



## Conditions to and Certain Further Terms of the Offer

1 February 2024



*This document is intended as an illustrative example of the approach that could potentially be taken to the structure and drafting of certain aspects of the conditions to a contractual offer under the Code rules.*

*This document was originally drafted by a Joint Working Party of the Company Law Committees of the City of London Law Society (CLLS) and the Law Society of England and Wales (the Law Society) (the Joint Working Party) in June 2021 in light of changes to the City Code on Takeovers and Mergers (Code) that took effect from 5 July 2021 and had an impact on, among other things, certain aspects of the conditions and further terms to contractual offers.*

*It was updated by the Joint Working Party in February 2024 to take account of revisions relating to “Phase 2 Clearance Conditions” made to Practice Statement No.5 (Rule 13.5 – Invoking conditions and pre-conditions) (PS5). Amongst other things, PS5 notes (see section 3(b)(iii)) that if a “Phase 2 Reference” is made (and any “Phase 2 Reference Condition” is waived) but the offer is not subject to a (specific or general sweeper) “Phase 2 Clearance Condition” the consequence will be that the bidder will not be able to lapse the offer if the “Phase 2 Clearance” is not obtained (unless another condition can be invoked). In that context, this document includes an illustrative example of an approach that could potentially be taken to “Phase 2 Clearance Conditions” through the inclusion of a sweeper provision in Condition (f) dealing with “Phase 2” clearances from the regulators referred to in the specific regulatory conditions preceding it. However, in practice other approaches could also be taken including (as noted in PS5) the inclusion of a relevant “Phase 2 Clearance Condition” limb in each of the specific regulatory clearance conditions. The appropriate approach will depend on the specifics of the transaction, the nature of the regulatory conditions in question and whether a Phase 2 process is reasonably expected (including whether the long stop date accommodates such a process). Where it is proposed to restrict or limit the terms of the sweeper condition, careful consideration should be given to the implications of this in the context of the guidance in PS5.*

*This document is not prescriptive or comprehensive and is not intended to be, and should not be relied upon as being, legal or regulatory advice. Users of this document will need to consider its contents in light of the specific circumstances of their particular transaction and should consult their own advisers before using, or taking any action based on, this document. No duty of care or liability whatsoever is accepted by the Law Society or the CLLS, by those involved in the preparation or approval of this document, or by the firms or organisations that they represent, to any firm, company or individual who relies on material in it and no representation or warranty is made as to its accuracy, suitability or completeness.*

*This document assumes, for illustrative purposes, a cash offer.*

*For an illustrative example of the approach which could potentially be taken to drafting further terms of an offer, see the separate document drafted by the Joint Working Party.*

*1 February 2024*

## CONDITIONS TO AND CERTAIN FURTHER TERMS OF THE OFFER

### Part [A]

#### CONDITIONS TO THE OFFER

The Offer [will be]/[is]<sup>1</sup> conditional upon:

##### Acceptance Condition

- (a) valid acceptances of the Offer having been received (and not validly withdrawn in accordance with the rules and requirements of the Code and the terms of the Offer) by no later than 1.00 p.m. (London time) on the Unconditional Date (or such other times and/or dates as [BIDDER] may specify, subject to the rules of the Code and where applicable with the consent of the Panel) in respect of 90 per cent. (or such lesser percentage as [BIDDER] may decide) of [TARGET] Shares to which the Offer relates and of the voting rights attached to those shares, provided that: (i) this Condition will not be satisfied unless [BIDDER] and/or any of its wholly-owned subsidiaries has acquired or agreed to acquire (whether pursuant to the Offer or otherwise) [TARGET] Shares carrying in aggregate more than 50 per cent. of the voting rights then exercisable at a general meeting of [TARGET]; and (ii) unless the Panel consents otherwise [and save for Condition ([•])] ***[i.e. any condition(s) which technically can only be satisfied once the acceptance condition has been satisfied<sup>2</sup>]***, this Condition shall only be capable of being satisfied when all other Conditions set out in paragraphs [(b)] to [(o)] below have been satisfied or waived;

For the purposes of this Condition [(a)]:

- (A) [TARGET] Shares which have been unconditionally allotted but not issued before the Offer becomes or is declared unconditional, whether pursuant to the exercise of any outstanding subscription or conversion rights or otherwise, shall be deemed to carry the voting rights they will carry upon issue;
- (B) valid acceptances shall be deemed to have been received in respect of [TARGET] Shares which are treated for the purposes of Part 28 of the Companies Act as having been acquired or contracted to be acquired by [BIDDER], whether by virtue of acceptance of the Offer or otherwise;
- (C) the expression [TARGET] Shares to which the Offer relates shall be construed in accordance with Chapter 3 of Part 28 of the Companies Act; and

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<sup>1</sup> Use first option in R 2.7 announcement and second option in offer document.

<sup>2</sup> Note that the inclusion of a technical condition to be satisfied after the acceptance condition requires Panel consent (see R 10.2 and the Note on it).

- (D) all percentages of voting rights and share capital are to be calculated by reference to the percentage held and in issue excluding any and all shares held in treasury by [TARGET] from time to time.

In addition, the Offer [will be]/[is] conditional upon the following Conditions and, accordingly, the Offer will not become or be declared unconditional unless the following Conditions (as amended if appropriate) have been satisfied or, where relevant, waived:

**Official authorisations, regulatory clearances and third party clearances<sup>3, 4</sup>**

(b) [either:

- (i) [confirmation that the UK Competition and Markets Authority (the “**CMA**”) has no further questions in relation to the proposed acquisition of [TARGET] by [BIDDER] following the submission of a briefing paper to it and]<sup>5</sup> as at the date on which all other Conditions are satisfied or waived, in relation to the proposed acquisition of [TARGET] by [BIDDER], the CMA not having:
- (A) requested submission of a merger notice pursuant to section 96 of the Enterprise Act 2002 (the “**EA**”);
- (B) indicated to either party that it intends, or is considering whether, to commence a Phase 1 investigation;
- (C) indicated that the statutory review period in which the CMA has to decide whether to make a reference under section 34ZA EA has begun; or
- (D) requested documents, information or attendance by witnesses (including under section 109 of the EA) which may indicate that it is considering whether to request submission of a merger notice or whether to commence the aforementioned statutory review period; or
- (ii) the CMA issuing a decision in terms [reasonably] satisfactory to [BIDDER] that it is not the CMA's intention to subject the proposed acquisition of [TARGET] by [BIDDER] or any matter arising therefrom or related thereto or any part of it to a reference under section 33 of the EA (a “**Phase 2 CMA Reference**”), such decision being either unconditional or conditional on the CMA's acceptance of undertakings in lieu under Section 73 EA which are [reasonably] satisfactory to [BIDDER] (or the applicable time period for the CMA to issue either decision having expired without it having done so and without it having made a Phase 2 CMA

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<sup>3</sup> Specific Conditions should be included in respect of jurisdictions/regulators where it is known clearance will need to be sought. The examples included in this document are illustrative only.

<sup>4</sup> See the pro forma acceleration statement published by the Joint Working Party for how the waiver of conditions relating to official authorisations and regulatory clearances may work in an acceleration statement.

<sup>5</sup> Include if it is proposed that a briefing paper be submitted to the CMA in the first instance.

- Reference) and there having been no decision by the Secretary of State to make a reference under sections 45 or 62 of the EA; [or
- (iii) in the event that a Phase 2 CMA Reference is made, confirmation from the CMA (or as the case may be, the Secretary of State) either:
- (A) that the proposed acquisition of [TARGET] by [BIDDER] may proceed without any undertakings or conditions; or
- (B) that the proposed acquisition of [TARGET] by [BIDDER] and any matter arising therefrom or relating thereto may proceed on terms [reasonably] satisfactory to [BIDDER];<sup>6</sup>]
- (c) [insofar as the proposed acquisition of [TARGET] by [BIDDER] constitutes, or is deemed to constitute, a concentration with a Union dimension within the meaning of the EU Merger Regulation, or, following a request pursuant to Article 22(1) of the EU Merger Regulation, the European Commission decides (or is deemed to have decided) that it shall examine the proposed acquisition pursuant to Article 22(3) of the EU Merger Regulation, the European Commission:
- (i) issuing a decision in terms [reasonably] satisfactory to [BIDDER] under Articles 6(1)(b) or 6(2) of the EU Merger Regulation declaring the proposed acquisition of [TARGET] by [BIDDER] compatible with the internal market (or having been deemed to do so pursuant to Article 10(6) of the EU Merger Regulation); or
- (ii) issuing a decision to refer (or being deemed to have taken a decision to refer) the proposed acquisition of [TARGET] by [BIDDER] in whole or in part to the competent authorities of one or more Member States of the European Union under Articles 4 or 9 of the EU Merger Regulation and (A) each such authority issuing a decision with equivalent effect to that in Condition [(c)(i)] with respect to those parts of the proposed acquisition referred to it and (B) where applicable, the European Commission issuing a decision as referred to in Condition [(c)(i)] with respect to any part of the proposed acquisition retained by it;]
- (d) [insofar as the Offer constitutes a notifiable concentration pursuant to Article 20(3) or Article 21(5) of the EU Foreign Subsidies Regulation (Regulation (EU) No. 2022/2560) (the "**EU Foreign Subsidies Regulation**"):
- (i) the European Commission:
- (A) informing [Bidder] [and] [Target] or declaring that it is closing its preliminary review of the Offer pursuant to Article 10(4) of the EU Foreign Subsidies Regulation;

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<sup>6</sup> Consider including a specific Phase 2 clearance condition where a Phase 2 CMA Reference is considered a realistic possibility. If included, make consequential changes to Condition (f).

- (B) not initiating an in-depth investigation of the Offer within 25 working days after receipt of the complete notification, calculated in accordance with Article 24 of the EU Foreign Subsidies Regulation (including any suspension of the relevant time period pursuant to Article 24(5));
  - (C) not adopting a decision specified in Article 25(3) of the EU Foreign Subsidies Regulation within the time period specified in Article 25(4) thereof, following an in-depth investigation of the Offer;
  - (D) issuing a no objection decision pursuant to Article 11(4) of the EU Foreign Subsidies Regulation following an in-depth investigation of the Offer; or
  - (E) issuing a decision in terms [reasonably] satisfactory to [BIDDER] with commitments pursuant to Article 11(3) of the EU Foreign Subsidies Regulation following an in-depth investigation of the Offer; and
- (ii) all applicable waiting and other time periods (including any extensions thereof) having expired, lapsed or been terminated and the time allowed for an application for review of any decision referred to in Condition [(d)(i)] having expired without any such application for review having been made to the EU General Court;]
- (e) [7
- (i) if the Offer is a notifiable acquisition under the National Security and Investment Act 2021 (“**NSI Act**”), the requisite notification having been made and the Secretary of State confirming that no further action will be taken under the NSI Act in relation to the Offer or making a final order under the NSI Act in respect of the Offer, the provisions of which allow the Offer to proceed on terms [reasonably] satisfactory to [BIDDER];
  - (ii) if the Offer is notified voluntarily under section 18 of the NSI Act, the Secretary of State confirming that no further action will be taken under the NSI Act in relation to the Offer or making a final order in respect of the Offer, the provisions of which allow the Offer to proceed on terms [reasonably] satisfactory to [BIDDER];
  - (iii) if, prior to the date on which all other Conditions are satisfied or waived, the Secretary of State issues a call-in notice within the meaning of the NSI Act in relation the Offer, the Secretary of State: (A) confirming that no further action will be taken under the NSI Act in relation to the Offer; or (B) making a final order under the NSI Act in respect of the Offer, the provisions of which allow the Offer to proceed on terms [reasonably] satisfactory to [BIDDER]; or

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<sup>7</sup> Where it is known that notification is mandatory, use limbs (i) and (iii). Where notification will be voluntary, use limbs (ii) – (iv) and add the definition of NSI Act into (ii). Where it is not yet clear if notification will be mandatory, use all four limbs.

(iv) as at the date on which all other Conditions are satisfied or waived, the Secretary of State not having instituted or indicated (whether formally or informally) that it may institute any action, investigation, enquiry or reference, or made or proposed any order or decision under the NSI Act prohibiting the Offer or imposing [material] additional conditions or obligations under the NSI Act with respect thereto;]

(f) <sup>8</sup>

(i) if and to the extent that any or all of Conditions [(b)] to [(e)] (inclusive) are waived or are not invoked by [BIDDER], all authorisations, orders, grants, recognitions, determinations, confirmations, consents, licences, clearances, permissions, exemptions and approvals from the authorities referred to in Conditions [(b)] to [(e)] (inclusive) (for the purposes of this Condition [(f)] each a “**Clearance**”) including, without limitation, any Clearance in connection with any Phase 2 CMA Reference and/or any “phase 2” or similar “in depth” review by any of the authorities referred to in Conditions [(b)] to [(e)] (inclusive) having been obtained; or

(ii) any other Clearance deemed necessary or appropriate by [BIDDER] or any member of the Wider [BIDDER] Group for or in respect of the Offer (including, without limitation, its implementation and financing or the proposed direct or indirect acquisition of any shares or other securities in, or control of, [TARGET] or any member of the Wider [TARGET] Group by any member of the Wider [BIDDER] Group) having been obtained,

in each case in terms and in a form and subject to conditions that are [reasonably] satisfactory to [BIDDER] and all such Clearances remaining in full force and effect and all filings necessary for such purpose having been made and there being no notice or intimation of any intention to revoke or not to renew any of the same at the time at which the Offer becomes otherwise unconditional;

(g) the waiver (or non-exercise within any applicable time limits) by any relevant government or governmental, quasi-governmental, supranational, statutory, regulatory, environmental or investigative body, court, trade agency, association, institution, any entity owned or controlled by any relevant government or state, or any other body or person whatsoever in any jurisdiction (each a “**Third Party**”) of any termination right, right of pre-emption, first refusal or similar right (which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer) arising as a result of or in connection with the Offer including, without limitation, its implementation and financing or the proposed direct or indirect acquisition of any shares or other securities in, or control or management of, [TARGET] by [BIDDER] or any member of the Wider [BIDDER] Group;

(h) all necessary filings or applications having been made in connection with the Offer and all statutory or regulatory obligations in any jurisdiction having been complied with in connection with the Offer

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<sup>8</sup> This condition is intended to serve as a general “Phase 2 Clearance” sweeper condition in respect of clearances from those authorities referred to in the preceding specific regulatory conditions (as one illustrative example of the approach that could potentially be taken in light of PS5 – see cover notes). To the extent additional specific regulatory conditions are included the cross-referencing in this condition should be expanded accordingly.

or the acquisition by any member of the Wider [BIDDER] Group of any shares or other securities in, or control of, [TARGET] and all authorisations, orders, grants, recognitions, determinations, confirmations, consents, licences, clearances, permissions, exemptions and approvals deemed necessary or appropriate by [BIDDER] or any member of the Wider [BIDDER] Group for or in respect of the Offer including, without limitation, its implementation and financing or the proposed direct or indirect acquisition of any shares or other securities in, or control of, [TARGET] or any member of the Wider [TARGET] Group by any member of the Wider [BIDDER] Group having been obtained in terms and in a form [reasonably] satisfactory to [BIDDER] from all appropriate Third Parties or persons with whom any member of the Wider [TARGET] Group has entered into contractual arrangements and all such authorisations, orders, grants, recognitions, determinations, confirmations, consents, licences, clearances, permissions, exemptions and approvals deemed necessary or appropriate to carry on the business of any member of the Wider [TARGET] Group which are material in the context of the [BIDDER] Group or the [TARGET] Group as a whole or for or in respect of the Offer including, without limitation, its implementation or financing remaining in full force and effect and all filings necessary for such purpose having been made and there being no notice or intimation of any intention to revoke or not to renew any of the same at the time at which the Offer becomes otherwise unconditional and all necessary statutory or regulatory obligations in any jurisdiction having been complied with;

- (i) no Third Party having given notice of a decision to take, institute, implement or threaten any action, proceeding, suit, investigation, enquiry or reference (and, in each case, not having withdrawn the same), or having enacted, made or proposed any statute, regulation, decision or order, or change to published practice or having taken any other step, and there not continuing to be outstanding any statute, regulation, decision or order, which in each case would or might reasonably be expected to:
  - (i) require, prevent or delay the divestiture, or materially alter the terms envisaged for any proposed divestiture by any member of the Wider [BIDDER] Group or any member of the Wider [TARGET] Group of all or any portion of their respective businesses, assets or property or impose any limitation on the ability of any of them to conduct their respective businesses (or any of them) or to own any of their respective assets or properties or any part thereof which, in any such case, is material in the context of the Wider [BIDDER] Group or the Wider [TARGET] Group in either case taken as a whole or in the context of the Offer;
  - (ii) require, prevent or delay the divestiture by any member of the Wider [BIDDER] Group of any shares or other securities in [TARGET];
  - (iii) impose any material limitation on, or result in a delay in, the ability of any member of the Wider [BIDDER] Group directly or indirectly to acquire or to hold or to exercise effectively any rights of ownership in respect of shares or loans or securities convertible into shares or any other securities (or the equivalent) in any member of the Wider [TARGET] Group or the Wider [BIDDER] Group or to exercise voting or management control over any such member;



- (iv) otherwise adversely affect the business, assets, profits or prospects of any member of the Wider [BIDDER] Group or of any member of the Wider [TARGET] Group to an extent which is material in the context of the Wider [BIDDER] Group or the Wider [TARGET] Group in either case taken as a whole or in the context of the Offer;
- (v) make the Offer or its implementation or the Offer or proposed Offer by [BIDDER] or any member of the Wider [BIDDER] Group of any shares or other securities in, or control of [TARGET] void, illegal, and/or unenforceable under the laws of any jurisdiction, or otherwise, directly or indirectly, restrain, restrict, prohibit, delay or otherwise interfere with the same, or impose additional conditions or obligations with respect thereto;
- (vi) require any member of the Wider [BIDDER] Group or the Wider [TARGET] Group to offer to acquire any shares or other securities (or the equivalent) or interest in any member of the Wider [TARGET] Group or the Wider [BIDDER] Group owned by any third party;
- (vii) impose any limitation on the ability of any member of the Wider [TARGET] Group to co-ordinate its business, or any part of it, with the businesses of any other members which is adverse to and material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer; or
- (viii) result in any member of the Wider [TARGET] Group ceasing to be able to carry on business under any name under which it presently does so,

and all applicable waiting and other time periods (including any extensions thereof) during which any such Third Party could institute, implement or threaten any action, proceeding, suit, investigation, enquiry or reference or any other step under the laws of any jurisdiction in respect of the Offer or the acquisition or proposed acquisition of any [TARGET] Shares having expired, lapsed or been terminated;

**Certain matters arising as a result of any arrangement, agreement etc.**

- (j) save as Disclosed,<sup>9</sup> there being no provision of any agreement, arrangement, licence, permit or other instrument to which any member of the Wider [TARGET] Group is a party or by or to which any such member or any of its assets may be bound, entitled or subject, or any circumstance which in consequence of the Offer or the proposed acquisition of any shares or other securities (or equivalent) in [TARGET] or because of a change in the control or management of [TARGET] or otherwise, could or might result in any of the following to an extent which is material and adverse in the context of the Wider [TARGET] Group, or the Wider [BIDDER] Group, in either case taken as a whole, or in the context of the Offer:

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<sup>9</sup> An appropriate definition of "Disclosed" should be included in the definitions section of the offer document.

- (i) any moneys borrowed by or any other indebtedness or liabilities (actual or contingent) of, or grant available to any such member, being or becoming repayable or capable of being declared repayable immediately or earlier than their or its stated maturity date or repayment date or the ability of any such member to borrow moneys or incur any indebtedness being withdrawn or inhibited or being capable of becoming or being withdrawn or inhibited;
- (ii) any such agreement, arrangement, licence, permit or instrument or the rights, liabilities, obligations or interests of any such member thereunder being terminated or adversely modified or affected or any obligation or liability arising or any action being taken or arising thereunder;
- (iii) any asset or interest of any such member being or failing to be disposed of or charged or ceasing to be available to any such member or any right arising under which any such asset or interest could be required to be disposed of or charged or could cease to be available to any such member otherwise than in the ordinary course of business;
- (iv) the creation or enforcement of any mortgage, charge or other security interest over the whole or any part of the business, property, assets or interest of any such member;
- (v) the rights, liabilities, obligations or interests of any such member, or the business of any such member with, any person, firm, company or body (or any arrangement or arrangements relating to any such interest or business) being terminated, adversely modified or affected;
- (vi) the value of any such member or its financial or trading position or prospects being prejudiced or adversely affected;
- (vii) any such member ceasing to be able to carry on business under any name under which it presently does so; or
- (viii) the creation or acceleration of any liability, actual or contingent, by any such member (including any material tax liability or any obligation to obtain or acquire any material authorisation, order, grant, recognition, determination, confirmation, consent, licence, clearance, permission, exemption, approval, notice, waiver, concession, agreement or exemption from any Third Party or any person) other than trade creditors or other liabilities incurred in the ordinary course of business or in connection with the Offer,

and no event having occurred which, under any provision of any agreement, arrangement, licence, permit or other instrument to which any member of the Wider [TARGET] Group is a party or by or to which any such member or any of its assets may be bound, entitled or subject, would or might reasonably be expected to result in any of the events or circumstances as are referred to in subparagraphs (i) to (viii) of this Condition;

#### **Certain events occurring since Last Accounts Date**

- (k) save as Disclosed, no member of the Wider [TARGET] Group having, since the Last Accounts Date:
- (i) save as between [TARGET] and wholly-owned subsidiaries of [TARGET] or for [TARGET] Shares issued under or pursuant to the exercise of options and vesting of awards granted under the [TARGET] Share Schemes, issued or agreed to issue, authorised or proposed the issue of additional shares of any class;
  - (ii) save as between [TARGET] and wholly-owned subsidiaries of [TARGET] or for the grant of options and awards and other rights under the [TARGET] Share Schemes, issued or agreed to issue, authorised or proposed the issue of securities convertible into shares of any class or rights, warrants or options to subscribe for, or acquire, any such shares or convertible securities;
  - (iii) other than to another member of the [TARGET] Group, prior to completion of the Offer, recommended, declared, paid or made any dividend or other distribution payable in cash or otherwise or made any bonus issue;
  - (iv) save for intra-[TARGET] Group transactions, merged or demerged with any body corporate or acquired or disposed of or transferred, mortgaged or charged or created any security interest over any assets or any right, title or interest in any asset (including shares and trade investments) or authorised or proposed or announced any intention to propose any merger, demerger, disposal, transfer, mortgage, charge or security interest, in each case, other than in the ordinary course of business and, in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (v) save for intra-[TARGET] Group transactions, made or authorised or proposed or announced an intention to propose any change in its loan capital in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (vi) issued, authorised or proposed the issue of, or made any change in or to, any debentures or (save for intra-[TARGET] Group transactions), save in the ordinary course of business, incurred or increased any indebtedness or become subject to any contingent liability;
  - (vii) purchased, redeemed or repaid or announced any proposal to purchase, redeem or repay any of its own shares or other securities or reduced or, save in respect to the matters mentioned in sub-paragraphs (i) or (ii) above, made any other change to any part of its share capital in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (viii) save for intra-[TARGET] Group transactions, implemented, or authorised, proposed or announced its intention to implement, any reconstruction, merger, demerger, amalgamation,

- scheme, commitment or other transaction or arrangement otherwise than in the ordinary course of business;
- (ix) entered into or varied or authorised, proposed or announced its intention to enter into or vary any contract, transaction or commitment (whether in respect of capital expenditure or otherwise) which is of a long term, onerous or unusual nature or magnitude or which involves or could involve an obligation of such a nature or magnitude other than in the ordinary course of business, in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (x) (other than in respect of a member which is dormant and was solvent at the relevant time) taken any corporate action or steps or had any legal proceedings started or threatened against it in relation to the suspension of payments, a moratorium of any indebtedness, its winding-up, dissolution or reorganisation or for the appointment of a receiver, administrative receiver, administrator, manager, trustee or similar officer of all or any part of its assets or revenues or any analogous proceedings in any jurisdiction or appointed any analogous person in any jurisdiction or had any such person appointed, in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (xi) entered into any contract, transaction or arrangement which would be restrictive on the business of any member of the Wider [TARGET] Group or the Wider [BIDDER] Group other than of a nature and extent which is normal in the context of the business concerned;
  - (xii) waived or compromised any claim otherwise than in the ordinary course of business which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (xiii) made any material alteration to its memorandum or articles of association or other incorporation documents;
  - (xiv) been unable, or admitted in writing that it is unable, to pay its debts or commenced negotiations with one or more of its creditors with a view to rescheduling or restructuring any of its indebtedness, or having stopped or suspended (or threatened to stop or suspend) payment of its debts generally or ceased or threatened to cease carrying on all or a substantial part of its business;
  - (xv) entered into any contract, commitment, arrangement or agreement otherwise than in the ordinary course of business or passed any resolution or made any offer (which remains open for acceptance) with respect to or announced any intention to, or proposed to, effect any of the transactions, matters or events referred to in this Condition [(k)];
  - (xvi) made or agreed or consented to any change to:

- (A) the terms of the trust deeds constituting the pension scheme(s) established by any member of the Wider [TARGET] Group for its directors, employees or their dependents, including the [RELEVANT TARGET PENSION SCHEME(S)];
- (B) the contributions payable to any such scheme(s) or to the benefits which accrue or to the pensions which are payable thereunder;
- (C) the basis on which qualification for, or accrual or entitlement to, such benefits or pensions are calculated or determined; or
- (D) the basis upon which the liabilities (including pensions) of such pension schemes are funded, valued or made,

in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;

- (xvii) proposed, agreed to provide or modified the terms of any of the [TARGET] Share Schemes or other benefit constituting a material change relating to the employment or termination of employment of a material category of persons employed by the Wider [TARGET] Group or which constitutes a material change to the terms or conditions of employment of any senior employee of the Wider [TARGET] Group, save as agreed by the Panel (if required) and by [BIDDER], or entered into or changed the terms of any contract with any director or senior executive;
- (xviii) taken (or agreed or proposed to take) any action which requires, or would require, the consent of the Panel or the approval of [TARGET] Shareholders in general meeting in accordance with, or as contemplated by, Rule 21.1 of the Code;
- (xix) entered into or varied in a material way the terms of, any contracts, agreement or arrangement with any of the directors or senior executives of any members of the Wider [TARGET] Group; or
- (xx) waived or compromised any claim which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer, otherwise than in the ordinary course;

**No adverse change, litigation or regulatory enquiry**

- (l) save as Disclosed, since the Last Accounts Date:
  - (i) no adverse change or deterioration having occurred in the business, assets, financial or trading position or profits or prospects or operational performance of any member of the Wider [TARGET] Group which, in any such case, is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer and no circumstances have

arisen which would or might reasonably be expected to result in such adverse change or deterioration;

- (ii) no litigation, arbitration proceedings, prosecution or other legal proceedings to which any member of the Wider [TARGET] Group is or may become a party (whether as a plaintiff, defendant or otherwise) and no enquiry, review or investigation by, or complaint or reference to, any Third Party or other investigative body against or in respect of any member of the Wider [TARGET] Group having been instituted, announced, implemented or threatened by or against or remaining outstanding in respect of any member of the Wider [TARGET] Group which in any such case has had or might reasonably be expected to have a material adverse effect on the Wider [TARGET] Group taken as a whole or in the context of the Offer;
- (iii) no contingent or other liability of any member of the Wider [TARGET] Group having arisen or become apparent to [BIDDER] or increased which has had or might reasonably be expected to have a material adverse effect on the Wider [TARGET] Group taken as a whole or in the context of the Offer;
- (iv) no enquiry or investigation by, or complaint or reference to, any Third Party having been threatened, announced, implemented, instituted by or remaining outstanding against or in respect of any member by or the Wider [TARGET] Group which in any case is material in the context of the Wider [TARGET] Group taken as a whole;
- (v) no member of the Wider [TARGET] Group having conducted its business in breach of any applicable laws and regulations and which is material in the context of the Wider [TARGET] Group as a whole or in the context of the Offer; and
- (vi) no steps having been taken which are likely to result in the withdrawal, cancellation, termination or modification of any licence or permit held by any member of the Wider [TARGET] Group which is necessary for the proper carrying on of its business and the withdrawal, cancellation, termination or modification of which has had, or would reasonably be expected to have, an adverse effect which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;

#### **No discovery of certain matters**

(m) save as Disclosed, [BIDDER] not having discovered:

- (i) that any financial, business or other information concerning the Wider [TARGET] Group as contained in the information publicly disclosed at any time by or on behalf of any member of the Wider [TARGET] Group is materially misleading, contains a material misrepresentation of fact or omits to state a fact necessary to make that information not misleading and which was not subsequently corrected before the date of this Announcement by disclosure either publicly or otherwise to [BIDDER] or its professional advisers, in each case, to the extent

which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;

- (ii) that any member of the Wider [TARGET] Group or partnership, company or other entity in which any member of the Wider [TARGET] Group has a significant economic interest and which is not a subsidiary undertaking of [TARGET], is subject to any liability (contingent or otherwise) which is not disclosed in the [TARGET ANNUAL REPORT AND ACCOUNTS], in each case, to the extent which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer; or
  - (iii) any information which affects the import of any information disclosed at any time by or on behalf of any member of the Wider [TARGET] Group and which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
- (n) save as Disclosed, [BIDDER] not having discovered that:
- (i) any past or present member of the Wider [TARGET] Group has failed to comply with any and/or all applicable legislation or regulation, of any jurisdiction with regard to the use, treatment, handling, storage, carriage, disposal, spillage, release, discharge, leak or emission of any waste or hazardous substance or any substance likely to impair the environment or harm human health or animal health or otherwise relating to environmental matters or the health and safety of humans, or that there has otherwise been any such use, treatment, handling, storage, carriage, disposal, spillage, release, discharge, leak or emission (whether or not the same constituted a non-compliance by any person with any such legislation or regulations, and wherever the same may have taken place) any of which storage, carriage, disposal, spillage, release, discharge, leak or emission would be likely to give rise to any liability (actual or contingent) or cost on the part of any member of the Wider [TARGET] Group and which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (ii) there is, or is likely to be, for any reason whatsoever, any liability (actual or contingent) of any past or present member of the Wider [TARGET] Group to make good, remediate, repair, reinstate or clean up any property or any controlled waters now or previously owned, occupied, operated or made use of or controlled by any such past or present member of the Wider [TARGET] Group (or on its behalf) or by any person for which a member of the Wider [TARGET] Group is or has been responsible, or in which any such member may have or previously have had or be deemed to have had an interest, under any environmental legislation, regulation, notice, circular or order of any Third Party and which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer;
  - (iii) circumstances exist (whether as a result of the making of the Offer or otherwise) which would be reasonably likely to lead to any Third Party instituting, or whereby any member of the

Wider [BIDDER] Group or any present or past member of the Wider [TARGET] Group would be likely to be required to institute, an environmental audit or take any other steps which would in any such case be reasonably likely to result in any liability (whether actual or contingent) to improve, modify existing or install new plant, machinery or equipment or carry out changes in the processes currently carried out or make good, remediate, repair, re-instate or clean up any land or other asset currently or previously owned, occupied or made use of by any past or present member of the Wider [TARGET] Group (or on its behalf) or by any person for which a member of the Wider [TARGET] Group is or has been responsible, or in which any such member may have or previously have had or be deemed to have had an interest which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer; or

- (iv) circumstances exist whereby a person or class of persons would be likely to have any claim or claims in respect of any product or process of manufacture or materials used therein currently or previously manufactured, sold or carried out by any past or present member of the Wider [TARGET] Group which claim or claims would be likely, materially and adversely, to affect any member of the Wider [TARGET] Group and which is material in the context of the Wider [TARGET] Group taken as a whole or in the context of the Offer; and

**Anti-corruption, economic sanctions, criminal property and money laundering**

(o) save as Disclosed, [BIDDER] not having discovered that:

- (i) (A) any past or present member, director, officer or employee of the Wider [TARGET] Group is or has at any time engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 or any other applicable anti-corruption or anti-bribery law, rule or regulation or any other applicable law, rule, or regulation concerning improper payments or kickbacks or (B) any person that performs or has performed services for or on behalf of the Wider [TARGET] Group is or has at any time engaged in any activity, practice or conduct in connection with the performance of such services which would constitute an offence under the Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 or any other applicable anti-corruption or anti-bribery law, rule or regulation or any other applicable law, rule, or regulation concerning improper payments or kickbacks; or
- (ii) any asset of any member of the Wider [TARGET] Group constitutes criminal property as defined by section 340(3) of the Proceeds of Crime Act 2002 (but disregarding paragraph (b) of that definition) or proceeds of crime under any other applicable law, rule, or regulation concerning money laundering or proceeds of crime or any member of the Wider [TARGET] Group is found to have engaged in activities constituting money laundering under any applicable law, rule, or regulation concerning money laundering; or



- (iii) any past or present member, director, officer or employee of the Wider [TARGET] Group, or any other person for whom any such person may be liable or responsible, is or has engaged in any conduct which would violate applicable economic sanctions or dealt with, made any investments in, made any funds or assets available to or received any funds or assets from:
  - (A) any government, entity or individual in respect of which US, UK or European Union persons, or persons operating in those territories, are prohibited from engaging in activities or doing business, or from receiving or making available funds or economic resources, by US, UK or European Union laws or regulations, including the economic sanctions administered by the United States Office of Foreign Assets Control, or HMRC; or
  - (B) any government, entity or individual targeted by any of the economic sanctions of the United Nations, the United States, the United Kingdom, the European Union or any of its member states, save that this shall not apply if and to the extent that it is or would be unenforceable by reason of breach of any applicable Blocking Law;<sup>10</sup> or
- (iv) any past or present member, director, officer or employee of the Wider [TARGET] Group, or any other person for whom any such person may be liable or responsible:
  - (A) has engaged in conduct which would violate any relevant anti-terrorism laws, rules, or regulations, including but not limited to the U.S. Anti-Terrorism Act;
  - (B) has engaged in conduct which would violate any relevant anti-boycott law, rule, or regulation or any applicable export controls, including but not limited to the Export Administration Regulations administered and enforced by the U.S. Department of Commerce or the International Traffic in Arms Regulations administered and enforced by the U.S. Department of State;
  - (C) has engaged in conduct which would violate any relevant laws, rules, or regulations concerning human rights, including but not limited to any law, rule, or regulation concerning false imprisonment, torture or other cruel and unusual punishment, or child labour; or
  - (D) is debarred or otherwise rendered ineligible to bid for or to perform contracts for or with any government, governmental instrumentality, or international organization or found to have violated any applicable law, rule, or regulation concerning government contracting or public procurement; or
- (v) any member of the Wider [TARGET] Group is or has been engaged in any transaction which would cause [BIDDER] to be in breach of any law or regulation upon its acquisition of [TARGET], including but not limited to the economic sanctions of the United States Office of Foreign Assets Control, or HMRC, or any other relevant government authority.

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<sup>10</sup> An appropriate definition of "Blocking Law" should be included in the definitions section of the offer document.

For the purposes of these Conditions the "Wider [TARGET] Group" means [TARGET] and its subsidiary undertakings, associated undertakings and any other undertaking in which [TARGET] and/or such undertakings (aggregating their interests) have a significant interest and the "Wider [BIDDER] Group" means [BIDDER] and its subsidiary undertakings, associated undertakings and any other undertaking in which [BIDDER] and/or such undertakings (aggregating their interests) have a significant interest and for these purposes subsidiary undertaking and undertaking have the meanings given by the Companies Act, associated undertaking has the meaning given by paragraph 19 of Schedule 6 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, other than paragraph 19(1)(b) of Schedule 6 to those regulations which shall be excluded for this purpose, and significant interest means a direct or indirect interest in 20 per cent. or more of the total voting rights conferred by the equity share capital (as defined in section 548 of the Companies Act).

## **Part B.**

### **Waiver and Invocation of the Conditions**

[BIDDER] reserves the right to waive, in whole or in part, all or any of the Conditions set out in Part A of Appendix [1] above, except for Condition [(a)] (Acceptance Condition) [and any other mandatory conditions], which cannot be waived. The Offer [will be]/[is]<sup>11</sup> subject to the satisfaction (or waiver, if permitted) of the Conditions set out in this Appendix [1], [to the further terms set out in this Appendix [1],] and to the full terms and conditions [which will be set out in the Offer Document and the Form of Acceptance]/[set out in this document and the Form of Acceptance].

The Offer shall lapse unless all of the Conditions have been fulfilled or, where permitted, waived or, where appropriate, have been determined by [BIDDER] to be or remain satisfied, by midnight (London time) on the earlier of the Unconditional Date and the Long-Stop Date (subject to the rules of the Code and, where applicable, the consent of the Panel<sup>12</sup>).

[BIDDER] shall be under no obligation to waive (if capable of waiver), to determine to be or remain satisfied or to treat as satisfied any of Conditions [(a)] to [(l)] (inclusive) by a date earlier than the latest date specified above for the fulfilment of the relevant Condition, notwithstanding that the other Conditions to the Offer may at such earlier date have been waived or fulfilled and that there are at such earlier date no circumstances indicating that any such Condition(s) may not be capable of fulfilment.

Under Rule 13.5(a) of the Code, [BIDDER] may not invoke a Condition to the Offer so as to cause the Offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the Condition are of material significance to [BIDDER] in the context of the Offer.

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<sup>11</sup> Use first option in R.2.7 announcement and second option in offer document.

<sup>12</sup> This wording is intended to stop the offer from lapsing in the circumstances envisaged by the Note on Rule 12 and the Note on Rule 31.7.

[BIDDER] may only invoke a condition that is subject to Rule 13.5(a) of the Code with the consent of the Panel and any condition that is subject to Rule 13.5(a) of the Code may be waived by [BIDDER].

Condition [(a)] (Acceptance Condition) [and insert reference to any other conditions not subject to R 13.5(a)] [is/are] not subject to Rule 13.5(a) of the Code.

If [BIDDER] is required by the Panel to make an offer or offers for [TARGET] Shares under the provisions of Rule 9 of the Code, [BIDDER] may make such alterations to the Conditions as are necessary to comply with the provisions of that Rule.

Save as may otherwise be required by the Panel, the Offer will not proceed, will lapse or will be withdrawn if on the Long-Stop Date:

- (a) sufficient acceptances have not been received so as to enable Condition [(a)] (Acceptance Condition) to be satisfied; or
- (b) where sufficient acceptances have been received so as to enable Condition [(a)] (Acceptance Condition) to be satisfied, one or more of the Conditions relating to an official authorisation or regulatory clearance has not been satisfied or waived and the Panel consents to the Offer not proceeding, lapsing or being withdrawn.

Each of the Conditions shall be regarded as a separate Condition and shall not be limited by reference to any other Condition.

#### **New definitions**

- **Acceleration Statement** means a statement in which [BIDDER], in accordance with Rule 31.5 of the Code, brings forward the latest date by which all of the Conditions to the Offer must be satisfied or waived;
- **Companies Act** means the UK Companies Act 2006, as amended from time to time;
- **Day 60** means [the 60th day following the publication of the Offer Document]/[INSERT DATE THAT IS 60TH DAY FOLLOWING PUBLICATION OF THE OFFER DOCUMENT]<sup>13</sup> or such other date as may otherwise be set as being such Day of the timetable of the Offer in accordance with the Code;
- **EU Merger Regulation** means Council Regulation (EC) No. 139/2004
- **Last Accounts Date** means [date to which latest set of accounts drawn up];

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<sup>13</sup> Use the first option for the R 2.7 announcement and the second in the offer document.

- **Long-Stop Date** means [midnight] on [date] or such later date (if any) as [BIDDER] may, with the consent of [TARGET] or with the consent of the Panel, specify;
- **Secretary of State** means the Secretary of State designated for the purposes of the relevant enactment;
- **Unconditional Date** means Day 60 or such earlier date as [BIDDER] may specify in [the Offer Document or]<sup>14</sup> any Acceleration Statement unless, where permitted, it has set aside that statement;

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<sup>14</sup> For inclusion in the R 2.7 announcement only.