

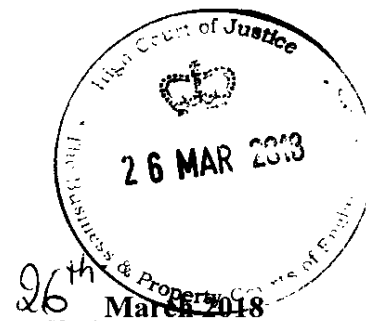
**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**Claim No. CR-2018-001278**

**THE HONOURABLE MR JUSTICE BIRSS**



**IN THE MATTER OF AVANTI COMMUNICATIONS GROUP PLC**

**- and -**

**THE COMPANIES ACT 2006**

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**ORDER**

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**UPON THE HEARING OF THE CLAIM** dated 14 February 2018 of the above named Avanti Communications Group Plc (the “**Company**”) whose registered office is situated at Cobham House, 20 Black Friars Lane, London, EC4V 6EB and whose registered number is 06133927

**AND UPON HEARING** William Trower QC and Adam Al-Attar for the Company

**AND UPON READING** the Part 8 Claim Form and the evidence in support

**THE COURT HEREBY SANCTIONS** the Scheme set forth in the Schedule hereto

**AND IT IS HEREBY ORDERED THAT** this Order be produced to the Registrar of Companies and that a copy be delivered to him with a copy of the Scheme in the Schedule hereto.

Dated: 26 March 2018

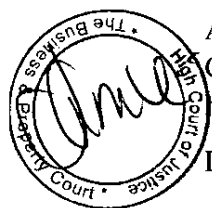
**Service of this Order**

The Court has provided a sealed copy of this Order to the serving party:

Milbank, Tweed, Hadley & McCloy LLP, 10 Gresham Street, London, EC2V 7JD

Ref: SS / NA

Tel: + 44 (0) 20 7615 3000



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COMPANIES HOUSE

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**IN THE MATTER OF**  
**AVANTI COMMUNICATIONS GROUP PLC**

**- and -**

**THE COMPANIES ACT 2006**

**-**

**SCHEME OF ARRANGEMENT (under Part 26 of the  
Companies Act 2006)**

**- between -**

**AVANTI COMMUNICATIONS GROUP PLC**

**- and -**

**The Scheme Creditors  
(as defined herein)**

## 1. PRELIMINARY

### 1.1 Definitions

In this Scheme, the following words and expressions shall have the following meanings:

**“2021 Notes Fifth Supplemental Indenture”** has the meaning given to that term in the Explanatory Statement;

**“2023 Notes”** means the 12%/17.5% Senior Secured Notes due 2023 issued by the Company pursuant to the 2023 Notes Indenture (Reg S CUSIP/ISIN: G0713NAH3/USG0713NAH38 and 144A CUSIP/ISIN: 05351L AJ6/US05351LAJ61);

**“2023 Notes Cancellation Order”** means an order instructing DTC to cancel the 2023 Notes;

**“2023 Notes Indenture”** means the indenture dated 3 October 2013 among, inter alios, the Company, the 2023 Notes Trustee and the Security Agents, as amended, restated and supplemented from time to time, including as amended and restated as of 23 March 2017 and supplemented by a first supplemental indenture dated 30 June 2017, a second supplemental indenture dated 27 October 2017, and a third and fourth supplemental indenture each dated 8 February 2018;

**“2023 Notes Restructuring”** means the restructuring of the 2023 Notes pursuant to this Scheme;

**“2023 Notes Scheme Claims”** means any Claim or Liability, whether present or future, known or unknown, prospective or contingent, against any Group member arising directly or indirectly out of, from or in connection with, the 2023 Notes and the 2023 Notes Indenture, including in respect of any accrued but unpaid interest, other than any Claim or Liability arising after the Restructuring Effective Date and held by a person that is a shareholder of the Company as a result of receiving Scheme Share Allocations pursuant to this Scheme;

**“2023 Notes Trustee”** means The Bank of New York Mellon, London Branch in its capacity as trustee under the 2023 Notes Indenture;

**“Account Holder”** means a person shown as holding an interest as principal in the Global Note for the 2023 Notes held through and shown on the records maintained by DTC;

**“Account Holder Letter”** means an account holder letter in substantially the form set out in Annex III to the Explanatory Statement with such technical amendments as the Information and Tabulation Agent may agree in its sole discretion;

**“Accruals”** means any dividends, distributions or other rights or benefits paid or distributed to the Custodian from time to time in respect of the Custody Share Allocations;

**“Act”** means the Companies Act 2006;

**“Ad Hoc Group”** means Solus Alternative Asset Management LP, Tennenbaum Capital Partners, LLC and Great Elm Capital Management, Inc.;

**“Allowed Proceedings”** means any Proceedings by a Scheme Creditor:

- (a) to enforce its rights under this Scheme or the Restructuring Documents (or any one of them) where the Released Party fails to perform its obligations under or in connection with this Scheme and/or the Restructuring Documents; or
- (b) imposing or attempting to impose Liability arising out of fraud, gross negligence or wilful misconduct of the Released Party;

**“Business Day”** means any day on which banks are open for transactions of normal banking business in New York and in London other than a Saturday, Sunday or public holiday;

**“Chapter 15 Order”** means the order of the U.S. Bankruptcy Court recognising this Scheme as a “foreign main proceeding” under Chapter 15 of the U.S. Bankruptcy Code;

**“Claim”** means all and any actions, causes of action, claims, counterclaims, suits, debts, sums of money, accounts, contracts, agreements, promises, contribution, indemnification, damages, judgments, executions, demands or rights whatsoever or howsoever arising, whether present, future, prospective or contingent, known or unknown, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money or the performance of an act or obligation or any failure to perform any obligation or any omission, whether arising at common law, in equity or by statute in or under the laws of England and Wales or the United States or under any other law in any other jurisdiction howsoever arising and **“Claims”** shall be construed accordingly;

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

**“Company”** means Avanti Communications Group plc, a public limited company organised under the laws of England and Wales, having its registered office at Cobham House, 20 Black Friars Lane, London, EC4V 6EB and company number 06133927;

**“Confirmation Form”** means a Confirmation Form in respect of a Scheme Creditor in substantially the form set out in Annex IV to the Explanatory Statement with such technical amendments as the Information and Tabulation Agent may agree in its sole discretion;

**“Court”** means the High Court of England and Wales;

**“Custodian”** means The Bank of New York Mellon, London Branch, in its capacity as custodian under the Custody Agreement, or such successor or alternate custodian of the Custody Share Allocations;

**“Custody Agreement”** means the agreement to be entered into between the Company and the Custodian regarding the custody of the Custody Share Allocations;

**“Custody Distribution Instruction”** has the meaning given to such term in clause 8.4.

**“Custody Scheme Creditor”** means any Scheme Creditor whose Scheme Share Allocations were issued to the Custodian pursuant to the terms of this Scheme;

**“Custody Share Allocations”** means any Scheme Share Allocations issued to the Custodian on the Restructuring Effective Date pursuant to clause 5.2(c)(ii);

**“Disqualified Recipient”** means any potential or proposed recipient of some or all of a Scheme Share Allocation which is domiciled or resident in, a citizen of or otherwise subject to the laws of any jurisdiction where the issue or distribution of a Scheme Share Allocation to such recipient is prohibited by law, or would be or be likely to result in the Company being required to comply with any filing, registration, disclosure or other onerous requirement as determined by the Company in its sole discretion;

**“Distribution Scheme Creditor”** has the meaning given to that term in clause 8.3;

**“DTC”** means The Depository Trust Company;

**“Entitlement Submission Deadline”** means 5.00 p.m. New York time on 27 March 2018 or such later time as the Information and Tabulation Agent may decide in its sole discretion (acting reasonably);

**“Exchange Shares”** means ordinary shares of the Company representing in aggregate 92.5% of the Company’s enlarged share capital on the Restructuring Effective Date;

**“Existing Agents”** means:

- (a) the 2023 Notes Trustee;
- (b) The Bank of New York Mellon, London Branch in its capacity as Principal Paying Agent and London Transfer Agent under the 2023 Notes Indenture;
- (c) The Bank of New York Mellon in its capacity as U.S. Paying Agent and New York Transfer Agent under the 2023 Notes Indenture;
- (d) The Bank of New York Mellon SA/NV, Luxembourg Branch in its capacity as Registrar under the 2023 Notes Indenture; and
- (e) the Security Agents.

**“Explanatory Statement”** means the explanatory statement relating to this Scheme dated 19 February 2018;

**“Group”** means the Company and its direct and indirect subsidiaries;

**“Holding Period”** means the period from the Restructuring Effective Date to 5.00 p.m. New York time on the date falling 150 days after the Restructuring Effective Date;

**“Holdings Certification”** means, in respect of a Scheme Creditor:

- (a) Part B of Section 1 (*Holdings Certification*) of a validly completed Account Holder Letter showing the aggregate principal amount of 2023 Notes held by that Scheme Creditor as at the Record Time, which Account Holder Letter has been DTC medallion stamped by the Scheme Creditor or its Account Holder, as applicable; or

- (b) if such a certification cannot be provided, such other evidence of the aggregate principal amount of 2023 Notes held by that Scheme Creditor as at the Record Time as may be acceptable to the Information and Tabulation Agent in its sole discretion (acting reasonably);

**“Information and Tabulation Agent”** means D.F. King Ltd and D.F. King & Co Inc., or any successor information and tabulation agent for this Scheme;

**“Liability”** means any debt, loss, damage, liability or obligation whatsoever whether it is present, future, prospective or contingent, known or unknown, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation and whether it arises at common law, in equity or by statute, in England and Wales, the United States or in any other jurisdiction, or in any other manner whatsoever;

**“Longstop Date”** means 30 April 2018 or such later date as may be agreed by the Company and the Majority Scheme Creditors;

**“Majority Scheme Creditors”** means Scheme Creditors representing in aggregate a simple majority by value of the 2023 Notes Scheme Claims;

**“Nominated Recipient”** means any person who is, or persons who are, not a Disqualified Recipient and who is or are nominated by a Scheme Creditor in its validly completed Account Holder Letter to receive some or all of that Scheme Creditor’s Scheme Share Allocation;

**“Omnibus Proxy”** means the omnibus proxy form provided by DTC in respect of the 2023 Notes as at the Record Time;

**“Proceedings”** means any process, action or other legal proceeding (including, without limitation, any demand, arbitration, alternative dispute resolution, judicial review, adjudication, execution, seizure, distraint, forfeiture, re-entry, lien, enforcement of judgment or enforcement of any security) in any jurisdiction whatsoever;

**“Record Time”** means 5.00 p.m. New York Time on 12 March 2018;

**“Released Advisers”** means Milbank, Tweed, Hadley & McCloy LLP and Osborne Clarke LLP as legal advisers to the Company, the Information and Tabulation Agent, Akin Gump LLP as English legal adviser to the Ad Hoc Group and Akin Gump Strauss Hauer & Feld LLP as US legal adviser to the Ad Hoc Group, and Hogan Lovells International LLP and Hogan Lovells US LLP as legal advisers to the Notes Trustees and the Security Agents;

**“Released Parties”** means each member of the Group as at the Restructuring Effective Date, each Existing Agent, each member of the Ad Hoc Group and each Released Adviser and, in each case, their respective employees, partners, directors, officers, delegates and agents and any partners, directors, officers employees or former partners, directors, officers, employees or any of the foregoing;

**“Restructuring Conditions Precedent”** means:

- (a) that the Company's shareholders have provided the necessary consents to:
  - (1) approve the issue of, and disapply statutory pre-emption rights relating to the issue of, the Exchange Shares pursuant to the terms of this Scheme; and
  - (2) waive Rule 9 of the Code in so far as it would require Solus Alternative Asset Management LP and certain of its funds to make a mandatory offer to the Company's shareholders as a result of the 2023 Notes Restructuring;
- (b) that the Company's board has approved the issue of the Exchange Shares pursuant to the terms of this Scheme;
- (c) the Custody Agreement has been executed by the Company and the Custodian;
- (d) the Share Registrar has received proof that the application has been made for the Exchange Shares to be admitted to trading on the AIM market of the London Stock Exchange; and
- (e) the Chapter 15 Order has been granted by the U.S. Bankruptcy Court;

**"Restructuring Documents"** means any document, agreement, deed, certificate, notice or form that the Company acting reasonably considers necessary or desirable to facilitate, implement or give effect to this Scheme;

**"Restructuring Effective Date"** means the date on which all the Scheme Implementation Steps have been completed;

**"Restructuring Implementation Date"** means the date notified to the Scheme Creditors through the Scheme Website after the Company has determined all of the Restructuring Conditions Precedent have been satisfied;

**"Sanction Order"** means the order of the Court sanctioning this Scheme under section 899 of the Act;

**"Scheme"** means this scheme of arrangement proposed by the Company under Part 26 of the Act;

**"Scheme Creditor Entitlement"** means with respect to each Scheme Creditor, its entitlement to receive its pro rata share of the Exchange Shares in exchange for its 2023 Notes Scheme Claims as determined pursuant to clause 7.1;

**"Scheme Creditors"** means the persons with the ultimate economic interest as principal in the 2023 Notes held in global form through DTC including by the right to have definitive notes issued to it under the 2023 Notes Indenture and/or the benefit of such right;

**"Scheme Implementation Steps"** means the steps set out in clause 5.2;

**“Scheme Lodgement Date”** means the date the Sanction Order is delivered to the Registrar of Companies of England and Wales;

**“Scheme Share Allocation”** means with respect to each Scheme Creditor, the number of Exchange Shares to be issued to it and/ or its Nominated Recipient(s) (as applicable) in exchange for that Scheme Creditor’s Scheme Creditor Entitlement as determined pursuant to clause 7.1;

**“Scheme Website”** means the scheme website set up by the Information and Tabulation Agent at <https://sites.dfkingltd.com/avanti>;

**“Security Agents”** means The Bank of New York Mellon, London Branch as trustee and primary security agent and Wilmington Trust (London) Limited as secondary security agent under the 2023 Notes Indenture;

**“Share Registrar”** means Neville Registrars Limited or any successor share registrar of the Company;

**“SPR”** means the security position report provided by DTC in respect of the 2023 Notes as at the Record Time;

**“U.S. Bankruptcy Code”** means Title 11 of the United States Code, which title includes Chapter 11 and Chapter 15 of that code; and

**“U.S. Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York or other appropriate forum in which the Chapter 15 representative files a petition for recognition of this Scheme under Chapter 15 of the U.S. Bankruptcy Code.

1.2 In this Scheme, unless the context otherwise requires or otherwise expressly provides:

- (a) references to clauses, recitals and appendices are to clauses, recitals and appendices of this Scheme;
- (b) references to a person include a reference to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute, statutory provision or regulatory rule or guidance include references to the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (e) the singular includes the plural and vice versa and words importing one gender shall include all genders;
- (f) references to “including” shall be construed as references to “including without limitation” and “include”, “includes” and “included” shall be construed accordingly;



- (g) headings to recitals, clauses, sub-clauses and appendices are for ease of reference only and shall not affect the interpretation of this Scheme;
- (h) references to a period of days shall include Saturdays, Sundays and public holidays and where the date which is the final day of a period of days is not a Business Day, that date will be adjusted so that it is the first following day which is a Business Day; and
- (i) references to time shall be to New York time unless otherwise indicated.

1.3 In the event of any inconsistency between the Explanatory Statement and this Scheme, the terms of this Scheme will prevail.

## **2. APPLICATION AND EFFECTIVENESS OF THE SCHEME**

- 2.1 This Scheme will become effective in accordance with its terms on the Scheme Lodgement Date.
- 2.2 The compromise and arrangement effected by this Scheme shall apply to all Scheme Creditors and shall be binding on all Scheme Creditors.
- 2.3 If the Restructuring Effective Date has not occurred on or before the Longstop Date, the terms of, and obligations on the parties under or pursuant to this Scheme shall lapse and cease to have any effect, except for this clause 2.3, clause 6.2, clause 6.3 and clause 9.

## **3. EFFECT OF THE SCHEME**

- (a) Upon the Restructuring Effective Date, each Scheme Creditor shall and hereby does, to the fullest extent permitted by law, completely and forever waive, cancel and release unconditionally any and all 2023 Notes Scheme Claims in accordance with the Scheme Implementation Steps.
- (b) Following the implementation of all the Scheme Implementation Steps on the Restructuring Effective Date, the Scheme Creditors shall not have any interest in or entitlement to any 2023 Notes Scheme Claims.

## **4. AUTHORISATION TO TAKE ACTIONS TO IMPLEMENT THE SCHEME**

- 4.1 With effect from the Scheme Lodgement Date, each Scheme Creditor hereby irrevocably authorises and instructs the Company, and appoints the Company as its agent and attorney, to on that Scheme Creditor's behalf:
  - (a) enter into, execute and deliver as a deed (as applicable) any Restructuring Documents; and
  - (b) give any instructions or carry out any related or ancillary actions that the Company acting reasonably considers necessary or desirable to implement or give effect to this Scheme.
- 4.2 The authority granted under clause 4.1 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

- 4.3 The authority granted under clause 4.1 shall terminate on the Restructuring Effective Date, or on the Longstop Date if this Scheme lapses in accordance with clause 2.3.
- 4.4 With effect from the Scheme Lodgement Date, each Scheme Creditor hereby irrevocably authorises and instructs the 2023 Notes Trustee to take any steps which are necessary or desirable to facilitate, implement or give effect to the terms of this Scheme, including the execution of any Restructuring Documents.

## 5. THE SCHEME IMPLEMENTATION STEPS

- 5.1 As soon as reasonably practicable after the Company has determined that the Restructuring Conditions Precedent have been satisfied, the Company shall designate a date prior to the Longstop Date as the Restructuring Implementation Date and notify the Scheme Creditors of the same.

- 5.2 On the Restructuring Implementation Date the following steps shall be taken in the following order:

- (a) the Scheme Creditors shall hereby completely and forever waive, cancel and release unconditionally any and all 2023 Notes Scheme Claims in respect of accrued but unpaid interest on the 2023 Notes as at the Restructuring Effective Date;
- (b) the Scheme Creditors shall hereby completely and forever waive, cancel and release unconditionally any and all 2023 Notes Scheme Claims (other than those waived, cancelled and released pursuant to clause 5.2(a)) in consideration for their Scheme Creditor Entitlements which entitlements shall be deemed to vest upon the exchange of 2023 Notes Scheme Claims for Scheme Creditor Entitlements;
- (c) the Scheme Creditor Entitlements shall be exchanged for the Scheme Share Allocations by the Company instructing the Share Registrar to issue the Exchange Shares to:
  - (i) the Scheme Creditors and/ or Nominated Recipients who are entitled to receive Scheme Share Allocations on the Restructuring Effective Date pursuant to clause 7.4; and

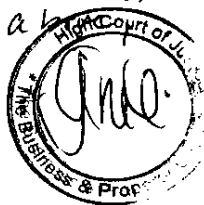
- (ii) the Custodian in respect of Scheme Creditors who are not entitled to receive their Scheme Share Allocations on the Restructuring Effective Date pursuant to clause 8.1; and

5.2A ~~the~~ *It is acknowledged that, on the occurrence of the steps in clauses 5.2(a) to (c) above,* the 2021 Notes Fifth Supplemental Indenture shall become operative in accordance with its terms,

- 5.3 Upon completion of all the steps in clauses 5.2(a)-(d) above, the Restructuring Effective Date will occur.

- 5.4 The Company shall promptly inform the Scheme Creditors through the Scheme Website once the Restructuring Effective Date has occurred.

- 5.5 Promptly following completion of the Scheme Implementation Steps, the Company shall, and is irrevocably authorised by each Scheme Creditor to, send the 2023 Notes



Cancellation Order to DTC, and each Scheme Creditor shall irrevocably authorise the Company and the 2023 Notes Trustee (as applicable) to take any other steps necessary to cancel the 2023 Notes.

**6. SCHEME CREDITOR CONFIRMATIONS, RELEASES AND UNDERTAKINGS**

**6.1 Each Scheme Creditor:**

- (a) irrevocably ratifies and confirms any act which the Released Parties may lawfully do or cause to be done or purport to do in accordance with the terms of this Scheme; and
- (b) undertakes to the Company and its directors, officers and other duly appointed representatives to take all such actions as may be reasonably required to implement this Scheme and/or the 2023 Notes Restructuring.

**6.2 Each Scheme Creditor to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, acquit, forgive and discharge unconditionally each of the Released Parties from any and all Claims and/or Liabilities arising or resulting from the Released Parties' involvement in the negotiation, execution, performance or implementation of the 2023 Notes Restructuring, except for Claims and/or Liabilities arising out of:**

- (a) that Released Party's fraud, gross negligence or wilful default; or
- (b) any breach by a Released Party of its express obligations under this Scheme or the Restructuring Documents.

**6.3 Each Scheme Creditor undertakes to the Company for its own benefit and for the benefit of each of the Released Parties, to the extent permitted by law:**

- (a) not to bring any Proceedings, other than any Allowed Proceedings, against any Released Party which imposes or attempts to impose upon any of them any Claim or Liability whatsoever in connection with the implementation of this Scheme and/or the 2023 Notes Restructuring; or
- (b) not to make, demand or institute (or threaten to institute) any Proceedings against the Existing Agents in connection with this Scheme and/or the 2023 Notes Restructuring, other than an Allowed Proceeding.

**6.4 With effect from the Restructuring Effective Date, each Scheme Creditor undertakes to the Company for its own benefit and for the benefit of each of the Released Parties, to the extent permitted by law:**

- (a) to treat its 2023 Notes Scheme Claims as having been completely and forever waived, cancelled and released with effect from the Restructuring Effective Date in consideration for its Scheme Creditor Entitlements whether or not the Scheme Creditor has had its Scheme Share Allocation issued to it, its Nominated Recipient or the Custodian (as applicable);

- (b) not to bring or continue, or instruct, direct or authorise any other person (including the 2023 Notes Trustee) to bring or continue any Proceedings, other than any Allowed Proceedings, against any of the Released Parties in respect of any 2023 Notes Scheme Claims or otherwise to assert any 2023 Notes Scheme Claims against any of the Released Parties; and
- (c) not to prove, or seek to prove, in the insolvencies of any member of the Group (if any insolvency occurs) in respect of any 2023 Notes Scheme Claims.

**7. ISSUANCE AND CALCULATION OF SCHEME CREDITOR ENTITLEMENTS AND SCHEME SHARE ALLOCATIONS**

- 7.1 The Company and the Information and Tabulation Agent shall calculate each Scheme Creditor's Scheme Creditor Entitlements and Scheme Share Allocation by:
- (a) dividing the principal amount of 2023 Notes held by the Scheme Creditor as at the Record Time by the aggregate outstanding principal amount of the 2023 Notes as at the Record Time, as confirmed to the Information and Tabulation Agent by the 2023 Notes Trustee; then
  - (b) multiplying the resulting number in 7.1(a) and the total number of Exchange Shares.
- 7.2 The Company and the Information and Tabulation Agent will calculate Scheme Creditor Entitlements and Scheme Share Allocations based on the Holdings Certifications provided by or on behalf of that Scheme Creditor, the SPR and the Omnibus Proxy. The Information and Tabulation Agent's determination of any Scheme Creditor Entitlements and Scheme Share Allocations will be final absent manifest error.
- 7.3 Fractions of Scheme Share Allocations will not be issued and will be rounded down to the nearest whole share.
- 7.4 Scheme Share Allocations will only be issued to a Scheme Creditor and/ or its Nominated Recipient(s) (as applicable) on the Restructuring Effective Date if:
- (a) the Information and Tabulation Agent has received a validly completed Account Holder Letter including a Holdings Certification in respect of that Scheme Creditor and a validly completed Confirmation Form in respect of that Scheme Creditor on or prior to the Entitlement Submission Deadline; and
  - (b) that Scheme Creditor is not a Disqualified Recipient, or is a Disqualified Recipient but has nominated one or more Nominated Recipient(s) to receive its entire Scheme Share Allocation.
- 7.5 If the Information and Tabulation Agent receives notice in writing of an assignment or transfer of a 2023 Notes Scheme Claim after the Record Time but prior to the Restructuring Effective Date, the Information and Tabulation Agent may, in its sole discretion and subject to the production of such evidence or information as it may reasonably require and to any other terms and conditions which the Information and Tabulation Agent or Company may consider necessary or desirable, agree to recognise

that assignment or transfer for the purposes of calculating Scheme Creditor Entitlements and Scheme Share Allocations.

## 8. CUSTODY AND DISTRIBUTION OF CUSTODY SHARE ALLOCATIONS

8.1 If the Information and Tabulation Agent has not received a validly completed Account Holder Letter (including a Holdings Certification) and a Confirmation Form in respect of a Scheme Creditor on or prior to the Entitlement Submission Deadline, and/or that Scheme Creditor is a Disqualified Recipient and has not nominated one or more Nominated Recipient(s) to receive its entire Scheme Share Allocation, that 2023 Note Creditor's Scheme Share Allocations will be issued to the Custodian on the Restructuring Effective Date, rather than to that Scheme Creditor or its Nominated Recipient(s).

8.2 Any Custody Scheme Creditor may, before the expiration of the Holding Period, deliver a validly completed Account Holder Letter (including a completed Section 4 (*Custody Distribution Instructions*)) to the Information and Tabulation Agent to irrevocably authorise and instruct the Information and Tabulation Agent to deliver a Custody Distribution Instruction to the Company regarding the distribution of that Custody Scheme Creditor's Scheme Share Allocation, along with any Accruals thereon.

8.3 The Information and Tabulation Agent will only be required to deliver a Custody Distribution Instruction in respect of a Custody Scheme Creditor if:

- (a) the Information and Tabulation Agent has received a validly completed Account Holder Letter (including a Holdings Certification) in respect of that Custody Scheme Creditor and a validly completed Confirmation Form in respect of that Custody Scheme Creditor before the expiry of the Holding Period; and
- (b) that Custody Scheme Creditor is not a Disqualified Recipient, or is a Disqualified Recipient but has nominated one or more Nominated Recipient(s) to receive its entire Scheme Share Allocation,

any Custody Scheme Creditor who satisfies both (a) and (b) of this clause 8.3 being a "**Distribution Scheme Creditor**".

8.4 On the third Business Day of each calendar month until the expiration of the Holding Period and the third Business Day following the expiry of the Holding Period, the Information and Tabulation Agent will send the Company an instruction which will set out:

- (a) the details of the Distribution Scheme Creditors (if any) who have instructed the distribution of their Scheme Share Allocations since:
  - (i) the Restructuring Effective Date, in respect of the first calendar month beginning after the Restructuring Effective Date; and
  - (ii) thereafter, since the previous Custody Distribution Instruction which was delivered to the Company;
- (b) the Scheme Share Allocations of each such Distribution Scheme Creditor; and

- (c) the details of the accounts to which such Distribution Scheme Creditor's Scheme Share Allocations and any Accruals related to should be distributed,

any such instruction being a **"Custody Distribution Instruction"**.

- 8.5 Upon receipt of a Custody Distribution Instruction, the Company shall promptly instruct the Custodian to make the distributions set out in that Custody Distribution Instruction, or otherwise procure that the Scheme Share Allocations set out in that Custody Distribution Instruction are distributed to the relevant Distribution Scheme Creditor(s) and/ or Nominated Recipient(s). The Company's obligations under this clause shall be enforceable against the Company by the relevant Distribution Scheme Creditor(s).
- 8.6 If upon the expiration of the Holding Period, the Information and Tabulation Agent has:
  - (a) not received a validly completed Account Holder Letter (including a completed Section 4 (*Custody Distribution Instructions*)) in respect of a Custody Scheme Creditor; or
  - (b) received a validly completed Account Holder Letter (including a completed Section 4 (*Custody Distribution Instructions*)) in respect of a Custody Scheme Creditor, but such Custody Scheme Creditor has not yet delivered a Confirmation Form to the Information and Tabulation Agent and/ or such Custody Scheme Creditor is a Disqualified Recipient and has not nominated one or more Nominated Recipient(s) to receive its entire Scheme Share Allocation,

the Company shall be irrevocably authorised and instructed by such remaining Custody Scheme Creditors to instruct the Custodian to transfer their Scheme Share Allocations (together with any Accruals thereon) to the Company or as the Company directs free of any claim or interest of the Custody Scheme Creditors and without notice to the Custody Scheme Creditors.

## 9. GENERAL SCHEME PROVISIONS

### 9.1 Reliance on Section 3(a)(10) exemption

In sanctioning this Scheme, the Court has been apprised of the fact that the Company will rely on the Court's approval of this Scheme as the basis for the Section 3(a)(10) exemption under the United States Securities Act of 1933 for the offer, issuance and distribution of Scheme Share Allocations to Scheme Creditors or their Nominated Recipient(s) in exchange for the 2023 Notes Scheme Claims through the issuance and exchange of the Scheme Creditor Entitlements, which are a mechanic to implement the Exchange, rather than a separate security.

### 9.2 Application to the Court for directions

Without prejudice to any rights that the Company might otherwise have in connection with this Scheme or any aspect of it, the Company shall be entitled, following consultation with the Majority Scheme Creditors, to make an application to the Court for directions at any time in connection with any matter arising under or in relation to this Scheme.

### 9.3 Modifications of the Scheme

The Company may agree on behalf of all Scheme Creditors to any modification of, or addition to, this Scheme and/or the Restructuring Documents or any terms or conditions that the Court may think fit to approve or impose and which would not directly or indirectly have an adverse effect on the rights or interests of Scheme Creditors, or any individual Scheme Creditor, under this Scheme.

### 9.4 Notices

- (a) Any notice or other written communication to be given under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by courier, post or e-mail:
  - (i) in the case of the Information and Tabulation Agent:
    - (A) by courier or post to any of:
      - (1) D.F. King, 125 Wood Street, London, EC2V 7AN, United Kingdom; or
      - (2) D.F. King, 48 Wall Street, 22<sup>nd</sup> Floor, New York, New York, 10005, United States; or
      - (3) D.F. King, Suite 1601, 16/F, Central Tower, 28 Queen's Road Central, Hong Kong; or
    - (B) by email to [avanti@dfkingltd.com](mailto:avanti@dfkingltd.com);
  - (ii) in the case of the Company:
    - (A) by courier or post to Milbank, Tweed, Hadley & McCloy LLP, 10 Gresham St., London, EC2V 7JD, marked for the attention of Stuart Swift; or
    - (B) by email marked for the attention of Nick Angel and Stuart Swift ([nangel@milbank.com](mailto:nangel@milbank.com) / [sswift@milbank.com](mailto:sswift@milbank.com)); and
  - (iii) in the case of a Scheme Creditor, by publication on the Scheme Website.
- (b) Any notice or other written communication or document made or delivered by one person to another under or in connection with this Scheme will only be effective:
  - (i) if by e-mail, when received by the recipient; or
  - (ii) if delivered by hand or courier on the day of delivery, or, if such a day is not a Business Day, then on the next Business Day of delivery;
  - (iii) if sent by post, on the second Business Day after posting if the recipient's address is in the country of dispatch, otherwise on the seventh Business Day after posting; and
  - (iv) if a particular contact is specified as part of its address details provided in this agreement, if addressed to that contact.

- (c) The failure by any party to send any notice, written communication or other document in accordance with this clause, or the non-receipt of any such notice by any Scheme Creditor, shall not affect the provisions of this Scheme.
- (d) The Company shall not be responsible for any loss or delay in the transmission of any notices or other documents posted by or to any Scheme Creditors which shall be posted at the risk of such Scheme Creditors.

#### **9.5 Future liquidation**

The Scheme shall be unaffected by any liquidation, administration or similar insolvency process of any of the Company, member of the Group, or Scheme Creditors after the Restructuring Effective Date and shall continue in full force and effect according to its terms.

#### **9.6 Governing law and jurisdiction**

- (a) This Scheme, and any dispute or claim (including non-contractual disputes or claims regarding non-contractual obligations) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the laws of England and Wales.
- (b) The Company and the Scheme Creditors hereby agree that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute or claim which may arise out of or in connection with this Scheme or its subject matter or formation, or which may arise out of any action taken or omitted to be taken under this Scheme, or any dispute or claim (including non-contractual disputes or claims regarding non-contractual obligations) arising out of or in connection with it. For such purposes the Scheme Creditors irrevocably submit to the jurisdiction of the courts of England and Wales.

#### **9.7 Enforcement by Released Parties**

Any Released Party may rely on and enforce the terms of clause 6.

#### **9.8 Financial assistance exemption**

The effect of the Sanction Order will be that the Company is authorised to pay certain of the fees of the Ad Hoc Group's professional advisers (as contemplated by the fee letter between the Company and the Ad Hoc Group's professional advisers) pursuant to the terms of this Scheme in reliance on section 681(2)(e) of the Act.