be applied first towards payment of any sums then owing (which remain unpaid) by the Lessee under the Agreement.

15. DEFAULT

- 15.1 Each of the events and circumstances set out below is an Event of Default and shall constitute a repudiatory breach of the Agreement:
- (a) The Lessee does not pay on the due date therefor any amount payable under the Agreement;
 - (b) The Lessee fails to comply with any provision of clause 13;
 - (c) The Lessee fails to comply with any provision of the Agreement (other than as referred to in clauses 15.1 (a) and (b) above) (including failing to comply with any Special Condition) provided that no Event of Default will occur if failure to comply is capable of remedy and is remedied with seven (7) days of the Lessor giving notice to the Lessee or the Lessee becoming aware of the failure to comply;
 - (d) Any representation or statement made or deemed to be made by the Lessee in connection with the Agreement is or proves to have been incorrect or misleading;
 - (e) Any indebtedness of the Lessee is not paid when due or any such indebtedness becomes due and payable prior to its specified maturity as a result of an event of default (however described) or any creditor becomes entitled to declare any such indebtedness due and payable prior to its specified maturity as a result of an event of default (however described);

- (f) The Lessee is unable or admits inability to pay its debts as they fall due, suspends making payment on any of its debts or commences negotiations with any creditor with a view to rescheduling any of its indebtedness or the value of the Lessee's assets is less than its liabilities (including contingent and prospective liabilities) or a moratorium is declared in respect of any indebtedness of the Lessee;
 - (g) Any corporate action, legal proceeding or other procedure or step is taken in relation to (i) the suspension of payments, a moratorium of any indebtedness, bankruptcy, winding-up, dissolution, administration or reorganisation of the Lessee; (ii) a composition, assignment or arrangement with any creditor of the Lessee; (iii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Lessee or any of its assets; (iv) the enforcement of any Security Interest over any asset of the Lessee; or (v) any analogous procedure or step is taken in any jurisdiction;
 - (h) Any expropriation, attachment, sequestration, distress or execution affects any item of Equipment or asset of the Lessee;
 - (i) The Lessee suspends or ceases to carry on the business it carries on as at the date of the Agreement or ownership of all or a material part of its assets are transferred to a third party;
 - (j) There occurs a change in the ownership or control of the Lessee from that subsisting at the date of the Agreement;
 - (k) It is or becomes unlawful for the Lessee to perform any of its obligations under the Agreement;
 - (l) The Lessee repudiates the Agreement or evidences an intention to do so;
 - (m) There occurs, in the opinion of the Lessor, a material adverse change in the financial condition of the Lessee; and
 - (n) Any of the events or circumstances specified in this clause 15 occurs in relation to any Guarantor.
- 15.2 If the Lessee fails to comply with any provision of the Agreement, the Lessor may take all steps it deems necessary to effect compliance with such provision. The Lessor shall not be obliged to take any steps pursuant to this clause 15.2 and shall have no liability as a result of any steps taken.
- 15.3 On and at any time after the occurrence of an Event of Default the Lessor may accept the Lessee's repudiation of the Agreement and by notice to the Lessee terminate the leasing of the Equipment and the consent of the Lessor to the possession of the Equipment with immediate effect. If the Commencement Date has not yet occurred, the Lessor may terminate the obligation to purchase the Equipment and lease the Equipment to the Lessee in accordance with the Agreement.
- 15.4 On termination of the leasing of the Equipment or the obligation to lease the Equipment pursuant to clause 15.3, the Lessee shall pay the Termination Sum to the Lessor.
- #### 16. RETURN OF THE EQUIPMENT
- 16.1 On the termination or expiration of the leasing of the Equipment hereunder howsoever occurring, the Lessee shall, at the risk and expense of the Lessee, return the Equipment to the Lessor, together with all books, manuals, service records, registration and other documents relating to it, at the Redelivery Location, free and clear of all liens and in good working and safe condition (reasonable wear and tear only excepted).
- 16.2 Upon the termination or expiration of the leasing of the Equipment hereunder, the Lessee shall no longer be in possession of the Equipment with the consent of the Lessor and the Lessor and its agents shall be entitled to recover possession of the Equipment (if not returned forthwith to the Lessor pursuant to clause 16.1), and for this purpose shall be entitled to enter upon any premises upon which the Equipment may be located and the Lessee shall indemnify the Lessor on demand against any Loss suffered, incurred or paid by the Lessor in respect of any damage caused to such premises by any such entry or by the removal of the Equipment.
- #### 17. SALE OF EQUIPMENT BY LESSOR
- 17.1 If the leasing of the Equipment is terminated pursuant to clause 15, or the Lessor recovers undisputed possession of the same, the Lessor shall use reasonable endeavours to arrange a sale of the Equipment and, if a sale is arranged and provided that the Lessee has complied with all of its obligations under the Agreement (including, without limitation, payment of the Termination Sum to the Lessor), an amount equal to the Agreed Percentage of the Net Proceeds relating to the Equipment shall be paid by the Lessor to the Lessee by way of rebate of rental, provided that the aggregate of all amounts payable by the Lessor to the Lessee by way of rebate of Lease Rentals shall not, in any event, exceed an amount equal to the aggregate of all Lease Rentals paid to the Lessor under the Agreement.
- #### 18. SALES AGENCY
- 18.1 Provided that no Event of Default has occurred and is continuing, upon termination of the leasing by effluxion of time, the Lessor shall appoint the Lessee as its exclusive agent for the sale of the Equipment and the Lessee hereby irrevocably agrees to act as such sales agent. The sales agency of the Lessee shall continue until the earlier of (a) the expiry of three (3) months from the date the leasing expires by effluxion of time, (b) the date of the sale of the Equipment and (c) the date of termination by written notice from the Lessor to the Lessee following the occurrence of an Event of Default or breach of this

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- clause 18. The Lessee shall, in its sole and absolute discretion, be entitled to determine the means, terms, conditions and timing of any such sale, provided that the sale of the Equipment shall be in accordance with the terms of this clause 18.
- 18.2 Any sale of the Equipment by the Lessee as agent shall:
- be to a third party (other than the Lessee or any person connected with the Lessee for the purposes of section 1122 of the Corporation Taxes Act 2010 or section 993 of the Income Tax Act 2007 ("**Connected Person**"));
 - be at a price not less than the open market value payable in cleared funds in full on completion;
 - not be to a person which is, at the time of such sale, purchasing the Equipment as part of an arrangement under which the Lessee or a Connected Person will be granted or retain possession and/or use of the Equipment; and
 - be on an "as is, where is" basis.
- 18.3 No express or implied representation, undertaking, guarantee or warranty whatsoever shall be given by the Lessee on behalf of the Lessor in connection with any such sale, save that the Lessor shall pass to the purchaser such title as the Lessor has in the Equipment.
- 18.4 The Lessee shall indemnify the Lessor on demand against any Loss suffered, incurred or paid by any Indemnitee if the purchaser of the Equipment or any third party makes any claim against the Indemnitee in respect of the sale of the Equipment.
- 18.5 On completion of a sale of the Equipment and receipt by the Lessor of the sale proceeds relating thereto and provided that the Lessee has complied with all its obligations under the Agreement and has provided the Lessor with a satisfactory VAT sales invoice, the Lessor shall pay to the Lessee, by way of rebate of Lease Rentals, an amount equal to the Agreed Percentage of the Net Proceeds relating to the Equipment, provided that the aggregate of all amounts payable by the Lessor to the Lessee by way of rebate of Lease Rental under the Agreement shall not, in any event, exceed an amount equal to the aggregate of all Lease Rentals paid to the Lessor under the Agreement.
19. **MISCELLANEOUS**
- 19.1 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under the Agreement shall operate as a waiver of such right or remedy. No single or partial exercise of any such right or remedy shall prevent any further or other exercise of such right or remedy or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 19.2 The Lessor and the Lessee agree that the Agreement constitutes the entire agreement between them, and supersedes all previous drafts, agreements, arrangements and understandings between them, whether oral or written. Any amendment or waiver of any provision of the Agreement and any waiver of any default under the Agreement shall be effective only if made in writing and signed by the Lessor.
- 19.3 A certificate by the Lessor as to any sum payable to it under the Agreement shall, in the absence of manifest error, be conclusive for the purposes of the Agreement and prima facie evidence in any legal action or proceeding arising out of the Agreement.
- 19.4 The Lessor may apply any credit balance to which the Lessee is beneficially entitled on any account of the Lessee (whether or not then due) with the Lessor in or towards satisfaction of any sum due from the Lessee under the Agreement but unpaid and, for this purpose, the Lessor may purchase with the moneys standing to the credit of any such account such other currencies as may be necessary to effect such application (but so that nothing in this clause 19.4 shall be effective to create a charge). The Lessor shall not be obliged to exercise any of its rights under this clause 19.4 which shall be without prejudice to and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- 19.5 The Agreement shall be binding upon and enure to the benefit of the Lessor and the Lessee and each of their respective successors and permitted assigns. The Lessor may, without prior reference to the Lessee, disclose any information about the Agreement, the Equipment, the Lessee or any other person as it thinks fit to any actual or potential assignee, as it may in its sole discretion determine.
- 19.6 The Lessor may assign and/or transfer any of its rights and/or obligations under the Agreement. The Lessee shall not, without the express prior written consent of the Lessor, assign or transfer any of its rights or obligations under the Agreement.
- 19.7 In the event that any provision of the Agreement shall be declared by any court or other competent authority to be void or unenforceable by reason of any provision of applicable law it shall be deleted and the remaining provisions of the Agreement shall continue in full force and effect.
- 19.8 Save in respect of any Indemnitee, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Agreement.
- 19.9 Any communication to be made under or in connection with the Agreement shall be made in the English language and in writing and may be made by fax or letter. The address, fax number and contact details for the Lessor and the Lessee for any communication or document to be made or delivered under or in connection with the Agreement is as set out in the Schedule or any substitute address or fax number as one party may notify to the other by not less than ten days' notice. Any communication or document to be made or delivered by one person to another under or in connection with the Agreement will only be effective if by way of fax, when received in legible form, or, if by way of letter, when it has been left at the relevant address or seven days after being deposited in the post postage prepaid in an envelope addressed to it at that address.
- 19.10 The Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.
- 19.11 The indemnities contained in the Agreement in favour of the Lessor and each other Indemnitee shall survive any termination or other ending of the Lease Period and any breach of the Agreement or repudiation or alleged repudiation of the Agreement by the Lessee or the Lessor. Furthermore, the termination or expiry of the Agreement or any hiring under the Agreement shall not affect any of the Lessor's rights and remedies under or in relation to the Agreement or any of the Lessee's obligations arising on or before termination or expiry.
- 19.12 The Lessee shall comply with all applicable laws, statutes, regulations, any guidance issued by a relevant authority or any requirement of the Lessor in relation to anti-bribery, anti-corruption, money laundering and data protection (including the requirements of the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007, the General Data Protection Regulation, the Data Protection Act 2018, and the Bribery Act 2010) and in addition, the Lessee will comply with the Lessor's "know your customer procedures" as may be notified by the Lessor to the Lessee from time to time and the Lessee will provide the Lessor with full copies of all items as may be required from the Lessee in order to evidence such compliance with this clause.
- 19.13 Where the Lessor has entered into the Agreement as agent for a disclosed or undisclosed principal ("**Principal**"), then it is hereby confirmed that the Principal has appointed the Lessor to act as its agent and accordingly, where the context so requires and admits, all terms and expressions and provisions relating to the Lessor shall be read and construed on the basis that such terms and expressions and provisions concern and relate to the Principal (acting through the Lessor (as its agent)).
20. **LAW AND JURISDICTION**
- 20.1 The Agreement is governed by, and shall be construed in accordance with, the laws of England and Wales.
- 20.2 The Lessee irrevocably agrees, for the benefit of the Lessor, that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with the Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- 20.3 The submission to the jurisdiction of such courts shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Lessee in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not

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