

THIS AMENDMENT AND RESTATEMENT DEED (the **Deed**) is made on 8 July 2019

BETWEEN:

- (1) **UNIVERSITIES SUPERANNUATION SCHEME LIMITED** (company number 01167127) of Royal Liver Building, Liverpool, L3 1PY, UK c/o 6th floor, 60 Threadneedle Street, London EC2R 8HP, UK (the **Investor**); and
- (2) **HUMBER BIDCO LIMITED** (company number 11940887) c/o 6th floor, 60 Threadneedle Street, London, EC2R 8HP (the **Buyer**);

(together, the **Parties**).

BACKGROUND

- (A) The Investor issued an equity commitment letter to the Buyer on 24 April 2019 (the **Equity Commitment Letter**) in connection with the Acquisition.
- (B) The Parties now wish to amend certain provisions of the Equity Commitment Letter and have therefore agreed to amend and restate the Equity Commitment Letter as set out in this Deed.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- (a) Capitalised terms defined in the Equity Commitment Letter have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) Paragraphs 3.2 and 7 to 12 (inclusive) of the Equity Commitment Letter (as amended by this Deed) shall apply to this Deed and have effect as if set out in full in this Deed and as if references in those clauses to “Equity Commitment Letter” are references to this Deed.

2. AMENDMENT AND RESTATEMENT

- (a) With effect on and from the date of this Deed, the Parties agree that the Equity Commitment Letter shall be amended and restated so that it shall be read and be construed for all purposes as set out in Schedule 1 to this Deed (*Amended and Restated ECL*).
- (b) The provisions of the Equity Commitment Letter shall, except as expressly amended by this Deed, continue in full force and effect in accordance with their terms.

IN WITNESS of which this Deed has been executed as a deed and has been delivered on the date which appears first on page 1.

SCHEDULE 1
AMENDED AND RESTATED ECL

From:

- (1) Universities Superannuation Scheme Limited (company number 01167127) of Royal Liver Building, Liverpool, L3 1PY, UK c/o 6th floor, 60 Threadneedle Street, London EC2R 8HP, UK (the **Investor**)

To:

- (2) Humber Bidco Limited (company number 11940887) c/o 6th floor, 60 Threadneedle Street, London, EC2R 8HP (the **Buyer**)

Date: 8 July 2019

Project Inferno – Equity Commitment Letter

We refer to the proposed acquisition by the Buyer of the entire issued and to be issued ordinary share capital of KCOM Group Public Limited Company (the **Acquisition**) to be effected by means of a scheme of arrangement under Part 26 of the Companies Act 2006 (the **Scheme**) or, should the Buyer so elect, by Takeover Offer, and the announcement of the offer to make such Acquisition pursuant to Rule 2.7 of the Takeover Code issued on 24 April 2019 (the **Announcement**).

Capitalised terms used but not defined in this Equity Commitment Letter have the meaning ascribed to them in the Announcement. The Investor and the Buyer are referred to collectively as the **Parties** and each of them individually as a **Party**.

1. Equity Commitment

1.1 Subject only to the conditions set out in paragraph 2 (Conditions) and to paragraph 5 (Termination), the Investor irrevocably undertakes to the Buyer to:

- (a) on or before the date on which consideration payments are required to be despatched to Kite Shareholders in connection with the Scheme or otherwise in sufficient time to enable the Buyer to apply such amounts towards satisfaction of the Buyer's payment obligations in respect of any Takeover Offer, provide, or procure that there is provided, to the Buyer, in cash in immediately available funds, an amount equal to:
- (i) the aggregate amount required to settle such consideration payments to be despatched to Kite Shareholders in connection with the Scheme or to settle the Buyer's payment obligations in respect of the Takeover Offer, as applicable; less
- (ii) the aggregate amount of the debt financing available to the Buyer pursuant to the Facilities Agreement dated on or about the date of the Announcement between the Buyer and, amongst others, the Arranger, the Facility Agent and the Security Agent (each as defined therein),

up to an aggregate maximum amount of [REDACTED], (such amount the **Equity Commitment Amount**);

- (b) procure, so far as it is reasonably able to do so, that the Equity Commitment Amount provided to the Buyer in accordance with paragraph 1.1(a) is not extracted, withdrawn, repaid or redeemed from or by the Buyer; and
- (c) procure that the Equity Commitment Amount provided to the Buyer in accordance with paragraph 1.1(a) is applied by the Buyer in satisfying its payment obligations in connection

with the Scheme or the Takeover Offer (as applicable) (the **Funding Obligations**) and will not be used for any other purpose until the Funding Obligations have been satisfied in full.

- 1.2 The Investor agrees and acknowledges that its obligation to make available to the Buyer the Equity Commitment Amount will, subject to the terms of this Letter, remain in force, and will not be satisfied, until such amount has been received in full by the Buyer in the manner described in paragraph 1.1.
- 1.3 Notwithstanding anything to the contrary herein, the maximum aggregate liability and payment obligation of the Investor under this Equity Commitment Letter shall in no circumstances exceed its Equity Commitment Amount.
- 1.4 This Equity Commitment Letter is being entered into by the Parties in consideration of the mutual undertakings herein and each Party agrees that this Equity Commitment Letter creates rights and obligations between the Parties.

2. Conditions

The obligations on the Investor pursuant to paragraph 1.1 of this Equity Commitment Letter are subject to and conditional upon either the Scheme becoming Effective or the Takeover Offer becoming unconditional in all respects.

3. Beneficiaries

- 3.1 This Equity Commitment Letter is addressed to the Buyer and the Investor shall have no duty to any person or entity other than the Buyer. The liability of the Investor hereunder or in any way related hereto shall be limited to its Equity Commitment Amount.
- 3.2 Nothing in this Equity Commitment Letter, express or implied, is intended to confer on any person or entity, other than the Buyer (i) the right to enforce the terms of this Equity Commitment Letter under the Contracts (Rights of Third Parties) Act 1999 (or otherwise) or (ii) any rights or remedies under or by reason of this Equity Commitment Letter.

4. Warranties

The Investor warrants and undertakes to the Buyer that:

- (a) it is duly organised and validly existing under the laws of its jurisdiction of organisation;
- (b) it has obtained all corporate authorisations and all other governmental, statutory, regulatory or other consents, licences or authorisations required to empower it to enter into and perform its obligations under this Equity Commitment Letter;
- (c) entry into and performance of its obligations under this Equity Commitment Letter will not:
 - (i) breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents; or
 - (ii) result in a breach of any laws or regulations in its jurisdiction of incorporation or any order, decree or judgment of any court or any governmental or regulatory authority; or
 - (iii) breach any agreement or undertaking to which it is a party; in each case, where any such breach would adversely affect its ability to enter into or perform any of its obligations under this Equity Commitment Letter;
- (d) its obligations under this Equity Commitment Letter constitute valid, binding and enforceable obligations on it;

- (e) that no resolution for the dissolution, liquidation, winding up or other termination of it has been passed;
- (f) it has received all necessary internal approvals in relation to its obligations contained in this Equity Commitment Letter; and
- (g) it or one of its affiliates has or will have available cash to fund an amount equal to its Equity Commitment Amount to the Buyer in accordance with paragraph 1.1 of this Equity Commitment Letter and it is not aware of any reason why those funds will not be available to provide immediately available cash, and it will not take any action or fail to take any action that is reasonably likely to result in those funds (or any part of them) not being available, in each case when required to satisfy its obligations under this Equity Commitment Letter.

5. Termination

This Equity Commitment Letter (except for paragraphs 6 to 12, which shall remain in full force and effect) shall terminate without any further notice and no Party shall have any further obligation or liability towards the other upon the earlier of:

- (a) the termination or lapsing of the Acquisition in accordance with the Announcement or, in the case of a Takeover Offer, the lapsing of the Takeover Offer in accordance with the Takeover Code;
- (b) 11:59 pm on the Long Stop Date (provided the Acquisition has not become unconditional and Effective prior to that time); and
- (c) satisfaction in full of the Funding Obligations,

but shall otherwise be incapable of termination (including by way of repudiation).

6. Set Off and Specific Performance

- 6.1 The Investor hereby waives and relinquishes any right of set off or counterclaim, deduction or retention which it might otherwise have in respect of any claim against, or out of any payments which it may be obliged to make (or procure to be made) to, the Buyer pursuant to this Equity Commitment Letter.
- 6.2 Without affecting any other rights or remedies that any Party to this Equity Commitment Letter may have, each Party acknowledges that the other Party may be irreparably harmed by any breach of the terms of this Equity Commitment Letter and that damages alone may not necessarily be an adequate remedy. Accordingly, such other Party shall be entitled to seek the remedies of final or interim injunction, specific performance and other equitable relief, or any combination of these remedies, for any potential or actual breach of its terms.

7. Confidentiality

- 7.1 The Parties must keep confidential the existence and contents of this Equity Commitment Letter unless a statutory or regulatory disclosure obligation exists or the other Party has consented to the disclosure or such disclosure is reasonably required to pursue any rights and claims under this Equity Commitment Letter.

8. Miscellaneous

- 8.1 Nothing contained in this Equity Commitment Letter (and no action taken by a Party pursuant to its terms) is to be construed as creating a partnership or agency relationship between the Parties, and the Parties shall not be deemed to be connected with one another or to be acting in concert solely because they are Parties to this Equity Commitment Letter.
- 8.2 Unless the Parties specifically agree in writing, no person shall assign, transfer, charge or otherwise deal with all or any of its rights under this Equity Commitment Letter nor grant, declare, create or dispose of any right or interest in it. Any purported assignment in contravention of this paragraph 8 shall be void.
- 8.3 The provisions of this Equity Commitment Letter shall be binding upon the Parties and their respective heirs, legal representatives, successors and permitted assigns.
- 8.4 No amendment of this Equity Commitment Letter shall be valid unless it is in writing and signed by the Parties.
- 8.5 The invalidity, illegality or unenforceability of any provision of this Equity Commitment Letter shall not affect the continuation in force of the remainder of this Equity Commitment Letter.
- 8.6 In this Equity Commitment Letter, a procuring obligation, where used in the context of the Investor, is not a guarantee or indemnity obligation and means that, so far as it is lawfully able to, the Investor undertakes to exercise its voting rights and use any and all powers vested in it from time to time as a shareholder or otherwise in or of the Buyer or any other entity (as relevant), to ensure compliance with that obligation so far as it is able to do so, whether acting alone or acting with others.

9. Entire Agreement

This Equity Commitment Letter constitutes all of the obligations of the Investor in relation to its Equity Commitment Amount and the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, written or oral, between them in respect thereof.

10. Counterparts

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

11. Notices

- 11.1 Any notice to be given in connection with this Equity Commitment Letter shall be in writing, in English and signed by or on behalf of the Party giving it. It shall be delivered by hand, email, registered post or courier (using an internationally recognised courier company). A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by email. Where delivery occurs outside working hours, notice shall be deemed to have been received at the start of working hours on the next following Business Day.
- 11.2 The addresses and email addresses of the Parties for the purpose of paragraph 11.1 are as follows:

Investor

Address: c/o 6th floor, 60 Threadneedle Street, London EC2R 8HP

Email: ProjectInferno@uss.co.uk

Attention: Bob Hewson

With a copy to:

Email: investmentlegal@uss.co.uk

Attention: Head of Group Legal

Buyer

Address: c/o 6th floor, 60 Threadneedle Street, London EC2R 8HP

Email: ProjectInferno@uss.co.uk

Attention: Bob Hewson

With a copy to:

Email: investmentlegal@uss.co.uk

Attention: Head of Group Legal

12. Governing Law & Jurisdiction

- 12.1 This Equity Commitment Letter and any non-contractual obligations arising out of or in connection with this Equity Commitment Letter shall be governed by, and interpreted in accordance with, English law.
- 12.2 The courts of England are to have exclusive jurisdiction to settle any disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation or performance of, or the legal relationships established by or otherwise arising out of or in connection with this Equity Commitment Letter; and (ii) any non-contractual obligations arising out of or in connection with this Equity Commitment Letter, (any such dispute being a **Dispute**). For such purposes each Party irrevocably submits to the exclusive jurisdiction of the English courts, waives any objections to the jurisdiction of those courts and irrevocably agrees that a judgment or order of the English courts in connection with this Equity Commitment Letter is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

Yours faithfully,

Executed as a deed by)
UNIVERSITIES)
SUPERANNUATION)
SCHEME LIMITED)
(acting in its capacity as sole)
corporate trustee of the)
Universities Superannuation)
Scheme) acting by its)
attorney **USS**)
INVESTMENT)
MANAGEMENT)
LIMITED acting by its)
attorney, in the presence of a)
witness:

Signature

Name (block capitals)
(as attorney)

Witness signature

Witness name
(block capitals)

Witness address

Executed as a deed by)
HUMBER BIDCO)
LIMITED acting by its)
attorney, in the presence of a)
witness:)
)
)
)
)
)
)
)
)
)
)

Signature

Name (block
capitals)
(as attorney)


Witness
signature

Witness name
(block
capitals)


Witness
address
.....

SIGNATORIES

Executed as a deed, but not)
delivered until the date)
specified on page 1, by)
UNIVERSITIES)
SUPERANNUATION)
SCHEME LIMITED)
(acting in its capacity as sole)
corporate trustee of the)
Universities Superannuation)
Scheme) acting by its)
attorney **USS**)
INVESTMENT)
MANAGEMENT)
LIMITED acting by its)
attorney, in the presence of a)
witness:

Signature 

Name (block capitals) MICHAEL POWELL
(as attorney)

Witness signature 

Witness name NICHOLAS HAYNES
(block capitals)

Witness address 60 THROLDNEDE ST, LONDON EC2R 4HP

Executed as a deed, but not)
delivered until the date)
specified on page 1, by)
HUMBER BIDCO)
LIMITED acting by its)
attorney, in the presence of a)
witness:)
)
)
)
)
)
)
)
)
)
)
)

Signature 

Name (block capitals) MICHAEL POWELL
(as attorney)

Witness signature 

Witness name NICHOLAS HARMES
(block capitals)

Witness address 60 THRELDON STREET, LONDON EC2R 8HP