

Memorandum of Understanding dated 7 March 2019 relating to:

The RPC Containers Limited Pension Scheme

(the *RPC Scheme*)

1. Background

- 1.1 Berry Global International Holdings Limited (*Bidder*), a newly incorporated company formed on behalf of Berry Global Group, Inc. (*Berry*), has indicated that it intends to make a cash offer to acquire the entire issued and to be issued ordinary share capital of RPC Group plc (*RPC Group*) by means of a scheme of arrangement proposed to be made pursuant to Part 26 of the Companies Act 2006 (or a takeover offer as defined in Chapter 3 of Part 28 of the Companies Act 2006 as the case may be) (the *Transaction*).
- 1.2 RPC Containers Limited (*RPC Containers*) is a subsidiary of RPC Group and is also the principal employer of the RPC Scheme.
- 1.3 RPC Containers Pension Trustees Limited is the sole trustee of the RPC Scheme (the *Trustee*).
- 1.4 This Memorandum of Understanding sets out the understanding and intentions of Berry, the Bidder, and the Trustee (the *Parties*) in relation to the Transaction and the RPC Scheme in the event that the Bidder is successful in acquiring the entire issued share capital of RPC Group.
- 1.5 Berry currently envisages that the Transaction would be announced on or before 13 March 2019 and that it would close early in the third quarter of 2019, although the precise timing is subject to a number of variables, including regulatory clearances.
- 1.6 With the exception of Clause 9 (*Confidentiality*) and Clause 10 (*Status*), each of which is intended to be legally binding, this Memorandum of Understanding is not intended to, nor shall it, create or reflect any binding contract or other form of legal relations between Berry and the Trustee. However, the Parties acknowledge that each regards this Memorandum of Understanding as a statement of their current intent.

2. Berry's approach to pensions

- 2.1 Berry confirms that it recognises the importance of:
 - (a) the RPC Scheme as a stakeholder in RPC Containers and RPC Group;
 - (b) appropriate governance, funding and financial support for the RPC Scheme, that ensures the security of members' benefits and enables the RPC Scheme to pay such benefits as they fall due; and
 - (c) the employer covenant to the RPC Scheme.
- 2.2 Berry understands that the Trustee may need to reflect any change to the covenant from RPC Containers and RPC Group in the funding and investment

strategy of the RPC Scheme in accordance with legislation and the Pensions Regulator's Code of Practice on funding defined benefits and related guidance.

- 2.3 Berry confirms that its intention is that RPC Containers and RPC Group will continue to be responsible for funding the RPC Scheme in the same way as prior to the Transaction.

3. Membership and contributions under the RPC Scheme

- 3.1 The RPC Scheme is closed to new members and to on-going accrual of benefits by existing members.

- 3.2 Berry confirms that it is aware that regular employer contributions are due to be paid by RPC Containers to the RPC Scheme under the current schedule of contributions dated 29 March 2018 (the *2018 Schedule of Contributions*). Berry confirms that it intends that RPC Containers shall continue to meet its obligations under the 2018 Schedule of Contributions.

4. Structure and financing of the Transaction

- 4.1 Berry intends that the acquisition of RPC Group will be carried out by the Bidder. Berry intends to finance the acquisition in whole or in part using third party debt (the *acquisition debt*).

- 4.2 Berry currently proposes that:

- (a) RPC Group and its subsidiaries (the *Group*) will not be guarantors to the acquisition debt;
- (b) the acquisition debt will not be secured on the assets of the Group; and
- (c) Berry's lenders will take a share pledge over 65% of the Bidder's shares, but will not take security over any Group assets.

- 4.3 Berry currently proposes that the existing debt facilities of the Group, being:

- (a) an unsecured multi-currency revolving credit facility of up to £870.0m;
- (b) an unsecured multi-currency revolving credit facility agreement of up to EUR 450.0m;
- (c) an unsecured term loan facility of USD 750.0m;
- (d) US private notes of USD 124m; and
- (e) US private notes of EUR 25m,

will be repaid and replaced with financing at Berry level on the same terms as the acquisition debt.

- 4.4 Berry confirms that the total amount of cash to be extracted from the Group is not expected to exceed the improvements in the cash flow in the Group resulting from:

- (a) the Group no longer being required to service the existing debt facilities;

- (b) the Group no longer making external dividend payments to stakeholders or share buybacks; and
 - (c) expected synergies, primarily from procurement savings, across all Group entities.
- 4.5 Berry undertakes to provide the Trustee with final details of the debt structure for the Transaction, including details of any contractual method of cash extraction from RPC Containers for debt service and any dividend or group treasury policy to be implemented, within 48 hours of this being finalised by Berry.
- 5. Trustee confirmation and Takeover Code announcement**
- 5.1 On the assumption that the Transaction proceeds substantially on the basis set out in Clause 4 (*Structure and financing of the Transaction*), the Trustee believes, having taken advice, that the Transaction will not weaken the employer covenant supporting the RPC Scheme and agrees with Berry's view that the Transaction is not materially detrimental to the likelihood of benefits under the RPC Scheme being received. The Trustee acknowledges that, once further details are available, Berry may ask the Trustee to consider whether the Transaction will strengthen the employer covenant supporting the RPC Scheme.
- 5.2 The Trustee further agrees that any opinion published by the Trustee for the purposes of Rule 25.9 of the Takeover Code shall be consistent with this Memorandum of Understanding.
- 5.3 Berry may include a statement in any announcement under Rule 2.7 of the Takeover Code referring to or summarising this Memorandum of Understanding and, so far as practical, shall consult the Trustee in advance about such statement. Berry may choose to publish this Memorandum of Understanding under Rule 26 of the Takeover Code notwithstanding that it is not a material contract of Berry for the purposes of note 6 to Rule 26.
- 5.4 For the avoidance of doubt, the confirmations and agreement provided under Clause 5.1 are provided on the basis that the Transaction proceeds substantially on the basis set out in Clause 4. If the Transaction structure (including proposed cash extraction from the Group) and/or financing changes, the Trustee reserves the right to reconsider its view of whether the Transaction is materially detrimental to the likelihood of benefits under the RPC Scheme being received.
- 6. Parties' confirmations**
- 6.1 **Impact of Transaction on open actuarial valuation**
 - (a) The RPC Scheme currently has an open triennial actuarial valuation which has an "as at" date of 31 March 2018 (the *2018 Valuation*). RPC Containers and the Trustee have 15 months from 31 March 2018 to agree the 2018 Valuation, such that in the ordinary course, the 2018 Valuation would be completed by 30 June 2019.

- (b) As noted at Clause 5 above, the Parties acknowledge that:
- (i) as a result of the Transaction, the employer covenant supporting the RPC Scheme will not be weakened; and
 - (ii) on that basis, a “business as usual” approach is appropriate for finalising the 2018 Valuation (rather than any mitigation being needed to address a weakening of employer covenant).
- (c) On that basis, the Parties agree that it would be appropriate:
- (i) that a discount rate of Gilts + 1.75% p.a. (pre-retirement), as was used for the actuarial valuation of the RPC Scheme as at 31 March 2015 (the *2015 Valuation*), and Gilts + 0.4% p.a. (post-retirement), compared to 0.6% under the 2015 Valuation, should be used to calculate Technical Provisions in the 2018 Valuation;
 - (ii) for other assumptions used in the 2018 Valuation, including those around future longevity of RPC Scheme members and allowance for investment outperformance (above the discount rate assumption) during the recovery plan, to be set such that, allowing for resultant level of Technical Provisions, they result in a recovery plan as described in Clause 6.1(c)(iii) below; and
 - (iii) for the valuation to result in a recovery plan which provides for annual deficit contributions of £6.3 million payable with effect from 1 July 2019 until 30 September 2024, increasing by 3% on 1 April each year (with the first such increase being on 1 April 2020).
- (d) The Parties anticipate that agreement in respect of the 2018 Valuation should be reached if it:
- (i) is consistent with the principles set out in Clause 6.1(c) above;
 - (ii) provides that deficit contributions cease at such earlier time as funding updates prepared by the RPC Scheme actuary show that assets have covered Technical Provisions calculated on the basis agreed in this Clause 6.1 for two consecutive quarters; and
 - (iii) provides that if deficit contributions cease as set out in Clause 6.1(d)(ii) above and funding updates prepared by the RPC Scheme actuary show that assets have subsequently fallen below the Technical Provisions calculated on the basis agreed in this Clause 6.1 for two consecutive quarters, deficit contributions would re-start at the same rate as the deficit contributions that were payable immediately prior to the cessation under Clause 6.1(d)(ii). Those re-started deficit contributions would increase in the same manner as set out in Clause 6.1(c)(iii) above and continue until 30 September 2024 (unless ceased again as set out in Clause 6.1(d)(ii) above).

- (e) The Parties acknowledge that the recovery plan period envisaged by Clause 6.1(c)(iii) above can be extended at future valuations, if appropriate, so that there is no requirement to increase contributions over a short period to target full funding by 30 September 2024 if the deficit worsens.
- (f) The Parties intend to complete the 2018 Valuation on a basis consistent with this Memorandum of Understanding. The Bidder and the Trustee will use reasonable endeavours to procure that RPC Containers acknowledges and agrees that the 2018 Valuation shall be completed on the basis described in this Clause 6.1.
- (g) If the Transaction has not completed by the 2018 Valuation deadline of 30 June 2019, and the 2018 Valuation cannot be agreed with RPC Containers in a manner consistent with this Memorandum of Understanding by 30 June 2019, the Trustee proposes seeking an extension to the 2018 Valuation timetable from the Pensions Regulator. In those circumstances, the 2018 Valuation would be completed as soon as reasonably practicable after the Transaction completes and the deficit contributions would be backdated to 1 July 2019.
- (h) Nothing in this Clause 6.1 is intended to be binding on either the Trustee or Berry or to restrict any right or obligation under the Pensions Act 2004.

6.2 Investment strategy

Berry confirms its willingness to engage constructively with the Trustee on matters regarding investment strategy in the RPC Scheme and to support the Trustee in agreeing an appropriate investment strategy which supports and is consistent with the approach to the 2018 Valuation outlined in Clause 6.1.

6.3 Existing guarantees

The Parties agree that the existing guarantees dated 28 March 2007 and 23 August 2010 provided by RPC Group for the benefit of the Trustee shall remain in place on their current terms.

6.4 Brand licensing

The Bidder agrees to notify the Trustee in advance of any material changes in the RPC Group's brand licensing structure.

7. Information sharing

The Parties intend in good faith to agree an information sharing protocol from the closing of the Transaction, at least consistent with past practice and intended to include any changes that would have a material impact on the covenant support to the RPC Scheme, to enable the Trustee and its advisers to monitor such covenant support. This includes, without limitation:

- (a) details of total cash extracted from the Group each year; and

- (b) circumstances in which Berry and/or the Bidder become aware of any transaction which may have a material impact on the covenant supporting the RPC Scheme, in which case Berry and/or the Bidder agree that it shall notify the Trustee as soon as reasonably practical of the potential transaction.

8. Winding-up

The Trustee confirms that, as at the date of this Memorandum of Understanding, it is not aware of any event which would entitle the Trustee to wind up the RPC Scheme (in whole or in part) under Clause 21 of the Definitive Trust Deed and Rules of the RPC Scheme dated 5 April 2006 as amended.

9. Confidentiality

- 9.1 This Memorandum of Understanding is confidential and may not be disclosed by any Party to any persons other than (i) that Party's advisers, directors and employees (to the extent reasonably necessary) (ii) in the case of Berry and the Bidder, other Berry group companies and their advisers, directors and employees (to the extent reasonably necessary), (iii) RPC Containers and its advisers, directors and (to the extent reasonably necessary) employees or (iv) the Pensions Regulator, except:
- (a) as provided under Clause 5.2 and Clause 5.3 of this Memorandum of Understanding; or
 - (b) with the other Party's consent; or
 - (c) where such disclosure is required by any applicable law or by any rule, regulation, direction, order or ruling of any competent judicial, regulatory, self-regulatory governmental administrative or supervisory organisation or body (including, without limitation, the Takeover Panel or any securities exchange); or
 - (d) where the relevant information is in the public domain (unless the information is in the public domain as a result of a breach of this paragraph).
- 9.2 The Trustee confirms that it will update Berry and the Bidder (to the extent appropriate) about any discussions that the Trustee has with the Pensions Regulator in relation to this Memorandum of Understanding.

10. Status

- 10.1 This Memorandum of Understanding and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be interpreted in accordance with, English law.
- 10.2 Nothing in this Memorandum of Understanding is or shall be read as constituting a post-offer undertaking by Berry for the purposes of the Takeover Code.

BERRY GLOBAL GROUP INC.

By: 

Name: Jason Greene
Title: Executive Vice President

BERRY GLOBAL INTERNATIONAL HOLDINGS LIMITED

By: 

Name: Jason Greene
Title: Executive Vice President

RPC CONTAINERS PENSIONS TRUSTEES LIMITED

By: 

Name: *Toby Cooper*
Title: Trustee Director