

Date 22 October 2018

For

OSG BIDCO LIMITED
as the Company

Arranged by
BARCLAYS BANK PLC

with

BARCLAYS BANK PLC
acting as Agent

and

BARCLAYS BANK PLC
acting as Security Agent

BRIDGE FACILITY AGREEMENT

WILLKIE FARR & GALLAGHER (UK) LLP

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THIS AGREEMENT is dated 22 October 2018 and made

BETWEEN:

- (1) **OSG BIDCO LIMITED** (the “**Company**”);
- (2) **OSG INTERMEDIATE HOLDINGS, INC.** (the “**Parent Guarantor**”);
- (3) **BARCLAYS BANK PLC** as bookrunner and mandated lead arranger (the “**Arranger**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the “**Original Lenders**”);
- (5) **BARCLAYS BANK PLC** as agent of the other Finance Parties (the “**Agent**”); and
- (6) **BARCLAYS BANK PLC** as security agent for the Secured Parties (the “**Security Agent**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceptable Bank**” means:

- (a) a Lender or an Affiliate of a Lender;
- (b) any bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody’s Investor Services Limited or a comparable rating from an internationally recognised credit rating agency, or any bank or financial institution which (having previously satisfied such requirements) ceases to satisfy the foregoing ratings requirement for a period of not more than three (3) months; or
- (c) a bank or financial institution otherwise approved by the Agent, acting reasonably; or
- (d) any other bank or financial institution providing banking services to a business or entity acquired by a member of the Group, provided that such services are terminated and moved to a bank or financial institution falling under another limb of this definition within six (6) months of completion of the relevant acquisition.

“**Acceptance Condition**” means, in relation to an Offer, a condition such that the Offer may not be declared unconditional as to acceptances until the Company has received acceptances from Target shareholders in respect of a certain percentage of Target Shares.

“**Accession Deed**” means a document substantially in the form set out in Schedule 11 (*Form of Accession Deed*).

“**Accounting Principles**” means generally accepted accounting principles in the jurisdiction of incorporation of the relevant Group Company or IFRS.

“**Acquired Indebtedness**” means any Indebtedness (other than Target Group Indebtedness):

- (a) of a person or any of its Subsidiaries existing at the time such person becomes a member of the Group, or existing prior to and assumed in connection with the acquisition of assets from such person; or
- (b) of a person at the time such person merges with or into or consolidates or otherwise combines with a member of the Group,

provided that Acquired Indebtedness shall be deemed to have been incurred, with respect to paragraph (a) above, on the date such person becomes a member of the Group or on the date of consummation of such acquisition of assets (as the case may be) and, with respect to paragraph (b) above, on the date of the relevant merger, consolidation or other combination.

“**Acquisition**” means the acquisition of shares in the Target by the Company pursuant to a Scheme or an Offer.

“**Acquisition Costs**” means all fees, closing payments, costs and expenses, stamp, registration and other Taxes incurred or required to be paid by any Group Company in connection with the Acquisition or any Approved Acquisition or the Finance Documents or their financing or one-off costs in connection with the refinancing of any indebtedness of any entity which is the subject of the Acquisition or an Approved Acquisition.

“**Additional Debt Financing**” means Indebtedness incurred in connection with any Permitted Refinancing.

“**Additional Guarantor**” means a company or other entity that becomes an Additional Guarantor in accordance with Clause 27.2 (*Additional Guarantors*).

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Agent**” means Barclays Bank PLC, as agent of the other Finance Parties.

“**Agent’s Spot Rate of Exchange**” means the Agent’s spot rate of exchange for the purchase of the relevant currency with the Base Currency (or other relevant currency) in the foreign exchange market at or about 11:00 a.m. on a particular day.

“**Announcement**” means the public announcement made by or on behalf of the Company of a firm intention to implement a Scheme or as the case may be, make an Offer, in each case pursuant to Rule 2.7 of the City Code.

“**Annual Financial Statements**” has the meaning given to that term in Clause 21 (*Information Undertakings*).

“**Anti-Bribery Laws**” means the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, *et seq.*) or other similar law in any applicable jurisdiction to which a member of the Group is subject.

“**Anti-Money Laundering Laws**” means the Executive Order, the Currency and Foreign Transactions Reporting Act, as amended (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 *et seq.*, as amended) the USA Patriot Act and any similar law enacted in the United States, the United Kingdom or the European Union after the date of this Agreement and any other similar law in any applicable jurisdiction to which a member of the Group is subject.

“**Approved Acquisition**” means any acquisition not prohibited by the terms of this Agreement.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Lender Assignment*) or any other form agreed between the relevant assignor and assignee provided that if that other form does not contain the undertaking set out in the form set out in Schedule 5 (*Form of Lender Assignment*) it shall not be a Creditor/Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

“**Audit Laws**” means the EU Regulation (537/2014) on specific requirements regarding the statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC and the EU Directive (2014/56/EU) amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and any law or regulation which implements that EU Directive (2014/56/EU).

“**Auditors**” means a recognised firm of independent auditors of international standing.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Availability Period**” means in relation to the Facility, the period starting on the date of this Agreement and ending on the last day of the Certain Funds Period.

“**Available Commitment**” means, in relation to the Facility, a Lender’s Commitment *minus*:

- (a) the Base Currency Amount of its participation in any outstanding Utilisations; and
- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under the Facility on or before the proposed Utilisation Date.

“**Available Facility**” means, in relation to the Facility, the aggregate for the time being of each Lender’s Available Commitment in respect of the Facility.

“**Bank Case Model**” means the base case model in the agreed form delivered to the Agent on or prior to the date of this Agreement.

“**Bank Levy**” means (i) the UK bank levy as set out in the Finance Act 2011, (ii) the French *taxe bancaire de risque systémique* as set out in the Finance Bill 2011, (iii) the German bank levy as set out in the German Restructuring Fund Act (*Restrukturierungsfondgesetz*), and (iv) any substantively similar bank levy or tax in any other jurisdiction, in each case, to the extent in force (or formally announced though not yet enacted into law) as at the date of this Agreement or (if applicable) as at the date that Lender accedes as a Lender to this Agreement, and in relation to which a Lender would reasonably be able to quantify the relevant Increased Cost as at the date of this Agreement or (if applicable) as at the date that Lender accedes as a Lender to this Agreement.

“**Base Currency**” means Sterling.

“**Base Currency Amount**” means in relation to a Utilisation, the amount specified in the Utilisation Request delivered by the Company for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent’s Spot Rate of Exchange on the date which is three (3) Business Days before the relevant Utilisation Date (or, if later, on the date the Agent, or Lender, as applicable, receives the Utilisation Request in accordance with the terms of this Agreement) as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation.

“**Beneficial Owner**” means a “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act).

“**Break Costs**” means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Bridge Term Facility**” means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (*The Facility*).

“**Bridge Term Facility Commitment**” means:

- (a) in relation to an Original Lender, the amount in the relevant Base Currency set out opposite its name under the heading “Term Loan Facility Commitment” in Schedule 1 (*The Original Lenders*) and the amount of any other Bridge Term

Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.4 (*Increase*); and

- (b) in relation to any other Lender, the amount in the relevant Base Currency of any Bridge Term Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.4 (*Increase*), to the extent:
 - (i) not cancelled, reduced or transferred by it under this Agreement; and
 - (ii) not deemed to be zero pursuant to paragraph 25.2 (*Conditions of assignment or transfer*), Clause 26 (*Debt Purchase Transactions*), paragraph (h) of Clause 37.3 (*Exceptions*) or otherwise under the Finance Documents.

“**Bridge Term Loan**” means a loan to be made under the Facility or the principal amount outstanding for the time being of that loan.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York.

“**Cash**” means, at any time, cash in hand (including money market deposits, cash in tills and safes) or in transit or payments made by cheques or debit cards which are yet to be received in cleared funds or at a bank and (in the latter case) credited to an account in the name of a Group Company with an Acceptable Bank and to which a Group Company is alone (or together with other Group Companies) beneficially entitled and for so long as:

- (a) that cash is repayable on demand within thirty (30) days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Group Company or of any other person whatsoever (other than any indebtedness taken into account in the calculation of Consolidated Total Net Debt) or on the satisfaction of any other condition (other than the giving of any notice);
- (c) there is no lien over, or set-off rights in respect of, that cash except:
 - (i) Transaction Security;
 - (ii) pursuant to cash pooling arrangements;
 - (iii) Security arising over any bank accounts or custody accounts or other clearing bank facilities held with any bank or financial institution under the standard terms and conditions of such bank or financial institution; or
 - (iv) Permitted Liens taken into account in the calculation of Consolidated Total Net Debt; and
- (d) the cash is freely (except as referred to in paragraph (a) above) available to be applied (or is available upon declaration of a dividend in accordance with

relevant legal requirements) within thirty (30) days in repayment or prepayment of the Facility (other than by virtue of conditions attached to the Security or the cash pooling arrangements referred to in paragraph (c) above).

“Cash Equivalent Investments” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State (or by an instrumentality or agency of any of them having an equivalent credit rating), in each case, with a long term credit rating of either A- or higher by Standard & Poor’s Rating Services or by Fitch Ratings Ltd or A3 or higher by Moody’s Investor Service Limited, maturing within one year after the relevant date of calculation and not convertible or exchangeable at the option of the issuer to any other security;
- (c) open market debt securities maturing within one year after the relevant date of calculation which are not convertible into any other security and are rated either A-2 or higher by Standard & Poor’s Rating Services or F2 or higher by Fitch Ratings Ltd or P-2 or higher by Moody’s Investor Service Limited (or, if no rating is available in respect of the debt securities, the issue of which has, in respect of its long-term debt obligations, an equivalent rating);
- (d) commercial paper not convertible or exchangeable at the option of the issuer to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor’s Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody’s Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) bills of exchange issued in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State eligible for rediscount at the relevant central bank and accepted by an Acceptable Bank (or any dematerialised equivalent);
- (f) any investment in money market funds which (i) have a credit rating of either A-2 or higher by Standard & Poor’s Rating Services or F2 or higher by Fitch

Ratings Ltd or P-2 or higher by Moody's Investor Service Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (e) above and (iii) can be turned into cash on not more than thirty (60) days' notice; or

- (g) any other debt security approved by the Majority Lenders, in each case, to which any Group Company is alone (or together with any other Group Company) beneficially entitled at that time and which is not issued or guaranteed by any Group Company or subject to any Security (other than Security arising under the Transaction Security Documents or Permitted Liens constituted by a lien arising under the general terms and conditions of banks under applicable law or similar general terms and conditions of banks with whom any member of the Group maintains a banking relationship in the ordinary course of business or Permitted Liens taken into account in the calculation of Consolidated Total Net Debt).

"Certain Funds Period" means the period commencing the date of this Agreement and ending on the earliest of:

- (a) the Longstop Date; and
- (b) the date on which the Offer or Scheme lapses, terminates or is withdrawn (as applicable).

"Certain Funds Utilisation" means a Utilisation made or to be made under the Facility during the Certain Funds Period.

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any governmental authority, or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any governmental authority.

"Change of Control" means any event the result of which is:

- (a) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date of this Agreement), other than one or more Initial Investors (taken together), becomes the Beneficial Owner, directly or indirectly, of more than 50% of the total voting power of the voting stock of the Parent Guarantor, provided that for the purposes of this clause, any voting stock of which any Initial Investor is the Beneficial Owner shall not be included in any voting stock of which any such person or group is the Beneficial Owner, unless that person or group is not an Affiliate of an Initial Investor and has greater voting power with respect to that voting stock; or
- (b) The Parent Guarantor ceases to beneficially own and control directly 100% of the issued share capital of the Company.

“**Charged Property**” means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

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

“**Clean-Up Date**” means the last day of the relevant Clean-Up Period.

“**Clean-Up Period**” means:

- (a) in respect of the Acquisition, the period commencing on the Closing Date and ending on (and including) the date falling one hundred and fifty (150) days thereafter; and
- (b) in respect of any Permitted Acquisition, the period commencing on the closing date for such Permitted Acquisition and ending on (and including) the date falling ninety (90) days thereafter, or, in each case, such shorter clean-up period as may apply pursuant to Clause 24.17 (*Clean-Up Period*).

“**Closing Date**” means the first Utilisation Date in respect of the Facility.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commitment**” means a Bridge Term Facility Commitment.

“**Confidential Information**” means any information relating to any Group Company, Unrestricted Subsidiary, the Company, the Investors and/or the Facility (including, without limitation, the Bank Case Model) provided to (or otherwise in the possession of) any Finance Party in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (a) information that:
 - (i) is or becomes public knowledge other than as a direct or indirect result of any breach of Clause 38 (*Confidentiality*); or
 - (ii) is known by such Finance Party before the date the information is disclosed to it or is lawfully obtained by it after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group (other than pursuant to or in connection with its evaluation of the Finance Documents), and which, in either case, so far as the relevant Finance Party is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality owed to any Group Company; and
- (b) any Funding Rate.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in the recommended form of the LMA or in any other form agreed between the Company and the Agent, and in any case capable of being relied upon by, and not capable of being materially amended without the consent of, the Company.

“**Consolidated EBITDA**” has the meaning given to that term in Schedule 13 (*Certain New York Law Defined Terms*).

“**Consolidated Total Net Debt**” has the meaning given to that term in Schedule 13 (*Certain New York Law Defined Terms*).

“**controlled sub-participation**” has the meaning given to that term in Clause 25.2 (*Conditions of assignment or transfer*).

“**Court Order**” means the order of the High Court sanctioning the Scheme.

“**CTA**” means the Corporation Tax Act 2009.

“**Debt Purchase Transaction**” means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

“**Declared Default**” means an Event of Default in respect of which a notice of acceleration has been served pursuant to paragraphs (b) or (d) of Clause 24.16 (*Acceleration*).

“**Default**” means an Event of Default or any event or circumstance specified in Clause 24 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default, provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes an Event of Default shall not be a Default unless that condition is satisfied.

“**Defaulting Lender**” means any Lender (other than a Lender which is an Equity Party):

- (a) which has failed to make its participation in a Loan available or has notified the Agent or the Company (which has notified the Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 4.4 (*Utilisations during the Certain Funds Period*) or Clause 5.4 (*Lenders’ Participation*), as the case may be;
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing, unless, in the case of paragraph (a) above, a Lender which is participating in a Loan in respect of Indebtedness is disputing in good faith whether it is contractually obliged to make the payment or issuance in question.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Designated Person**” means a person or entity:

- (a) listed on, or owned or controlled by any person listed on, a Sanctions List, or to the best of the Company’s knowledge otherwise targeted by the provisions of, any Economic Sanctions Laws;
- (b) which is a government of a Sanctioned Country, or an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country;
- (c) resident or located in, operating from, or incorporated under the laws of, a Sanctioned Country; or
- (d) to the best of the Company’s knowledge, with which any Finance Party is prohibited from dealing or otherwise engaging in any transaction by any Economic Sanctions Laws.

“**Discharge Date**” means the date on which all outstanding amounts under the Facility have been fully and finally discharged to the satisfaction of the Agent.

“**Disposal**” means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents, and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

“**Economic Sanctions Laws**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any Sanctions Authority.

“Equity Party” means (i) the Initial Investor, (ii) any other fund that is under the control of, or under common control with an Initial Investor (excluding any Independent Debt Fund) and (iii) any Affiliate of an entity referred to in (i) and (ii) including, in each case, any successor funds and “control” (including controlling, controlled by and under common control) means the power, directly or indirectly to direct and (whether by exercise of voting rights, by contract or otherwise), or cause the direction of the affairs and management of or control the composition of the board of directors of an entity, but excluding, for the purposes of (i), (ii) and (iii), any investment fund, proprietary investing, general-purpose lending or flow trading operation of an Initial Investor or an Affiliate of an Initial Investor, that in each case is engaged as its primary purpose in the business of arranging or underwriting debt obligations or investing in, trading in, or managing debt obligations in the primary or secondary market similar to those of the Company and which is managed and/or operated separately from any Initial Investor’s investment (direct or indirect) in the Group.

“Event of Default” means any event or circumstance specified as such in Clause 24 (*Events of Default*).

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated pursuant thereto.

“Executive Order” means the US Executive Order No. 13224 on Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism.

“Existing Finance Documents” means the agreements and/or instruments documenting or evidencing the Target Group Indebtedness (or any component thereof).

“Existing Lender” has the meaning given to it in Clause 2.4 (*Increase*).

“Facility” means the Bridge Term Facility.

“Facility Office” means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

“Fallback Interest Period” means one week.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction,

which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means:

- (a) the letters originally dated on or about the date of this Agreement (as amended from time to time, pursuant to the terms thereof) and on or about the date of this Agreement between any of the Arrangers and the Company (or the Agent and the Company or the Security Agent and the Company) setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any letter or letters between the Company and any Increase Lender setting out any fees payable referred to in paragraph (d) of Clause 2.4 (*Increase*).

“Finance Document” means this Agreement, any Fee Letter, any Selection Notice, any Increase Confirmation, the Intercreditor Agreement, any Transaction Security Document, any Utilisation Request and any other document designated as a “Finance Document” by the Agent and the Company.

“Finance Party” means the Agent, the Arrangers, the Security Agent or a Lender.

“Financial Due Diligence Report” means the “Project Eclipse” financial due diligence report prepared by Deloitte LLP dated 11 October 2018.

“**Financial Quarter**” means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

“**Financial Statements**” means each of the financial statements delivered in accordance with Clause 21.2 (*Financial Statements*).

“**Financial Year**” means the annual accounting period of the Group ending on or about 31 December in each year.

“**Funding Rate**” means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 12.2 (*Market Disruption*).

“**Funds Flow Statement**” means the funds flow statement delivered to the Agent pursuant to Clause 4.1 (*Initial Conditions Precedent*).

“**Group**” means the Parent Guarantor, the Company and the Company’s Subsidiaries from time to time.

“**Group Company**” means a company which is a member of the Group.

“**Group Structure Chart**” means the group structure chart in the agreed form delivered in accordance with Part 1 of Schedule 2 (*Conditions Precedent*).

“**Guarantor**” means the Parent Guarantor and each Additional Guarantor.

“**Guarantor Coverage Test**” means confirmation that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) than exceeds 80% of Consolidated EBITDA (provided that for the purposes of calculating the guarantor coverage only, to the extent that any Group Company is incorporated in a jurisdiction where it is not required to or is unable to become a Guarantor in accordance with the Security Principles, such Group Company shall be deemed to have zero (0) Consolidated EBITDA for the purpose of calculating the Guarantor Coverage Test).

“**High Court**” means the High Court of Justice in England and Wales.

“**Historic Screen Rate**” means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than 5 days before the Quotation Day.

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

“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Impaired Agent**” means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of Defaulting Lender; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent, unless, in the case of paragraph (a) above:
 - (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; and
 payment is made within three (3) Business Days of its due date; or
 - (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

“**Increase Confirmation**” means a confirmation substantially in the form set out in Schedule 8 (*Form of Increase Confirmation*).

“**Increase Lender**” has the meaning given to that term in Clause 2.4 (*Increase*).

“**Increased Costs**” has the meaning given to that term in paragraph (b) of Clause 15.1 (*Increased Costs*).

“**Indebtedness**” has the meaning given to that term in Schedule 13 (*Certain New York Law Defined Terms*).

“**Independent Debt Fund**” means any trust, fund or other entity which has been established primarily for the purpose of purchasing or investing in loans or debt securities (but which has not been formed specifically with a view to investing in the Facility) and which is managed or advised independently from all other trusts, funds or other entities managed, advised or controlled by an Initial Investor or a manager or adviser of such Initial Investor or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies (and, for the avoidance of doubt, but without limitation, an entity trust or fund shall be treated as being managed independently from all other trusts, funds, or other entities managed or controlled by an Initial Investor or any of its Affiliates, if it has a different general partner (or equivalent)).

“**Initial Investor**” means each of:

- (a) Sponsor (the “**Initial Co-Investors**”), and any other person which acquires an indirect shareholding in the Parent Guarantor from Sponsor and/or the Initial Co-Investors to the extent that Sponsor and/or the Initial Co-Investors manage or advise such person in respect of that indirect shareholding in the Parent

Guarantor or otherwise retain direct or indirect control (by contract or otherwise) over such person's indirect shareholding in the Parent Guarantor; and

- (b) senior management of the Target.

“Insolvency Event” in relation to a Finance Party means that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights all other than by way of an Undisclosed Administration, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, judicial manager, provisional liquidator, conservator, receiver, trustee in bankruptcy, custodian or other similar official for it or for all or substantially all its assets all other than by way of an Undisclosed Administration;

- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Intellectual Property” means:

- (a) any patents, trademarks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Group Company.

“Intercreditor Agreement” means the intercreditor agreement dated on or about the date hereof and made between, amongst others, the Company, the Parent Guarantor, the Agent, the Security Agent, the Arrangers and the Lenders.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default Interest*).

“Interpolated Historic Screen Rate” means, in relation to any Loan, the rate which results from interpolating on a linear basis between:

- (a) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than 5 days before the Quotation Day.

“Interpolated Screen Rate” means, in relation to LIBOR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan, each as of the Specified Time on the Quotation Day for the currency of that Loan.

“**Investment Grade Rating**” means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

“**Investors**” means each of the Initial Investors and any other person from time to time who holds (directly or indirectly) share capital in the Parent Guarantor.

“**ITA**” means the Income Tax Act 2007.

“**Legal Due Diligence Report**” means the legal due diligence report prepared by Willkie Farr & Gallagher LLP titled “Project Eclipse – Legal Due Diligence” dated 17 October 2018.

“**Legal Opinion**” means any legal opinion delivered to the Agent under Clause 4.1 (*Initial Conditions Precedent*) or Clause 27 (*Changes to the Obligors*).

“**Legal Reservations**” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts and the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction to those referred to in paragraphs (a) and (b) above; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.4 (*Increase*) or Clause 25 (*Changes to the Lenders*), which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

“**Lender Delegate**” has the meaning given to that term in paragraph (c) of Clause 25.2 (*Conditions of assignment or transfer*).

“**LIBOR**” means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan, as of the Specified Time on the Quotation Day for the currency of that Loan and a period equal in length to the Interest Period of that Loan and if that rate is less than zero per cent. (0%) per annum, LIBOR shall be deemed to be zero per cent. (0%) per annum.

“**Limitation Acts**” means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

“**Listing**” means (subject to the proviso below) the admission of or the grant of permission to deal in any part of the issued share capital of any Group Company (or Holding Company of any Group Company other than an Investor) on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or any other public exchange or public market or on any exchange or market replacing the same in any country or any other sale or issue by way of initial public offering, provided that for the avoidance of doubt, the existing listing of the Target the date of this Agreement shall not constitute a Listing for any purpose under this Agreement.

“**LMA**” means the Loan Market Association.

“**Loan**” means a Bridge Term Loan.

“**Loan to Own/Distressed Debt Investor**” means any person (including an Affiliate or a Related Fund of a Lender or any transferee which satisfies the requirements set out under Clause 25.2 (*Conditions of assignment or transfer*)) whose principal business or material activity is in investment strategies whose primary purpose is the purchase of loans or other debt securities with the intention of (or view to) owning the equity or gaining control of a business (directly or indirectly) provided that:

- (a) any Affiliate of any such person which is a deposit taking financial institution authorised by a financial services regulator to carry out the business of banking; and
- (b) any Original Lender,

shall not, in each case, be a Loan to Own/Distressed Debt Investor.

“**Longstop Date**” means the date that is:

- (a) six (6) Months after the Original Execution Date; plus
- (b) if the Closing Date occurs on or before the last day of the period specified in paragraph (a) above, the date falling seventy-five (75) days after the Closing Date.

“**Major Default**” means any circumstances constituting an Event of Default under any of the following, only in each case in so far as they relate to the Parent Guarantor or the Company only (and for the avoidance of doubt not any other members of the Group or the Target Group and excluding any procurement obligations):

- (a) Clause 24.1 (*Non-payment*);
- (b) Clause 24.2 (*Other Obligations*), insofar as it relates to:
 - (i) paragraph (a), (b) or (e) of Clause 23.8 (*Acquisition Undertakings*);
 - (ii) Clause 23.4 (*Holding Companies*);
 - (iii) Section 1.01 of Schedule 12 (*General Undertakings*) (*Limitations on Liens*);
 - (iv) Section 1.03 of Schedule 12 (*General Undertakings*) (*Limitations on Indebtedness*);
 - (v) Section 1.05 of Schedule 12 (*General Undertakings*) (*Restrictions on Dispositions*);
 - (vi) Section 1.06 of Schedule 12 (*General Undertakings*) (*Limitations on Restricted Payments*);
- (c) Clause 24.3 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation
- (d) Clause 24.5 (*Insolvency*);
- (e) Clause 24.6 (*Insolvency Proceedings*);
- (f) Clause 24.9 (*Unlawfulness and Invalidity*) insofar as it relates to this Agreement, the Fee Letters and the Transaction Security; and
- (g) Clause 24.13 (*Repudiation and Rescission of Agreements*).

“**Major Representation**” means a representation or warranty under any of Clause 20.2 (*Status*) to Clause 20.6 (*Validity and Admissibility in Evidence/Authorisations*) (inclusive), in each case, only in so far as they relate to the Parent Guarantor or the Company only (and for the avoidance of doubt not any other members of the Group or the Target Group and excluding any procurement obligations).

“**Majority Lenders**” means a Lender or Lenders whose Commitments aggregate more than fifty-point-one per cent. (50.1%) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than fifty-point-one per cent. (50.1%) of the Total Commitments immediately prior to that reduction).

“**Margin**” means in relation to any Loan, 6.0% per cent. per annum, which will increase by 0.5% on the date that is 90 days after the Closing Date and an additional 0.5% for each additional 90 day period thereafter.

“**Material Adverse Effect**” means any event or circumstance or series of events or circumstances which, taking into account all the circumstances, is or is likely to:

- (a) be materially adverse to the financial condition of the Group taken as a whole;

- (b) have a material adverse effect on the ability of the Group taken as a whole to perform its payment obligations under any of the Finance Documents (taking into account resources available to it); or
- (c) subject to the Legal Reservations and Perfection Requirements, affect the validity or enforceability of any Transaction Security granted pursuant to the Finance Documents in any way which is materially adverse to the interests of the Lenders under the Finance Documents taken as a whole, and which, if capable of remedy, is not remedied within twenty (20) Business Days of the earlier of the Company becoming aware of the issue or being given notice of the issue by the Agent.

“**Material Company**” means, at any time:

- (a) an Obligor;
- (b) any Group Company that is wholly-owned (directly or indirectly) by the Parent Guarantor or the Target which has earnings before interest, tax, depreciation and amortisation calculated on the same basis as Consolidated EBITDA, representing five per cent. (5%) or more of the Consolidated EBITDA and for these purposes and compliance with such conditions shall be determined on an annual basis and by reference to the latest Annual Financial Statements; and
- (c) each immediate Holding Company (provided that it is a Group Company) of any company that is a Material Company pursuant to paragraphs (a) or (b) above.

If a Subsidiary is acquired after the end of the financial period to which the latest Annual Financial Statements relate, those financial statements shall be adjusted (as if that Subsidiary had been shown in them by reference to its then latest audited financial statements) until audited consolidated financial statements of the Group for the financial period in which the acquisition is made have been prepared, and such adjustments will be certified by the chief financial officer, the chief executive officer or a director/manager of the Group as being made in good faith to reflect the revised Consolidated EBITDA of the Group taking into account the acquisition of that Subsidiary.

A report by the Auditors of the Company that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.

“**Maturity Date**” means, subject to Clause 2.5 (*Maturity Date Extension*), six (6) Months from the Closing Date.

“**Minimum Acceptance Condition**” means the minimum Acceptance Condition set out in the Offer Documents or such lower minimum Acceptance Condition as the Company may subsequently announce, provided that it shall be no less than 75% of the Target Shares.

“**Month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. “**Monthly**” shall be construed accordingly.

“**Net Proceeds**” means the cash proceeds received by any Group Company (and if the recipient (other than the Target) is not a wholly owned subsidiary of a Group Company the proceeds proportionate to the interest held by the Group in the recipient), or in the case of a Target Group refinancing, received by a member of the Target Group of any Disposal, insurance claim, Listing or Target Group refinancing after deducting:

- (a) reasonable fees, costs and expenses incurred by any Group Company with respect to that Disposal, claim, Listing or Target Group refinancing to persons who are not Group Companies including without limitation:
 - (i) bonus payments to, or any other payments in connection with management incentive schemes for, management of the disposed business; and
 - (ii) underwriting, arrangement, agency or advisor fees, costs and expenses in respect of a Target Group refinancing;
- (b) any Tax incurred and required to be paid or reasonably reserved for by the seller, claimant or borrower in connection with that Disposal, claim, Listing or Target Group refinancing (as reasonably determined by the seller, claimant or borrower) or the transfer of the proceeds thereof intra-group;
- (c) amounts required to be applied in repayment of any Indebtedness secured over the asset or which is intended to be repaid out of those proceeds including any hedging break or termination costs incurred in connection with the repayment (other than any Indebtedness that is subordinated to the liens securing the Loans);
- (d) up to the amounts so retained, amounts retained to cover anticipated liabilities reasonably expected to arise in connection with that disposal, claim or Listing, as certified by a director or other officer of the Company (however, any amount subsequently (and permanently) released (other than in connection

with a payment in respect of such liability shall be deemed to be Net Proceeds of such Disposal or Casualty Event on the date of such release;

- (e) amounts to be repaid to the entity disposed of in respect of intra-Group indebtedness;
- (f) in respect of any Disposal, amounts representing cash or cash equivalent investments that have been disposed of in relation to such Disposal; and
- (g) costs and reasonably anticipated (acting in good faith) costs of redundancy, closure, relocation, reorganisation and restructuring and other costs incurred directly preparing the asset for, or incurred as a consequence of, a Disposal (in each case to persons who are not Group Companies).

“New Equity” means the proceeds of a subscription for shares in the Company or any other form of equity contribution to the Company, that is issued after the Closing Date, which is not redeemable at the option of the holder prior to the Discharge Date.

“New Investment” means New Equity and/or Subordinated Debt.

“New Lender” has the meaning given to that term in Clause 25.1 (*Assignments and Transfers by the Lenders*).

“Non-Consenting Lender” has the meaning given to that term in Clause 37.4 (*Replacement of a Lender*).

“Notice to the Company” has the meaning given to that term in paragraph (b) of Clause 7.1 (*Illegality*).

“Notifiable Debt Purchase Transaction” has the meaning given to that term in paragraph (c) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by an Equity Party*).

“Obligor” means the Company, the Parent Guarantor or any Additional Guarantor.

“Obligors’ Agent” means the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors’ Agent*).

“Offer” means a takeover offer within the meaning of section 974 of the Companies Act 2006 made by the Company to acquire shares in the Target.

“Offer Documents” means the offer document distributed to Target shareholders setting out, among other things, the terms and conditions of the Offer and the documents incorporated therein by reference, and any other document designated as an "Offer Document" by the Agent and the Company.

“Original Execution Date” means the first date of this Agreement.

“Original Financial Statements” means the annual audited financial statements of the Target for the Financial Year ending 31 December 2017.

“Panel” means The Panel on Takeovers and Mergers.

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“Pensions Report” means the “Project Eclipse” report on pensions prepared by Deloitte LLP dated on or before the Closing Date.

“Perfection Requirements” means the making or the procuring of the necessary registrations, filings, endorsements, notarisation, stampings and/or notifications of the Transaction Security Documents and/or the Transaction Security created thereunder necessary for the validity and enforceability thereof.

“Permitted Acquisition” has the meaning given to that term in paragraph (a) of Clause 24.16 (*Clean-Up Period*).

“Permitted Disposal” means a Disposal that is not prohibited under the terms of this Agreement

“Permitted Holding Company Activity” means:

- (a) normal holding company activities including those incurred as a result or part of the implementation or completion of any steps set out in the Tax Structure Report or the Offer Documents or Scheme Circular (as applicable) or otherwise required for or contemplated in connection with the Acquisition;
- (b) any Indebtedness and/or other liabilities incurred (including, for the avoidance of doubt, entering into and incurring any rights and liabilities under mandate, engagement or underwriting letters or agreements) and any loan, guarantee or payment made and/or transactions entered into under the Finance Documents permitted to be outstanding under the terms this Agreement;
- (c) the provision of management and administrative services, research and development, marketing and the secondment of employees to and guaranteeing the obligations of other Group Companies of a type customarily provided by a holding company to its subsidiaries (provided that, in the case of guarantees, the guaranteed obligations are undertaken in the ordinary course of the business);
- (d) activities desirable to maintain Tax status;
- (e) incurring liabilities for, or in connection with, Taxes;
- (f) the receipt of the proceeds of any New Investment by the Parent Guarantor and on-lending to a Group Company and the making of a corresponding payment to a Group Company where such payment permitted by the terms of this Agreement;
- (g) any liabilities incurred and payments made pursuant to an intra-Group loan;

- (h) the receipt of any Permitted Payments made by a Group Company and the making of any Permitted Payments to a Group Company or the making of a Permitted Payment to an Investor or any Affiliate of an Investor (or to a Group Company to fund such a payment);
- (i) making claims (and the receipt of any related proceeds) for rebates or indemnification with respect to Taxes and the benefit of a Permitted Payment;
- (j) activities in connection with any litigation or court or other proceedings that are, in each case, being contested in good faith;
- (k) ownership of shares in Subsidiaries and any liabilities incurred or payments made by it as a holding company in respect of its share capital and professional fees, employee costs, administration costs and Taxes in each case incurred in the ordinary course of its business as a holding company and not expressly prohibited under this Agreement;
- (l) the ownership of cash balances or Cash Equivalent Investments at any time arising under any cash pooling arrangement entered into with any of its Subsidiaries and the on-lending of cash intra- Group;
- (m) incurring liabilities arising by operation of law;
- (n) the making of any Permitted Payment, any Disposal, Permitted Transaction or the issuance of capital stock to its direct Holding Company;
- (o) those activities, rights, liabilities and other obligations arising in connection with any employee or management incentive or participation scheme operated by a Target Group Company or Holding Company or in connection with any investment in the Target or a Holding Company thereof which does not result in any payment in cash which is not a Permitted Payment;
- (p) granting Transaction Security and any other Permitted Liens;
- (q) carrying on business, incurring any liability or owning any asset solely to the extent necessary to maintain its corporate existence;
- (r) the incurrence of any other costs that relate to services provided to or duties of any Group Company;
- (s) any step or action taken (or relating to a step or action taken) by the Company prior to the Closing Date;
- (t) entry into the Finance Documents and drawing the Facility hereunder; or
- (u) activities, liabilities and other obligations set out in or pursuant to the Finance Documents or otherwise permitted by the Agent (acting on the instructions of the Majority Lenders).

“Permitted Indebtedness” means any Indebtedness that is not prohibited under this Agreement.

“**Permitted Lien**” means any Security that is not prohibited under this Agreement.

“**Permitted Payment**” means any dividend, distribution, payment, repayment, prepayment, purchase, repurchase, redemption, defeasance, discharge, exchange, other acquisition, retirement or acquisition not prohibited by the terms of this Agreement.

“**Permitted Refinancing**” has the meaning given to that term in Schedule 13 (*Certain New York Law Defined Terms*).

“**Permitted Transaction**” means any transaction that is not prohibited under this Agreement.

“**Permitted Treasury Transaction**” means any Treasury Transaction that is not prohibited under this Agreement.

“**Quarter Date**” means each of 31 March, 30 June, 30 September and 31 December.

“**Quarterly Financial Statements**” has the meaning given to that term in Clause 21 (*Information Undertakings*).

“**Quotation Day**” means in relation to any period for which an interest rate is to be determined, the first day of that period.

“**Receiver**” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

“**Regulation S**” means Regulation S under the Securities Act (including any successor regulation thereto), as it may be amended from time to time.

“**Related Fund**” in relation to a fund (the “**first fund**”), means a fund which is managed or advised by the same investment manager or adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or adviser is an Affiliate of the investment manager or adviser of the first fund.

“**Relevant Interbank Market**” means the London interbank market.

“**Relevant Jurisdiction**” means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts all or a substantial part of its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

“**Repeating Representations**” means each of the representations set out in Clauses 20.2 (*Status*) to Clause 20.5 (*Power and Authority*) (inclusive) and Clauses

20.7 (*Governing Law and Enforcement*), 20.8 (*No Default*) (with respect to no Event of Default only), 20.25 (*Ranking*) and 20.26 (*COMI*).

“**Reports**” means the Legal Due Diligence Report, the Financial Due Diligence Report, the Pensions Report and the Tax Structure Report.

“**Requisite Lenders**” has the meaning given to that term in Clause 40.5 (*Lender details definitions*).

“**Restricted Subsidiary**” means any Subsidiary of the Parent Guarantor other than an Unrestricted Subsidiary.

“**Rule 144A**” means Rule 144A under the Securities Act (including any successor regulation thereto), as it may be amended from time to time.

“**Sanctioned Country**” means any country or other territory subject to a general export, import, financial or investment embargo under any Economic Sanctions Laws, which, as of the date of this Agreement, include Crimea, Cuba, Iran, North Korea, Sudan and Syria.

“**Sanctions Authority**” means (i) the United States, (ii) the United Nations Security Council, (iii) the European Union, (iv) the United Kingdom (v) Norway or (vi) the respective governmental institutions of any of the foregoing including, without limitation, Her Majesty’s Treasury, the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of Commerce, the US Department of State and any other agency of the US government.

“**Sanctions List**” means any of the publicly available lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time.

“**Scheme**” means a scheme of arrangement under Part 26 of the Companies Act 2006 pursuant to which the Company acquires the Target Shares.

“**Scheme Circular**” means the scheme document (including any supplementary document) dispatched to the holders of the Target Shares setting out the terms and conditions of the Scheme .

“**Scheme Effective Date**” means the date on which the Court Order sanctioning the Scheme is duly delivered by or on behalf of the Target to the Registrar of Companies in England and Wales.

“**Screen Rate**” means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on page LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate);

or, on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If the agreed page is replaced or service ceases

to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

“**Secured Parties**” means the Security Agent, the Agent, each Arranger and each Lender from time to time party to this Agreement and any Receiver or Delegate together with any other person entitled to share in the Transaction Security in accordance with the terms of the Intercreditor Agreement.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated pursuant thereto.

“**Security**” means a mortgage, charge, land charge, pledge, lien, assignment or transfer for security purposes, (extended) retention of title arrangements or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Principles**” means the principles set out in Schedule 7 (*Security Principles*).

“**Selection Notice**” means a notice substantially in the form set out in Part 2 of Schedule 3 (*Requests and Notices*) given in accordance with Clause 11 (*Interest Periods*) in relation to the Facility.

“**Specified Time**” means a time determined in accordance with Schedule 6 (*Timetables*).

“**Sponsor**” means Aquiline Capital Partners LLC, any funds or limited partnerships managed or advised by Aquiline Capital Partners LLC or any of their Affiliates or direct or indirect Subsidiaries (but excluding, in each case, the Group and any portfolio company in which Aquiline Capital Partners LLC or such funds, limited partnerships, Affiliates, Subsidiaries or investors hold an investment).

“**Squeeze Out**” means an acquisition of the shares in the Target pursuant to section 979 of the Companies Act 2006.

“**Subordinated Debt**” means Indebtedness under any Junior Financing (as defined in Schedule 13 (*Certain New York Law Definitions*)).

“**Subsidiary**” means in relation to any company, corporation or partnership:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation or partnership;
- (b) more than half the outstanding share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation or partnership; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company, corporation or partnership, and for this purpose, a company or corporation or partnership shall be treated as being controlled by another if that other company or corporation or partnership is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“Super Majority Lenders” means a Lender or Lenders whose Commitments aggregate more than ninety per cent. (80%) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than eighty per cent. (80%) of the Total Commitments immediately prior to that reduction).

“Syndication Date” means the last day of the primary syndication of the Facility.

“Take-out Financing” means any direct or indirect public offering or private placement of debt or equity or convertible securities of the Company or any of its subsidiaries or the incurrence of other Indebtedness by the Company or any subsidiary of the Company including, without limitation, Permanent Debt, but excluding any other Indebtedness permitted to be incurred pursuant to this Agreement (other than Permanent Debt).

“Target” means the company known by the code name “Eclipse”.

“Target Group” means the Target and its Subsidiaries for the time being.

“Target Group Company” means a company which is a member of the Target Group.

“Target Group Indebtedness” means any Indebtedness of the Target Group existing and/or available to be drawn at the date of this Agreement, including under the multicurrency revolving facility agreement dated 2 August 2017 made between (amongst others) the Target, the Original Lenders (as defined therein) and Lloyds Bank PLC as agent.

“Target Shares” means all of the outstanding shares in the Target (other than any treasury shares held by the Target).

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

“Tax Structure Report” means the “Project Eclipse” tax structure report prepared by Deloitte LLP dated on or before the Closing Date.

“Total Assets” has the meaning given to that term in Schedule 13 (*Certain New York Law Definitions*).

“Total Commitments” the aggregate of the Bridge Term Facility Commitments, being GBP £208,000,000 at the date of this Agreement.

“Transaction Security” means the Security created or expressed to be created in favour of the Security Agent and/or other Secured Parties (or any of them) pursuant to the Transaction Security Documents.

“Transaction Security Documents” means each of the documents listed as being a Transaction Security Document in Part 1 of Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of Group Companies under any of the Finance Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

“Transfer Date” means, in relation to an assignment or transfer:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; or
- (b) in the event that no Transfer Date is specified in the relevant Assignment Agreement or Transfer Certificate, the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

“Treasury Transactions” means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

“Undisclosed Administration” means, in relation to any Lender, the appointment of an administrator, judicial manager, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“Unpaid Sum” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“Unrestricted Subsidiary” means:

- (a) any Subsidiary of the Target designated by the Company as an “Unrestricted Subsidiary” in writing to the Agent, provided that:
 - (i) no Event of Default is continuing or would result from the designation of such Subsidiary as an Unrestricted Subsidiary;
 - (ii) such Subsidiary does not hold any shares in any other Group Company and is not party to any arrangement pursuant to which any other Group Company has granted any Security for the obligations of such Subsidiary or incurred any liability in respect of such Subsidiary;
 - (iii) immediately before and at all times after any such designation, Unrestricted Subsidiaries shall not comprise in the aggregate, on a pro forma basis, more than (x) 10.0% of the Total Assets of the Company and its Restricted Subsidiaries on a consolidated basis or (y) 10.0% of Consolidated EBITDA of the Company and its Restricted Subsidiaries on a consolidated basis (i.e., in each case, calculated as if such Unrestricted Subsidiaries were Restricted Subsidiaries); and
 - (iv) such Subsidiary does not hold any material intellectual property of the Company and its Subsidiaries; or
- (b) any Subsidiary from time to time of an Unrestricted Subsidiary.

The Company may subsequently re-designate any Unrestricted Subsidiary as a Restricted Subsidiary by notice to the Agent, provided that:

- (i) no Event of Default is continuing or would result from the designation of such Unrestricted Subsidiary as a Restricted Subsidiary; and
- (ii) immediately before and at all times after any such re-designation, Unrestricted Subsidiaries shall not comprise in the aggregate, on a pro forma basis, more than (x) 10.0% of the Total Assets of the Company and its Restricted Subsidiaries on a consolidated basis or (y) 10.0% of Consolidated EBITDA of the Company and its Restricted Subsidiaries on a consolidated basis (i.e., in each case, calculated as if such Unrestricted Subsidiaries were Restricted Subsidiaries).

“**U.S. Debtor**” means an Obligor that is incorporated or organised under the laws of the United States of America or any State of the United States of America (including the District of Columbia).

“**US**” means the United States of America.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**Utilisation**” means a Loan.

“**Utilisation Date**” means the date on which a Utilisation is made.

“**Utilisation Request**” means a notice substantially in the relevant form set out in Schedule 3 (*Requests and Notices*).

“**VAT**” means:

- (a) any tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) (as amended) (including, in relation to the United Kingdom, value added tax imposed by the Value Added Tax Act 1994 and supplemental legislation and regulations); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or elsewhere.

“**White List**” means the agreed list of approved entities set out in Schedule 10 (*White List*), subject to amendments from time to time in accordance with the terms of this Agreement.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) the “**Agent**”, the “**Arranger**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title (including, for the avoidance of doubt, any surviving entity in connection with a merger or reorganisation communicated to the public through press releases and similar channels of such entity prior to the date of this Agreement), permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
- (ii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of the Company and the Agent;
- (iii) “**amendment**” includes any amendment, supplement, variation, novation, modification, replacement or restatement and “**amend**”, “**amending**” and “**amended**” shall be construed accordingly;
- (iv) “**assets**” includes present and future properties, revenues and rights of every description;
- (v) “**disposal**” or “**dispose**” means any transfer or other disposal of an asset or of an interest in an asset, or the creation of any right (being any right, privilege, power or immunity, or any interest of any kind, whether it is personal or proprietary) over an asset in favour of another person, but does not include the lending of money or creation of Security permitted under this Agreement;
- (vi) the “**equivalent**” of an amount specified in a particular currency (the “**specified currency amount**”) shall be construed as a reference to the amount of the other relevant currency which can be purchased at the Agent’s Spot Rate of Exchange with the specified currency amount in the foreign exchange market at or about 11:00 a.m. on the date the calculation falls to be made for spot delivery;
- (vii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated (however fundamentally including by any increase in amounts owing or available to be utilised under such document or any change to the parties thereto);
- (viii) “**guarantee**” means (other than in Clause 19 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (ix) “**including**” means including without limitation;

- (x) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xi) an “**Obligor**” having an obligation or being subject to any requirement under the terms of this Agreement where and for so long as that Obligor is not a party to this Agreement, shall be construed as an obligation of the Company to procure that such Obligor complies with such obligation or requirement (but this shall not limit or otherwise affect any separate obligation such Obligor may be under pursuant to the terms of any other Finance Document to so comply with an equivalent obligation or requirement);
- (xii) “**pay**”, “**prepay**” or “**repay**” in Clause 23 (*General Undertakings*) includes by way of set-off, combination of accounts or otherwise;
- (xiii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xiv) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having force of law which are binding or customarily complied with) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (xv) “**rights**” include all rights, whether actual or contingent, present or future, arising under contract or law, or in equity;
- (xvi) a “**sub-participation**” includes a sub-participation (whether risk or funded), total return swap, credit default swap or any other similar transaction pursuant to which an economic interest is acquired or is to be acquired in or in relation to the Facility, and “**sub-participant**” shall be construed accordingly;
- (xvii) “**trustee**”, “**fiduciary**” and “**fiduciary duty**” has in each case the meaning given to such term under applicable law;
- (xviii) the “**winding up**”, “**dissolution**”, “**administration**” or “**judicial management**” of a person or a “**receiver**” or “**administrative receiver**” or “**administrator**” or “**judicial manager**” in the context of insolvency proceedings or security enforcement actions in respect of a person shall be construed so as to include any equivalent or analogous proceedings or any equivalent and analogous person or appointee (respectively) under the law of the jurisdiction in which such person is established or incorporated or any jurisdiction in which such person carries on business including (in respect of proceedings) the seeking or occurrence of liquidation, winding up, reorganisation, dissolution,

administration, judicial management, arrangement, adjustment, protection or relief of debtors;

- (xix) a provision of law is a reference to that provision as amended or re-enacted;
 - (xx) the awareness of any Group Company shall be limited to the actual awareness of that Group Company at the relevant time having made due and careful enquiry;
 - (xxi) a time of day is a reference to London time;
 - (xxii) words importing the plural shall include the singular and *vice versa*;
 - (xxiii) where a person (the “**first person**”) is required to “**ensure**” or “**procure**” certain acts or circumstances in relation to any other person (the “**second person**”) and the first person owns less than eighty per cent. (80%) of the equity in the second person and the balance of the equity is not owned by one or more Affiliates of the first person, the first person shall only be obliged to use its reasonable efforts, subject to all limitations and restrictions on the influence it may exercise as a parent or shareholder over the second person, pursuant to any agreement with the other shareholders or pursuant to any applicable law which requires the consent of the other shareholders, and its obligation to ensure or procure shall not be construed as a guarantee for such acts or circumstances, provided that the provision of this paragraph shall only apply in relation to a person acquired by a Group Company pursuant to an Approved Acquisition; and
 - (xxiv) a “**finance lease**” or a “**capital lease**” (or a “**finance or capital lease**”) shall include any such lease which would, in accordance with the Accounting Principles as applied at the date of this Agreement, be treated as a finance or capital lease but shall exclude any operating lease entered into at any time which is subsequently treated as a finance or capital lease as a result of any change to the treatment of such leases under the Accounting Principles which is implemented after the date of this Agreement.
- (b) Section, clause and Schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) References to any matter being “**permitted**” under this Agreement or any other Finance Document shall include references to such matters not being prohibited or otherwise being approved under this Agreement or such other Finance Document.

- (e) A Default or Event of Default is “**continuing**” if it has not been remedied or waived.
- (f) Any financial ratios required to be maintained or satisfied in order for a specific action to be permitted shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which the ratio is expressed and rounding the result up or down to the nearest number (with rounding up if there is no nearest number).

1.3 Intercreditor Agreement

- (a) This Agreement is entered into subject to, and with the benefit of, the terms of the Intercreditor Agreement.
- (b) The Parties acknowledge clause 1.6 (*Security Agent*) of the Intercreditor Agreement.
- (c) Notwithstanding anything to the contrary in this Agreement, the terms of the Intercreditor Agreement will prevail if there is a conflict between the terms of this Agreement and the terms of the Intercreditor Agreement.

1.4 Currency Symbols and Definitions

“**GBP**”, “**£**” and “**sterling**” denotes the lawful currency of the United Kingdom.

1.5 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.6 Personal liability

Where any natural person gives a certificate or other document or otherwise gives a representation or statement on behalf of any of the parties to the Finance Documents pursuant to any provision thereof and such certificate or other document, representation or statement proves to be incorrect, the individual shall incur no personal liability in consequence of such certificate, other document, representation or statement being incorrect save where such individual acted fraudulently in giving such certificate, other document, representation or statement (in which case any liability of such individual shall be determined in accordance with applicable law).

1.7 Adjustment of Baskets

- (a) Any amounts incurred or transaction undertaken on the basis of any basket, test or permission where an element is determined by reference to

Consolidated EBITDA (“**EBITDA Basket**”) shall (provided that such amounts are, at the time of incurrence, duly and properly incurred in accordance with the relevant basket, test or permission) be treated as having been duly and properly incurred without the occurrence of an Event of Default even in the event that such EBITDA Basket subsequently decreases by virtue of the operation of that calculation.

- (b) Notwithstanding any other provisions to the contrary in this Agreement or any other Finance Document, any financial definition or incurrence based permission, test or basket (including an EBITDA Basket) prior to the first Quarter Date after the Closing Date shall be calculated in accordance with levels and ratios as at the Closing Date as set out in the Bank Case Model and thereafter as provided for and calculated in accordance with the provisions in this Agreement.
- (c) In the event that any amount or transaction meets the criteria of more than one of the baskets, exceptions or permissions set out in Clause 23 (*General Undertakings*) and Schedule 12 (*General Undertakings*), the Company, in its sole discretion, will classify and may from time to time reclassify that amount or transaction to a particular basket, exception or permissions and will only be required to include that amount or transaction in one of those baskets, exceptions or permissions (and, for the avoidance of doubt, an amount or transaction may at the option of the Company be split between different baskets, exceptions or permissions), provided that Indebtedness under Section 1.03(a) of Schedule 12 (*General Undertakings*) may not be so reclassified or split.

1.8 Unrestricted Subsidiaries

Notwithstanding any other provision of this Agreement, none of the representations and warranties in Clause 20 (*Representations*) (other than Clause 20.21 (*Sanctions, Anti-Money Laundering and Anti-Bribery*)), the provisions of Clause 21 (*Information Undertakings*) or undertakings in Clause 23 (*General Undertakings*) (other than Clause 23.7 (*Sanctions, Anti-Money Laundering and Anti-Bribery*)) shall apply to any Unrestricted Subsidiary and Unrestricted Subsidiaries shall be deemed not to be Subsidiaries for the purposes of the provisions therein or any other provision of this Agreement save for the definition of “Unrestricted Subsidiary” and except to the extent that an Unrestricted Subsidiary is subsequently re-designated by the Company as a Subsidiary.

1.9 Existing Finance Documents

Notwithstanding any other term of the Finance Documents, from the date of this Agreement until the Closing Date, any action, event or circumstance permitted by the Existing Finance Documents shall be deemed to be permitted under the Finance Documents.

2. THE FACILITY

2.1 The Facility

- (a) Subject to the terms of this Agreement, the Lenders make available a Base Currency term loan facility in an aggregate amount equal to the Total Commitments.
- (b) The Facility will be available to the Company.

2.2 Finance Parties' Rights and Obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Obligors' Agent

- (a) Each Obligor (other than the Company) by its execution of this Agreement irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including Utilisation Requests and Selection Notices), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect such Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company, and in each case such Obligor shall be bound as though such Obligor

itself had given the notices and instructions (including, without limitation, any Utilisation Requests or Selection Notices) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

2.4 Increase

- (a) The Company may by giving prior notice to the Agent by no later than the date falling thirty (30) Business Days after the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.5 (*Right of Cancellation in relation to a Defaulting Lender*);
 - (ii) the Commitments of a Lender in accordance with Clause 7.4 (*Right of Cancellation and Repayment in relation to a single Lender*);
 - (iii) the Commitments of a Lender in accordance with Clause 7.1 (*Illegality*); or
 - (iv) the Commitments of a Lender in accordance with Clause 37.4 (*Replacement of a Lender*), request that the Commitments relating to the Facility be increased (and the Commitments relating to the Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments relating to the Facility so cancelled as follows:
 - (A) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each, an "**Increase Lender**") selected by the Company (none of which shall be an Equity Party or a Group Company) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
 - (B) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would

have assumed and/or acquired had the Increase Lender been an Original Lender;

- (C) each Increase Lender shall become a Party as a “Lender” and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (D) the Commitments of the other Lenders shall continue in full force and effect; and
 - (E) any increase in the Commitments relating to the Facility shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments relating to the Facility will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
 - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
 - (B) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Company and the Increase Lender.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a Fee Letter.
- (e) Unless the Agent otherwise agrees or the increased Commitment is assumed by an existing Lender, the Company shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of GBP 2,500 and the Company shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) properly incurred by

either of them in connection with any increase in Commitments under this Clause.

- (f) Clause 25.4 (*Limitation of Responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.4 in relation to an Increase Lender as if references in that Clause to:
- (i) an “**Existing Lender**” were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the “**New Lender**” were references to that “**Increase Lender**”; and
 - (iii) a “**re-transfer**” and “**re-assignment**” were references to respectively a “**transfer**” and “**assignment**”.

2.5 Maturity Extension

- (a) Pursuant to a request (an “**Extension Request**”), the Company may, on not more than two occasions, request that the Maturity Date (as extended by operation of this Clause 2.5) be extended by three (3) months per Extension Request (each a “**Maturity Extension**”) provided that:
- (i) no Event of Default is continuing at the time of such Extension Request; and
 - (ii) the Company, on or prior to date the when the Maturity Extension takes effect, pays (or procures payment of) an extension fee to the Agent (for account of each of the Lenders) calculated as 1.00% of the principal amount of Loans outstanding as at that date; and
 - (iii) with respect to the second occasion (if any) of the exercise of an Extension Request, the Company has, on or prior to the date of the Extension Request, complied with the “Guarantor Coverage Test” and has delivered a certificate to the Agent certifying such compliance.
- (b) The Lenders irrevocably authorize the Agent to countersign the Extension Request provided the condition in paragraph (a) is satisfied and upon such countersignature the Maturity Date (as extended by operation of this Clause 2.5) shall be extended.
- (c) Any Extension Request must be delivered to the Agent at least 5 Business Days (or such shorter period as agreed between the Company and the Agent) before the Maturity Date (as extended by operation of this Clause 2.5).

3. PURPOSE

3.1 Purpose

- (a) The Company shall apply all amounts borrowed by it under the Facility towards (directly or indirectly) the following:

- (i) to finance the proposed Acquisition, directly or indirectly, by the Company, including:
 - (A) to finance the consideration payable by The Company for the acquisition by it of shares in the Target pursuant to a Scheme or Offer and the cash settlement of any shares in the Target held by the Target and/or Target warrants, share options or similar equity-based financial instruments granted to employees of the Target Group (including, without limitation, any “performance share units”);
 - (B) to finance the acquisition by the Company of shares in the Target to be acquired by it/them as a result of implementing the Squeeze Out; and
 - (C) to finance (in respect of any market or other purchase made by the Company after the Closing Date) or refinance market and other purchases of shares in the Target made by the Company other than pursuant to the Scheme, the Offer or the Squeeze Out, whether before or after the Closing Date;
- (ii) to finance the payment of any Acquisition Costs.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial Conditions Precedent

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders’ Participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received (or the Original Lenders (or, after the Syndication Date, the Majority Lenders) have waived the requirement to receive) all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent (acting reasonably), save where set out in Part 1 of Schedule 2 (*Conditions Precedent*). The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further Conditions Precedent

Subject to Clause 4.1 (*Initial Conditions Precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders’ Participation*) in relation to a Utilisation (other

than one to which Clause 4.4 (*Utilisations during the Certain Funds Period*) applies) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Utilisation; and
- (b) in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 20 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations, to be made by each Obligor are true and accurate in all material respects (except where the representation or warranty is already qualified by materiality under Clause 20 (*Representations*)).

4.3 Maximum Number of Utilisations

- (a) The Company may not deliver a Utilisation Request if as a result of the proposed Utilisation, more than 3 Loans would be outstanding;
- (b) The Company may not request that a Loan be divided if, as a result of the proposed division, more than 15 Loans would be outstanding.

4.4 Utilisations during the Certain Funds Period

- (a) Subject to Clause 4.1 (*Initial Conditions Precedent*) and notwithstanding the provisions of Clause 4.2 (*Further Conditions Precedent*), during the Certain Funds Period, the Lenders will be obliged to comply with Clause 5.4 (*Lenders' Participation*) in relation to a Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Major Default is continuing or would result from the proposed Utilisation;
 - (ii) no Change of Control has occurred;
 - (iii) it is not illegal or contrary to applicable law for any Lender to fund under the applicable Facility (and if that is the case that Lender must notify the Company immediately when it becomes aware of the relevant legal issue and such Lender's Commitment shall be cancelled or transferred pursuant to the provisions of Clause 7.1 (*Illegality*)).
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' Participation*)), none of the Finance Parties shall be entitled to:
 - (i) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (ii) rescind, terminate or cancel this Agreement or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation (other than set off in respect of agreed fees, costs and expenses);

- (iii) refuse to participate in the making of a Certain Funds Utilisation;
- (iv) declare that cash cover in respect of each Certain Funds Utilisation is immediately due and payable;
- (v) declare that cash cover in respect of each Certain Funds Utilisation is payable on demand by the Agent on the instructions of the Majority Lenders;
- (vi) exercise any right of set-off or counterclaim in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or
- (vii) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Company may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Facility;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and Amount*); and
 - (iii) the proposed Interest Period complies with Clause 11 (*Interest Periods*).
- (b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is during the Certain Funds Period relating to the Facility. Only one Utilisation may be requested in each subsequent Utilisation Request.

5.3 Currency and Amount

- (a) The currency specified in a Utilisation Request must be the Base Currency.

- (b) The amount of the proposed Utilisation must be a minimum of GBP 10,000,000 or, if less, the Available Facility.

5.4 Lenders' Participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

5.5 Cancellation of Commitment

- (a) The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.
- (b) The Commitments shall be automatically cancelled to the extent of the principal amount of the proceeds of any Take-out Financing borrowed or issued by the Company (after deducting (without duplication) all reasonable fees, costs and expenses relating to such offering, placement or incurrence incurred by the Group), immediately upon the unconditional receipt by the Company of the proceeds of such Take-out Financing

6. REPAYMENT

6.1 Repayment of the Loans at the Maturity Date

- (a) The Company shall repay to the Agent for the ratable account of the Lenders the aggregate outstanding principal amount of the Loans on the Maturity Date.
- (b) The Company may not reborrow any part of the Facility which is repaid.

7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

7.1 Illegality

Subject to Clause 2.4 (*Increase*) and Clause 37.4 (*Replacement of a Lender*), if after the date of this Agreement (or, if later, the date the relevant Lender became a Party) it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation (or for any Affiliate of a Lender for that Lender to do so):

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event and the Agent shall notify the Company as soon as reasonably practicable after receiving such notice;
- (b) upon the Agent notifying the Company (“**Notice to the Company**”), the Commitment of that Lender will be immediately reduced and cancelled to the extent necessary to comply with applicable law or, (save for in circumstances

where it would be illegal for the relevant Utilisation to remain in place) at the Company's request, the Lender's Commitment shall be transferred to another person pursuant to Clause 37.4 (*Replacement of a Lender*) provided that such replacement shall take place no later than ten (10) Business Days from the date of the Notice to the Company; and

- (c) the Company shall repay that Lender's reduced and cancelled participation in the Utilisations made to the Company on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) or, as the case may be, request that Lender's Commitment shall be transferred to another person pursuant to Clause 37.4 (*Replacement of a Lender*).

7.2 Voluntary Cancellation

The Company may, if it gives the Agent not less than three (3) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of GBP 1,000,000) of an Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders, as far as reasonably practicable, rateably under the Facility.

7.3 Voluntary Prepayment of Loans

- (a) The Company may, by giving the Agent not less than one (1) Business Day's (or such shorter period as the Majority Lenders may agree) prior written notice, prepay the whole or any part of the Loans (but, if in part, being an amount that reduces the Loans by a minimum amount of GBP 1,000,000 or, if less, the balance of the Loans) at a price equal to 100 per cent. of the principal amount thereof plus accrued and unpaid interest to the date of repayment (plus any other amounts then due and payable under any Finance Documents).
- (b) Prepayment notices pursuant to this Clause 7.3 may be conditional provided that if the relevant prepayment is not made on the date specified in the notice, the Lenders of the Loan(s) that were the subject of the prepayment notice will be reimbursed for any Break Costs that they actually incur as a result of the prepayment not being made.

7.4 Right of Cancellation and Repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 14.2 (*Tax Gross-up*); or
 - (ii) any Lender claims indemnification from an Obligor under Clause 14.3 (*Tax Indemnity*) or Clause 15.1 (*Increased Costs*), the Company may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment

of that Lender's participation in the Utilisations or, as the case may be, of the transfer of that Lender's participation at par, for cash, together with accrued and unpaid interest and fees and costs and other amounts due under the Finance Documents pursuant to Clause 37.4 (*Replacement of a Lender*) and in accordance with Clause 25 (*Changes to the Lenders*).

- (b) On receipt of a notice referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero and/or, as the case may be, on the date set out in such notice and in accordance with Clause 25 (*Changes to the Lenders*) that Lender's Commitment shall be transferred to another person pursuant to Clause 37.4 (*Replacement of a Lender*).
- (c) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Company in that notice), the Company shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents or, as the case may be, on the date set out in such notice and in accordance with Clause 25 (*Changes to the Lenders*) that Lender's Commitment shall (unless it shall be unlawful for the Lender's Commitment to be transferred) be transferred to another person pursuant to Clause 37.4 (*Replacement of a Lender*), provided that the transfer of such Lender's participation is at par, for cash, together with accrued and unpaid interest, fees and costs and other amounts due under the Finance Documents and to an Existing Lender or New Lender willing to assume such participation as directed by the Company.

7.5 Right of Cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent not less than three (3) Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

8. MANDATORY PREPAYMENT

8.1 Change of Control

Upon the occurrence of a:

- (a) Change of Control, or
- (b) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions (a "Sale"), then:

the Company must promptly notify the Agent of that event and: (x) a Lender shall not be obliged to fund a utilisation; and (y) if a Lender so requires and notified the Agent within 30 days of the Company notifying the Agent of the event, the Agent shall (by five (5) Business Days' notice to the Company) cancel the commitments of that Lender and declare the participation of that Lender in all outstanding utilizations due and payable.

8.2 Take-out Financing

- (a) The Company shall promptly apply an amount equal to 100 per cent. of the proceeds from a Take-out Financing that are received by it, or if applicable, paid out of escrow in cash to it, after deducting (without duplication) all reasonable fees, costs and expenses relating to such offering, placement or incurrence incurred by the Group, towards the prepayment of the Loans.
- (b) Subject to paragraph (b) of Clause 8.5 (*General*) below, each member of the Group (other than the Company) shall promptly pay to the Company an amount equal to 100 per cent of the proceeds from a Take-out Financing that are received by it or if applicable, paid out of escrow in cash to it, after deducting (without duplication) all reasonable fees, costs and expenses relating to such offering placement or incurrence incurred by the Group, and upon receipt the Company shall apply the proceeds of such payment towards the prepayment of the Loans.
- (c) Any prepayment made under paragraph (a) or (b) above shall be applied in prepayment of the Loans on a pro rata basis.

8.3 Additional Mandatory Prepayment Provisions

If (1) the Company or any Restricted Subsidiary of the Company Disposes of any property or assets (other than any Disposal of any property or assets permitted by Section 1.05(a), 1.05(b), 1.05(c), 1.05(d), 1.05(e), 1.05(g), 1.05(h), 1.05(i), 1.05(k), 1.05(l), 1.05(m), 1.05(n), 1.05(o), 1.05(p), 1.05(q), or 1.05(v)) of Schedule 12 (*General Undertakings*) or (2) any Casualty Event (as defined in Schedule 13 (*Certain New York Law Defined Terms*)) occurs, in each case which results in the realization or receipt by the Company or such Restricted Subsidiary of Net Proceeds, the Company shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of such realization or receipt by the Company or any Restricted Subsidiary of such Net Proceeds, an aggregate principal amount of Loans in an amount equal to 100% of such Net Proceeds realized or received; provided that if at the time that any such prepayment would be required, the Company (or any Restricted Subsidiary) is required to prepay or offer to repurchase any other applicable Indebtedness that is secured on a pari passu basis, and pari passu in right of payment, with the obligations under the Finance Documents, then the Company may apply an amount equal to 100% of such required prepayment on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and such other applicable Indebtedness at such time; provided that the portion of such amount allocated to such other applicable Indebtedness shall not exceed the amount required to be allocated to such other applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, shall be allocated to the Loans in accordance with the terms of this Agreement) to the prepayment of the Loans and to

the repurchase or prepayment of such other applicable Indebtedness, and the amount of prepayment of the Loans that would have otherwise been required pursuant to this Clause 8.3 shall be reduced accordingly; provided, further, that to the extent the holders of such other applicable Indebtedness decline to have such Indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Loans in accordance with the terms of this Agreement notwithstanding. Anything else in this Clause 8.3 notwithstanding, at the option of the Company, the Company may use all or any portion of Net Proceeds otherwise required to be applied to a prepayment in accordance with this Clause 8.3 to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Company or its Restricted Subsidiaries, in each case within 12 months of receipt of such Net Proceeds, and such Net Proceeds shall not be required to be applied to a prepayment under this Clause 8.3 except to the extent not, within 12 months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such Net Proceeds are not so used within such 12-month period but within such 12-month period are contractually committed to be used, then upon the earlier of (x) the termination of such contract or (y) 6 months after the last day of such 12-month period, such remaining portion shall be required to be applied to a prepayment in accordance with this Clause 8.3 as of the date of such termination or such date without giving effect to this proviso); provided, further that the Company may elect to make such reinvestment prior to receiving such Net Proceeds (provided that, such reinvestment shall be made no earlier than the earlier of execution of a definitive agreement for the relevant Disposal and consummation of the relevant Disposal); and provided, further, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$1,000,000 or (y) the aggregate net proceeds exceed \$2,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause).

8.4 Application of Mandatory Prepayments

- (a) A prepayment of any amount under Clause 9.4 shall be applied in the following order:
 - (i) *first*, in cancellation of Available Commitments under the Facility (and the commitment of the Lenders will be cancelled rateably); and
 - (ii) *second, pro rata* in prepayment of Loans.

8.5 General

- (a) All prepayments to be made under Clause 8.3 (*Additional Mandatory Prepayment Provisions*) and/or Clause 9.4 (*Prepayment in accordance with Agreement*) (and any intra-Group movements of cash to facilitate such prepayments) are subject to permissibility under, and shall only be required to the extent permitted by, local law (including, without limitation, legal or regulatory requirements as to maintenance of capital, financial assistance, corporate benefit and/or distributable reserve and other restrictions on up streaming of cash intra-group and the fiduciary and statutory duties of the directors/managers of the relevant Group Companies). There will be no

requirement to make any prepayment and/or provide cash cover where the Tax or other cost to the Group of making that payment or making funds available to another Group Company to enable such payment to be made, exceed an amount equal to three per cent. (3%) of the amount to be prepaid or if the relevant funds are not available for one or more of the reasons specified in the preceding sentence. The Parent Guarantor shall ensure that all Group Companies will use their reasonable endeavours to overcome such restrictions and/or minimise any costs of such prepayment. If at any time restrictions on a prepayment are removed, any relevant proceeds will be applied in prepayment of the Facility upon expiry of the then current Interest Period.

- (b) Any proceeds received by a Subsidiary of the Company shall be applied in accordance with Clause 8.3 (*Additional Mandatory Prepayment Provisions*) only to the extent that such proceeds are received by the Company from such Subsidiary as a dividend or other distribution (taking account any amounts required to be paid by Target to minority shareholders (if any) *pro rata* to their shareholdings).
- (c) Any amendments (save for the amendments relating to prepayments following a Change of Control or Sale) to this Clause 8 and/or Schedule 12 (*General Undertakings*) shall be capable of being made with the consent of the Majority Lenders.

9. RESTRICTIONS

9.1 Notices of Cancellation or Prepayment

Any notice of cancellation or prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) or Clause 8.4 (*Application of Mandatory Prepayments*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

9.2 Interest and other Amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

9.3 No Reborrowing of Facility

The Company may not reborrow any part of the Facility which is prepaid.

9.4 Prepayment in accordance with Agreement

The Company shall not repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

9.5 No Reinstatement of Commitments

Subject to Clause 2.4 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

9.6 Agent's Receipt of Notices

If the Agent receives a notice under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) it shall promptly forward a copy of that notice or election to either the Company or the affected Lender, as appropriate.

9.7 Effect of Repayment and Prepayment on Commitments

If all or part of a Utilisation under the Facility is repaid or prepaid and is not available for redrawing other than by operation of Clause 4.2 (*Further Conditions Precedent*) or Clause 4.4 (*Utilisations during the Certain Funds Period*) an amount of the Commitments (equal to the Base Currency Amount of the amount of the Utilisation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellations under this Clause 9.7 shall reduce the Commitments of the Lenders under the Facility.

9.8 [Reserved]

9.9 Application of Prepayments

Any prepayment of a Utilisation (other than a prepayment pursuant to Clauses 7.1 (*Illegality*), 7.4 (*Right of Cancellation and Repayment in relation to a Single Lender*), 37.4 (*Replacement of a Lender*) and/or 37.6 (*Replacement of a Defaulting Lender*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

10. INTEREST

10.1 Calculation of interest

The rate of interest on each Loan commencing for each Interest Period is the percentage rate per annum which is the aggregate of (excluding default interest):

- (i) the then applicable Margin; and
- (ii) LIBOR.

10.2 Payment of interest

The Company shall pay accrued interest in cash on the Loans on the last day of each Interest Period (and, if the Interest Period is longer than six (6) Months, on the dates falling at six (6) Monthly intervals after the first day of the Interest Period) and on the date of any prepayment of any Loans, except for an Interest Period shorter than seven days for which payment of interest shall be made in arrears on the day following the last day of such Interest Period.

10.3 Default Interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent. (1.00%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. (1.00%) higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded (to the extent permitted under any applicable law) with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) Notwithstanding anything to the contrary in this Agreement, in no event shall any cap or limit on the yield or interest rate payable with respect to Loans affect the payment in cash of any default rate of interest in respect of the Loan.

10.4 Notification of Rates of Interest

The Agent shall promptly notify the Lenders and the Company of the determination of a rate of interest under this Agreement.

11. INTEREST PERIODS

11.1 Interest Periods; Selection of Interest Periods

- (a) Subject to paragraph (d) below, the Company may select an Interest Period for a Loan in the Utilisation Request for the Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for the Loan is irrevocable and must be delivered to the Agent by the Company not later than the Specified Time.
- (c) If the Company fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be one month or, such shorter period as is notified by the Agent (acting on the instructions of the Majority Lenders).

- (d) Subject to this paragraph (d), the Company may select an Interest Period of one (1), three (3) or six (6) Months, or, any other period agreed between the Company and the Agent (acting on the instructions of the Majority Lenders, calculated for these purposes by reference only to the Lenders participating in the relevant Loan). If the Company notifies the Agent of its intention to prepay all remaining outstanding amounts under the Facility the Agent may, where applicable, select a duration of the next Interest Period such that the final day of that Interest Period corresponds to the date on which such prepayment is scheduled to take place.
- (e) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (f) No Interest Period for a Loan shall extend beyond the Maturity Date applicable to its Facility and no Interest Period shall end after the Maturity Date.

11.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

11.3 Consolidation and Division of Term Loans

- (a) Subject to paragraph (b) below, if two (2) or more Interest Periods:
 - (i) relate to Term Loans advanced under the same Facility; and
 - (ii) end on the same date,

the Term Loan will, unless the Company specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Term Loan under the Facility on the last day of the Interest Period.

- (b) Subject to Clause 4.3 (*Maximum Number of Utilisations*), and Clause 5.3 (*Currency and Amount*) if the Company requests in a Selection Notice that a Term Loan be divided into two (2) or more Term Loans, that Term Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, having an aggregate Base Currency Amount equal to the Base Currency Amount of the Term Loan immediately before its division.

12. CHANGES TO THE CALCULATION OF INTEREST

12.1 Unavailability of Screen Rate

- (a) **Interpolated Screen Rate:** If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

- (b) **Shortened Interest Period:** If no Screen Rate is available for LIBOR for:
- (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,
- the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable LIBOR for that shortened Interest Period shall be determined pursuant to the definition of “LIBOR”.
- (c) **Shortened Interest Period and Historic Screen Rate:** If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR for:
- (i) the currency of that Loan; or
 - (ii) the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate,
- the applicable LIBOR shall be the Historic Screen Rate for that Loan.
- (d) **Shortened Interest Period and Interpolated Historic Screen Rate:** If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
- (e) **Weighted Average Cost of Funds:** If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to paragraph (b) above, revert to its previous length and there shall be no LIBOR for that Loan and Clause 12.4 (*Cost of Funds*) shall apply to that Loan for that Interest Period.

12.2 Market Disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender’s share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
 - (ii) the Weighted Average Cost of Funds.
- (b) If:
- (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a) above is less than LIBOR; or
 - (ii) a Lender has not notified the Agent of a percentage rate per annum pursuant to paragraph (a) above, the cost to that Lender of funding its

participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

In this Agreement, “**Market Disruption Event**” means:

- (A) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed forty per cent. (40%) of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

12.3 Alternative Basis of Interest or Funding

- (a) If a Market Disruption Event occurs and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

12.4 Cost of Funds

- (a) If this Clause 12.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the weighted average of the rates notified to the Agent by each Lender as soon as practicable and in any event by close of business on the date falling 2 Business Days after the Quotation Day (or, if earlier, on the date falling 5 Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 12.4 applies and the Agent or the Parent Guarantor so requires, the Agent and the Parent Guarantor shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Parent Guarantor, be binding on all Parties.
- (d) If this Clause 12.4 applies pursuant to Clause 12.2 (*Market Disruption*) and:
 - (i) a Lender’s Funding Rate is less than LIBOR; or

- (ii) a Lender does not supply a quotation by the time specified in paragraph 12.4(a)(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

- (e) If this Clause 12.4 applies pursuant to Clause 12.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (d)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

12.5 Break Costs

- (a) The Company shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Company on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, together with a demand made under paragraph (a) above, provide a certificate confirming the amount of (and giving reasonable details of the calculation of) its Break Costs for any Interest Period in which they accrue, a copy of which shall be provided to the Company.

13. FEES

13.1 Commitment Fee and Funding Fee

Subject to a Utilisation being made under this Agreement, the Company shall pay (or shall procure that another Obligor shall pay) to the Arrangers a commitment fee and funding fee in the amount and at the times agreed in a Fee Letter.

13.2 Agency Fee

Subject to a Utilisation being made under this Agreement, the Company shall pay (or shall procure that another Obligor shall pay) to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

13.3 Security Agent Fee

Subject to a Utilisation being made under this Agreement, the Company shall pay (or shall procure that another Obligor shall pay) to the Security Agent (for its own account) the Security Agent fee in the amount and at the times agreed in a Fee Letter.

13.4 No Closing Date no Fee

Notwithstanding any provision of this Clause 13, Clause 18 (*Costs and Expenses*), no fees, commissions, costs and expenses of the Secured Parties of any kind (other than reasonable legal costs up to an agreed cap and indemnification and related costs set forth hereunder, to the extent applicable) shall be payable unless and until the Closing Date occurs, unless otherwise set forth in a Fee Letter.

14. TAX GROSS-UP AND INDEMNITIES

14.1 Definitions

In this Agreement:

“**Borrower DTTP Filing**” means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Obligor, which:

- (a) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Schedule 1 (*The Original Lenders*), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (b) where it relates to a Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party as a Lender; and is filed with HM Revenue & Customs within 30 days of that date.

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under any Finance Document.

“**Qualifying Lender**” means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
 - (i) a Lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
 - (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;

- (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
- (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
 - (iii) a Treaty Lender; or
- (b) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

“**Tax Confirmation**” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (*Tax Gross-up*) or a payment under Clause 14.3 (*Tax Indemnity*).

“**Treaty Lender**” means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Loan is effectively connected; and
- (c) meets all other conditions which must be met under the Treaty for residents of such Treaty State to obtain full exemption from tax on interest imposed by the United Kingdom, subject to completion of any necessary procedural formalities.

“**Treaty State**” means a jurisdiction having a double taxation agreement (a “**Treaty**”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

“**UK Non-Bank Lender**” means a Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.

Unless a contrary indication appears, in this Clause 14 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

14.2 Tax Gross-up

- (a) The Obligors shall make all payments to be made by them without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Obligors.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from the relevant Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that

- date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority;
- (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of “Qualifying Lender” and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “**Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(i)(B) of the definition of “Qualifying Lender” and:
 - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or
 - (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (h) below.
 - (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent, for the Finance Party entitled to the payment, a statement under section 975 ITA or other evidence reasonably satisfactory to the Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (g) (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-

operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

(ii)

(A) A Treaty Lender which is an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Schedule 1 (*The Original Lenders*); and

(B) a Treaty Lender which is not an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

(h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:

(i) the Obligor making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

(ii) the Obligor making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

(B) HM Revenue & Customs has not given the Company authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the Company has notified that Lender in writing, that Lender and the Obligor shall co-operate in completing any additional procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

(i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Utilisation unless the Lender otherwise agrees.

(j) An Obligor shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.

- (k) A UK Non-Bank Lender which is an Original Lender gives a Tax Confirmation to the Company by entering into this Agreement.
- (l) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.

14.3 Tax Indemnity

- (a) The Company shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 14.2 (*Tax Gross-up*);
 - (B) would have been compensated for by an increased payment under Clause 14.2 (*Tax Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 14.2 (*Tax Gross-up*) applied;
 - (C) relates to a FATCA Deduction required to be made by a Party; or
 - (D) relates to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy).
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the relevant Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.

- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

14.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the relevant Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

14.5 Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes on becoming a Party, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If such Lender fails to indicate its status in accordance with this Clause 14.5 then such Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent and the Company which category applies. For the avoidance of doubt, the documentation which a Lender executes on becoming a Party shall not be invalidated by any failure by a Lender to comply with this Clause 14.5.

14.6 Stamp taxes

The Company shall pay, and within three (3) Business Days of demand by the Agent, indemnify each Finance Party and each Secured Party against any cost, loss or liability that Finance Party or Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, except for any such stamp duty, registration and other similar Taxes payable in respect of any transfer, assignment, sub-participation, sub-contract or substitution of any Finance Parties' rights or Secured Parties' rights under a Finance Document (except where the transfer, assignment, sub-participation, sub-contract or substitution is made at the written request of the Obligor or as a result of steps taken in accordance with Clause 17 (*Mitigation by the Lenders*)).

14.7 Value added tax

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

14.8 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payment made under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

14.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Agent and the Agent shall notify the other Finance Parties.

15. INCREASED COSTS

15.1 Increased Costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Company shall, within three (3) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or any Change in Law or (ii) compliance with any law or regulation made after the date of this Agreement (or, if later, the date it became a Party) or (iii) the implementation or application of or compliance with Basel III Standards and/or CRD IV or any other law or regulation which implements Basel III Standards and/or CRD IV.
- (b) In this Agreement:

“**Increased Costs**” means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

15.2 Increased Cost Claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent or the Company, provide a certificate (giving reasonable details of the

circumstances giving rise to such claim and the calculation of the Increased Cost, provided that it does not extend to information and detail that the Finance Party is not legally allowed to disclose, is confidential or price-sensitive in relation to listed shares or other instruments issued by that Finance Party or any of its Affiliates) confirming the amount of its Increased Costs, a copy of which shall be provided to the Company.

15.3 Exceptions

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction that is required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 14.3 (*Tax Indemnity*) (or would have been compensated for under Clause 14.3 (*Tax Indemnity*) but was not so compensated solely because any of the exclusions in Clause 14.3 (*Tax Indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation or the terms of any Finance Document;
 - (v) attributable to any penalty having been imposed by the relevant central bank or monetary or fiscal authority upon the Finance Party or its Affiliates by virtue of its having exceeded any country or sector borrowings limits or breached any directives imposed on it, in the form that any such limits or directives are in at the date on which it became a Party;
 - (vi) attributable to the implementation or application of, or compliance with, the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement or, if later, the date it became party to this Agreement (but excluding any amendment arising out of the Basel III Standards unless otherwise excluded under paragraph (vii) below) (“**Basel II**”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates);
 - (vii) attributable to the implementation or application of, or compliance with, the Basel III Standards or CRD IV or any other law or regulation which implements the Basel III Standards or CRD IV, in each case to the extent the relevant Finance Party would reasonably be able to quantify the relevant Increased Cost as at the date of this Agreement or, if later, the date it became a Party; or

- (viii) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy).
- (b) In this Clause 15.3:
 - (i) “**Tax Deduction**” has the same meaning given to the term in Clause 14.1 (*Definitions*);
 - (ii) “**Basel III Standards**” means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”; and
 - (iii) “**CRD IV**” means:
 - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

16. OTHER INDEMNITIES

16.1 Currency Indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or

- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, that Obligor shall as an independent obligation, within three (3) Business Days of demand, indemnify the Arrangers and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

16.2 Other Indemnities

- (a) The Company shall (or shall procure that an Obligor will), within three (3) Business Days of demand (which demand shall be accompanied by reasonable calculations or details of the amount demanded), indemnify the Arrangers and each other Secured Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by the Company in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
 - (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Company.
- (b) The Company shall (or shall procure that an Obligor will) promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (together, the “**Indemnified Persons**”), against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of any action, claim, investigation or proceeding commenced or threatened (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights and legal fees of one firm of counsel in each applicable jurisdiction for all Indemnified Persons (and, in the case of an actual or perceived conflict of interest where the Indemnified Person affected by such conflict informs you of such conflict and thereafter retains its own counsel, of one additional firm of counsel in each applicable jurisdiction for all such similarly affected

Indemnified Persons)) in relation to the Acquisition (including the funding of the Acquisition) and/or the Finance Documents.

- (c) No Obligor will be liable under paragraph (b) above for any cost, expense, loss or liability incurred by or awarded against an Indemnified Person to the extent that cost, expense, loss or liability is finally judicially determined to have resulted from:
 - (i) any breach by that Indemnified Person of any material provision of this Agreement or any document referred to therein or any confidentiality undertaking given by that Indemnified Person; or
 - (ii) the gross negligence or wilful misconduct of that Indemnified Person.
- (d) If any event occurs in relation to which indemnification will be sought from an Obligor under paragraph (b) above, the relevant Indemnified Person shall (provided that it is legally permitted to do so) notify the Company in writing within ten (10) Business Days after the relevant Indemnified Person becomes aware of such event (provided that the failure to notify the Company shall not relieve the Company from any liability that the Company may have under paragraph (b) above except to the extent that the Obligors have been prejudiced through the forfeiture of substantive rights or defences by such failure), consult with the Company fully in good faith and promptly with respect to the conduct of the relevant claim, action or proceeding, conducts such claim, action or proceeding properly and diligently (to the extent permitted by law and without being under any obligation to disclose any information which it is not lawfully permitted to disclose) and shall not settle any claim, action or proceeding without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- (e) The Obligors agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Obligor, the Investors or any of their Affiliates for or in connection with anything referred to in paragraph (b) above other than any such cost, loss, expense or liability incurred by any Obligor that results from any breach by that Indemnified Person of any Finance Document which is finally and judicially determined to have resulted directly from the deliberate breach, gross negligence or wilful misconduct of that Indemnified Person.
- (f) Notwithstanding paragraph (b) above, no Indemnified Person shall be responsible or have any liability to any Obligor or their Affiliates or anyone else for consequential losses or damages.
- (g) Each Indemnified Person, and each person named in paragraph (e) above, may rely on this Clause 16.2 subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

16.3 Indemnity to the Agent

- (a) The Company shall promptly indemnify the Agent against:

- (b) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is an Event of Default;
 - (ii) acting or relying on any notice, request or instruction from a member of the Group which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement (provided that any legal fees are properly incurred and are subject to pre-agreed fee arrangements).
- (c) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

16.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure to comply with its obligations under Clause 18 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instructions which if reasonably believed to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement (provided that any legal fees are properly incurred and are subject to pre-agreed fee arrangements); and

- (vii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 16.4 will not be prejudiced by any release or disposal under Clause 10.2 (*Distressed Disposals*) of the Intercreditor Agreement taking into account the operation of that clause.
- (c) The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

17. MITIGATION BY THE LENDERS

17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax Gross-up and Indemnities*) or Clause 15.1 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 Limitation of Liability

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

18. COSTS AND EXPENSES

18.1 Transaction Expenses

The Company shall (or shall procure that another member of the Group, other than a Target Group Company, shall) promptly and in any event within five (5) Business Days of demand (provided that no such demand may be made prior to the first Utilisation Date unless the Facility has been cancelled in full) pay the Agent, the Arrangers and the Security Agent the amount of all costs and expenses (including legal fees subject to any pre-agreed fee arrangements) properly incurred by any of

them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security (but subject to the Security Principles); and
- (b) any other Finance Documents executed after the date of this Agreement.

18.2 Amendment Costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 31.10 (*Change of Currency*), the Company shall (or shall procure that another member of the Group, other than a Target Group Company, shall), within ten (10) Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees subject to any pre-agreed fee arrangements) properly incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 Enforcement and Preservation Costs

The Company shall (or shall procure that another member of the Group, other than a Target Group Company, shall), within five (5) Business Days of demand, pay to the Arrangers and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

18.4 Allocation of Fees

Notwithstanding anything to the contrary in any Finance Document, the Company may in its sole discretion allocate or recharge fees, costs and expenses paid or payable under any Finance Document to any member of the Group, other than a Target Group Company.

19. GUARANTEE AND INDEMNITY

19.1 Guarantee and Indemnity

Subject to the limitations set out herein (to the extent applicable), each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, each Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by each Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

19.2 Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

19.3 Reinstatement

If any payment by an Obligor or any discharge or release given by a Finance Party (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Obligor shall continue or be re-instated as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Finance Party shall be entitled to recover the value or amount of that Security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

19.4 Waiver of Defences

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Group Company;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or Security including without limitation, any change in the purpose of, any extension of or increase in the facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security; or
- (g) any insolvency or similar proceedings.

19.5 Guarantor Intent

Without prejudice to the generality of Clause 19.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.6 Immediate Recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from each Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and each Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from each Guarantor or on account of each Guarantor's liability under this Clause 19.

19.8 Deferral of Guarantors' Rights

- (a) Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, each Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:
 - (i) to be indemnified by an Obligor;
 - (ii) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
 - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which each Guarantor has given a guarantee, undertaking or indemnity under this Clause 19;
 - (v) to exercise any right of set-off against any Obligor; and/or
 - (vi) to claim or prove as a creditor of any Obligor in competition with any Finance Party.
- (b) If each Guarantor receives any benefit, payment or distribution in relation to such rights it will promptly pay an equal amount to the Agent for application in accordance with Clause 31 (*Payment Mechanics*). This only applies until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full.

19.9 Limitations on guarantee under US Law; Contributions

- (a) In respect of the Parent Guarantor:
 - (i) the Parent Guarantor acknowledges that it will receive valuable direct or indirect benefits as a result of the transactions contemplated by the Finance Documents (including utilisations thereunder);
 - (ii) in any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, including any US bankruptcy law, if the obligations of the Parent Guarantor under Clause 19.1 (*Guarantee and Indemnity*) or any Finance Document would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the

amount of its liability under Clause 19.1 (*Guarantee and Indemnity*) or any Finance Document, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by the Parent Guarantor or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding, or would otherwise render the Parent Guarantor's obligations owed to any Secured Party hereunder or under any other Finance Document as a fraudulent transfer or conveyance or terms of similar import, subject to avoidance, in each case, under applicable US Federal or state laws; and

- (iii) subject, in each case, to Clause 19.8 (*Deferral of Guarantors' rights*), in addition to all such rights of indemnity and subrogation as the Parent Guarantor may have under applicable law, each party agrees that (1) in the event a payment shall be made by the Parent Guarantor under this Clause 19 or any Finance Document, the Company shall indemnify the Parent Guarantor for the full amount of such payment and the Parent Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (2) in the event any assets of the Parent Guarantor shall be sold pursuant to this Agreement to satisfy in whole or in part a claim of any Secured Party, the Company shall indemnify the Parent Guarantor in an amount equal to the fair market value of the assets so sold.
- (b) Notwithstanding any provision of this Agreement to the contrary, all rights of the Parent Guarantor under paragraph (a)(iii) above and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the payment in full in cash of the obligations owned by the Obligors to any Secured Party hereunder or under any other Finance Document. No failure on the part of the Company or the Parent Guarantor to make the payments required by paragraph (a)(iii) above (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of the Parent Guarantor with respect to its obligations hereunder, and the Parent Guarantor shall remain liable for the full amount of its obligations hereunder.

19.10 Qualified ECP Guarantors

- (a) For the purposes of paragraphs (b) and (c) below, the following terms have the following meanings:

“CEA” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, any regulations thereunder and any successor statute.

“CFTC” means the Commodity Futures Trading Commission.

“ECP” means a person who constitutes an “eligible contract participant” under the CEA or any regulations promulgated thereunder and can cause

another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the CEA .

“**Excluded Swap Obligations**” has the meaning given to it in paragraph (c) below.

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, a guarantor that has total assets exceeding US\$ 10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or that constitutes an ECP.

“**Specified Loan Party**” means any person who is not an ECP.

“**Swap Obligation**” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the CEA.

- (b) If a Guarantor is a Qualified ECP Guarantor at the time the guaranty or the grant of the security interest under the Transaction Security Documents by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably, undertakes to provide such funds or other support as may be needed from time to time by such Specified Loan Party from time to time to honour all of such Specified Loan Party’s obligations under this guarantee in respect of Swap Obligations (but, in each case, only up to the maximum amount of such liability that can be incurred without rendering the Qualified ECP Guarantor’s obligations hereunder voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of any Qualified ECP Guarantor under this paragraph (b) shall remain in full force and effect until all Swap Obligations in respect of which a Specified Loan Party has provided a guarantee have been fully and finally discharged. The Parties intend this provision to constitute, and this provision shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each Guarantor for all purposes of Section 1a (18)(A)(v)(II) of the CEA.
- (c) If, notwithstanding paragraph (b) above, at any time a Guarantor is not an ECP, then, if, and to the extent that, all or a portion of the guarantee of such Guarantor, or the grant by such Guarantor of a security interest to secure, a Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the CEA or any rule, regulation, or order of the CFTC (or the application or official interpretation of any thereof) by virtue of such guarantor’s failure for any reason to constitute an ECP at the time the guarantee of such Guarantor, or the grant by such Guarantor of a security interest, would otherwise become effective with respect to such Swap Obligation but such Guarantor’s failure to constitute an ECP at such time, any guarantee or security provided by such Guarantor shall not constitute a guarantee of, or security for, any such Swap Obligations (“**Excluded Swap Obligations**”), and any reference in any Finance Document to the Parent Guarantor providing a guarantee shall be deemed not to relate to any Excluded Swap Obligations (and each Party relinquishes, waives and releases any rights

to enforce any such guarantee or security, or share in the proceeds from the enforcement thereof, in respect of Excluded Swap Obligations).

19.11 Additional Security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by any Finance Party.

20. REPRESENTATIONS

20.1 General

- (a) Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party in respect of such Group Companies as set out herein at the times set out in Clause 20.24 (*Times when Representations made*).
- (b) Each representation made “to the best of the knowledge and belief” (or similar phrases) of the relevant Obligor or the Company are made to the best of the knowledge and belief of the management of the relevant Obligor or the Company (as applicable).

20.2 Status

- (a) It is a limited liability company, corporation, limited partnership, limited liability partnership or joint stock corporation, duly organised or incorporated or, in the case of a partnership, established and validly existing and in good standing (where applicable) under the law of its jurisdiction of organisation or incorporation, as appropriate.
- (b) It has the power to own the shares it owns in Group Companies and its other material assets and carry on its business as it is being conducted, save to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

20.3 Binding Obligations

Subject to the Legal Reservations and the Perfection Requirements:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above) each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective, in each case, and save when this representation is made on the date of this Agreement, not in a manner or to an extent as to breach the provisions of Clause 24.8 (*Unlawfulness and Invalidity*).

20.4 Non-conflict with Other Obligations

Subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security pursuant to the Security Principles do not conflict with:

- (a) any law or regulation applicable to it in any material respect;
- (b) its constitutional documents in any material respect; or
- (c) any agreement or instrument binding upon it or any Group Company or any of its or any Group Company's assets or constitute a default or termination event (howsoever described) under such agreement or instrument to the extent such default or termination event would have or is reasonably likely to have a Material Adverse Effect.

20.5 Power and Authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

20.6 Validity and Admissibility in Evidence/Authorisations

- (a) Subject to the Legal Reservations and, in respect of the Transaction Security Documents, the Perfection Requirements, all Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been (or will at the required date be) obtained or effected and are (or will be) in full force and effect.

20.7 Governing Law and Enforcement

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and, subject to the Perfection Requirements, enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations and Perfection Requirements, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and, subject to the Perfection Requirements, enforced in its Relevant Jurisdictions.

20.8 No Default

No Event of Default and, on the date of this Agreement and the Closing Date (as applicable), no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, any Finance Document.

20.9 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 24.6 (*Insolvency Proceedings*); or
- (b) creditors' process described in Clause 24.7 (*Creditors' Process*),
- (c) has been taken or, to the knowledge of the Parent Guarantor, threatened in relation to a Material Company; and none of the circumstances described in Clause 24.5 (*Insolvency*) applies to a Material Company.

20.10 Financial Statements

- (a) Its most recent financial statements delivered pursuant to Clause 21.2 (*Financial Statements*):
 - (i) have been prepared in accordance with the Accounting Principles; and
 - (ii) if audited, give a true and fair view (in all material respects) of its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

20.11 No Proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have been started or (to the best of its knowledge and belief having made due and careful enquiry) formally threatened in writing against any Group Company which are reasonably expected to be adversely determined and would reasonably be expected to have a Material Adverse Effect.

20.12 No Breach of Laws

No Group Company has breached any law or regulation (including environmental laws or regulations) which breach has or would reasonably be expected to have a Material Adverse Effect.

20.13 Group Structure Chart

The Group Structure Chart delivered to the Agent pursuant to paragraph 4(h) of Part 1 of Schedule 2 (*Conditions Precedent*) is true, complete and accurate in all material respects.

20.14 Taxation

- (a) It is not materially overdue in the filing of any Tax returns and is not overdue in the payment of any amount in respect of Tax unless and only to the extent that failure to so file such Tax returns or to pay those Taxes does not have or would not reasonably be expected to have a Material Adverse Effect.
- (b) It is resident for Tax purposes only in its jurisdiction of incorporation.

20.15 Pensions

Except for any defined benefit pension schemes specified in the Pensions Report with which any member of the Group has been “connected” or “associated”:

- (a) neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); and
- (b) neither it nor any of its Subsidiaries is or has at any time been “connected” with or an “associate” of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.¹

20.16 Good Title to Assets

It has a good and valid title to, or valid leases or licences of the assets required to carry on its business as presently conducted to the extent failure to do so has or would be reasonably expected to have a Material Adverse Effect.

20.17 Intellectual Property

To the best knowledge and belief of the Company, each Group Company (i) is the sole legal and beneficial owner of or has licensed to it all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being currently conducted and (ii) does not, in carrying on its businesses, infringe any Intellectual Property of any third party in any respect, which has or would be reasonably likely to have a Material Adverse Effect.

20.18 Legal and Beneficial Ownership

It is the sole legal and beneficial owner of the shares in any Group Company over which it purports to grant Transaction Security.

20.19 Shares

Subject to legal mandatory provisions, all shares in any Material Company which are subject to the Transaction Security are fully paid up. The constitutional documents of such Material Companies do not (and the Material Companies have not entered into any other agreement that would) restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.

¹ Pensions team to confirm.

20.20 Holding companies

Save as permitted pursuant to Clause 23.4 (*Holding Companies*) or as otherwise permitted or contemplated by the Finance Documents or as may be required in connection with its continuing existence, neither the Parent Guarantor nor the Company has:

- (a) traded or engaged in any activity or business other than as a holding company;
- (b) entered into any contracts, agreements or arrangements;
- (c) incurred any material liabilities or commitments (actual or contingent, present or future) or indebtedness of any nature whatsoever; or
- (d) acquired or held any material assets or rights other than the shareholdings in, and intercompany debt made to, its Subsidiaries and Cash and Cash Equivalent Investments.

20.21 Sanctions, Anti-Money Laundering and Anti-Bribery

- (a) Each Obligor has taken reasonable measures appropriate to ensure compliance with applicable Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Bribery Laws and, to the best of its knowledge and belief, is in compliance with such laws.
- (b) Each Obligor, any of its Subsidiaries, directors, officers, or employees, and, to the knowledge of any Obligor, any agent, Affiliate or other person associated with or acting on behalf of any Obligor or any of its Subsidiaries:
 - (i) is not a Designated Person; and
 - (ii) has not received notice of, or is otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to any Economic Sanctions Laws.
- (c) With respect to any Obligor, nothing in this Clause 20.21 with respect to the use of proceeds of the Facility shall create or establish an obligation or right for any such member of the Group to the extent that, by agreeing to it, compliance with it, exercising it, having such obligation or right, or otherwise, it would be placed in violation of any law applicable to it.
- (d) In relation to each Lender that notifies the Agent to this effect (each, a “**Restricted Lender**”), this Clause 20.21 shall only apply for the benefit of that Restricted Lender to the extent that the receipt and acceptance by that Restricted Lender of representations and warranties in this Clause would not result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96. In connection with any amendment, waiver, determination or direction relating to any part of this Clause 20.21 of which a Restricted Lender does not have the benefit, the Commitments of that Restricted Lender will be excluded for the purpose of determining whether the consent of the Majority Lenders or Super Majority Lenders has been obtained or whether the

determination or direction by the Majority Lenders or Super Majority Lenders has been made.

20.22 No filing or stamp taxes

Save as disclosed in writing by it or on its behalf to the Agent or its counsel, under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, documentary, registration, property transfer, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) for any fees payable in respect of registrations required in respect of each Transaction Security Document; and
- (b) any filing, recording or enrolling or any tax or fee payable which is referred to in any Legal Opinion and which will be made or paid as soon as reasonably practicable after the date of the relevant Finance Document but in any event by no later than the period allowed for by law.

20.23 The Offer Documents and Scheme Circular

The Offer Documents or Scheme Circular (as applicable):

- (a) are or will be in compliance in all material respects with all applicable laws and regulation;
- (b) are or will be true, accurate and complete in all material respects; and
- (c) contain all of the material terms of the Scheme or Offer (as applicable).

20.24 No Misleading Information

Save as disclosed in writing to the Agent and the Arrangers prior to the date of this Agreement:

- (a) to the best of its knowledge and belief, any material factual information (taken as a whole) contained in the Bank Case Model was true and accurate in all material respects as at the date that it was provided; and
- (b) the Bank Case Model and the financial projections contained in the Bank Case Model have been prepared in good faith on the basis of such recent historical information as was available to the Company, and on the basis of assumptions that, in the opinion of the Company, were fair and reasonable as at the date they were made (it being understood that such projections are subject to significant uncertainties and contingencies which are beyond the Group's control and that no assurance can be given that the forecasts will be realised).
- (c) any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the

date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

- (d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (e) no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect; and
- (f) all material information provided to a Finance Party by or on behalf of the Investors, the Parent Guarantor or the Company in connection with the Acquisition and/or the Target Group on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.

20.25 Ranking

The Transaction Security has or will have at least the ranking in priority to which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking lien (other than to the extent permitted or not prohibited under this Agreement).

20.26 COMI

For the purposes of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the “**Regulation**”):

- (a) its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation; and
- (b) it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

20.27 Times when Representations made

- (a) The following representations and warranties shall be made as follows:
 - (i) the representation and warranty in Clause 20.6 (*Validity and Admissibility in Evidence/Authorisations*) is made on the date of this Agreement and the Closing Date, and in relation to any Transaction Security Document executed by an Obligor, on the date of execution of such Transaction Security Document;

- (ii) the representations and warranties in Clause 20.9 (*Financial Statements*) is made on the date of delivery of the relevant financial statements;
 - (iii) in relation to any Transaction Security Document executed by any Obligor after the date of this Agreement, the representation and warranty in Clause 20.18 (*Legal and Beneficial Ownership*) is made:
 - (A) on the date of execution of such Transaction Security Document; and
 - (B) only by the relevant Obligor executing such Transaction Security Document; and
 - (iv) each other representation or warranty in this Clause 20 is made on the date of this Agreement and the Closing Date.
- (b) The Repeating Representations are also deemed to be made by each Obligor on the date of each Utilisation Request and on the first day of each Interest Period.
 - (c) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

21. INFORMATION UNDERTAKINGS

- (a) The undertakings in this Clause 21 are subject to Clause 21.9 (*Limitations on Information Undertakings*).
- (b) The undertakings set out in this Clause 21 shall remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 21:

“**Annual Financial Statements**” means the financial statements for a Financial Year delivered pursuant to paragraph (a)(i) of Clause 21.2 (*Financial Statements*).

“**Quarterly Financial Statements**” means the quarterly financial statements delivered pursuant to paragraph (a)(ii) of Clause 21.2 (*Financial Statements*).

21.2 Financial Statements

- (a) **Provided that** the Closing Date has occurred, the Parent Guarantor or the Company shall supply to the Agent in sufficient copies for all the Lenders as soon as the same are available, but in any event:
 - (i) within one hundred and twenty (120) days after the end of each of the Parent Guarantor’s Financial Years, the annual audited consolidated financial statements of the Company for that Financial Year; and

- (ii) commencing with the second full Financial Quarter after the Closing Date, within sixty (60) days after the end of each relevant Financial Quarter, the unaudited consolidated financial statements of the Company for that Financial Quarter.

21.3 Requirements as to Financial Statements

- (a) The Obligors' Agent shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Obligors' Agent shall procure that each set of Annual Financial Statements shall be audited by the Auditors.
- (b) Each set of Annual Financial Statements and Quarterly Financial Statements delivered pursuant to Clause 21.2 (*Financial Statements*):
 - (i) shall be certified by a director or authorised signatory of the Company as giving a true and fair view of (in the case of Annual Financial Statements), or fairly representing (in other cases), its financial condition and operations (consolidated if applicable) as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by the corresponding Auditor's report addressed to the management of the Parent Guarantor by the Auditors; and
 - (ii) shall be prepared using IFRS unless, in relation to any set of financial statements, the Parent Guarantor or the Company notifies the Agent that the Accounting Principles have changed from IFRS to other Accounting Principles and the Parent Guarantor's Auditors deliver to the Agent a description of any change necessary for those financial statements to reflect IFRS;
 - (iii) if amendments satisfactory to the Majority Lenders are agreed by the Company within thirty (30) days of notification of the change, those amendments will take effect in accordance with the terms of that agreement and be binding on all Parties; and
 - (iv) if amendments not so agreed or whilst amendments are being negotiated, the Company shall deliver to the Agent with each set of financial statements required to be delivered under this Agreement another set prepared using the original Accounting Principles or on a basis consistent with IFRS.
- (c) Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect IFRS.
- (d) In the event of a change in IFRS after the date of this Agreement, the Parent Guarantor or the Company shall provide to the Agent a description of the change and a reconciliation of the line items affected in the first set of financial statements provided to the Agent pursuant to Clause 21.2 (*Financial Statements*) which take into account such change. Such description and

reconciliation shall be provided by the Parent Guarantor or the Company to the Agent at the same time as delivery of such financial statements to the Agent pursuant to Clause 21.2 (*Financial Statements*).

21.4 Noteholder Meetings and Information

To the extent any listed debt or equity securities issued by the Target or any other Obligor remain outstanding:

- (a) the Company shall notify the Agent of any meeting, presentation or conference call convened by or on behalf of the Target and/or the Group with the holders of any such listed debt or equity securities (or any representative of the same) at the same time as, or reasonably promptly following, any notice covering the same is sent to the holders of any such listed debt or equity securities and shall allow the Agent and the Lenders to attend (but not participate) to each such meeting, presentation or conference call; and
- (b) the Company shall supply to the Agent (in sufficient copies for all the Lenders), copies of all documents dispatched by the Target or any Obligor to the holders of such listed debt or equity securities.

21.5 Year-end

The Company shall notify the Agent of a change of the Parent Guarantor's Financial Year-end.

21.6 Information: Miscellaneous

The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all material documents dispatched by the Parent Guarantor or the Company to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any material litigation, arbitration or administrative proceedings which are current, threatened in writing or pending against any member of the Group which if adversely determined would or would be reasonably likely to have a Material Adverse Effect;
- (c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (d) subject to any confidentiality requirements, promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any Group Company as any Finance Party through the Agent may reasonably request, as long as, if no Event of Default is continuing, such information, amplification or explanation is readily obtainable by the management of a Group Company without the Group incurring material cost.

Notwithstanding any term of this Agreement, no Event of Default shall occur, or be deemed to occur, as a result of any restriction on the identity of the Auditors contained in this Agreement, being prohibited, unlawful, ineffective, invalid or unenforceable pursuant to Audit Laws.

21.7 Notification of Default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless an Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Agent, the Obligors' Agent shall supply to the Agent a certificate signed by two (2) authorised signatories on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it). Such request may not be made more than once in any Financial Year unless the Agent has reasonable grounds to suspect that an Event of Default has occurred or is continuing, in which case the Agent may make more than one (1) requests in any Financial Year.

21.8 "Know your Customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer, obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or similar checks in relation to any relevant person pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary “know your customer” or other similar checks on Lenders or prospective new Lenders pursuant to the transactions contemplated in the Finance Documents.
- (c) The Parent Guarantor shall, by not less than 10 Business Days’ prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 27 (Changes to the Obligors).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent Guarantor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

21.9 Limitations on Information Undertakings

For so long as the equity securities of the Target remain listed on the London Stock Exchange or any successor or replacement exchange (the “**Stock Exchange**”) and the Target is subject to disclosure rules pursuant to the EU Market Abuse Regulation and the “Rules of the London Stock Exchange” issued by the Stock Exchange (the “**Rules**”), then for so long as it elects, the Parent Guarantor or the Company will make available to the Agent such financial statements, information, documents and other reports that the Target is required to make public pursuant to the EU Market Abuse Regulation, any other similar applicable law and regulation and/or the Rules, in each case, at the same time as such financial statements, information, documents and other reports are made public on the Target’s website.

22. [RESERVED]

23. GENERAL UNDERTAKINGS

- (a) The undertakings in this Clause shall apply to the Group Companies as referred to herein.
- (b) The undertakings set out in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and Compliance with Laws

23.1 Authorisations

Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisations required under any law or regulation of a Relevant Jurisdiction to:

- (a) enable it to perform its obligations under the Finance Documents;
- (b) ensure, subject to the Legal Reservations and the Perfection Requirements, the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (c) carry on its business where failure to do so has or would reasonably be expected to have a Material Adverse Effect.

23.2 Compliance with Laws

Each Obligor shall (and the Parent Guarantor shall ensure that each Group Company will) comply in all respects with all laws and regulations (including environmental laws and regulations) to which it may be subject, if failure so to comply has or would be reasonably expected to have a Material Adverse Effect.

23.3 Taxation

Each Obligor shall (and the Parent Guarantor shall ensure that each Group Company will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed or later, before incurring material penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes (and the costs required to contest them) to the extent and at the time required by applicable Accounting Principles; and
- (c) such payment can be lawfully withheld.

Restrictions on Business Focus

23.4 Holding Companies

None of the Parent Guarantor or the Company shall trade, carry on any business, own any assets or incur any material liabilities except for or pursuant to any Permitted Holding Company Activity.

Restrictions on dealing with Assets and Security

23.5 *Pari Passu* Ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those

creditors whose claims are mandatorily preferred by laws of general application to companies.

23.6 Further Assurance

- (a) Subject to the Security Principles, each Obligor shall (and the Parent Guarantor shall procure that each Group Company will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) following a Declared Default, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the Security Principles, each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

23.7 Sanctions, Anti-Money Laundering and Anti-Bribery

- (a) No Obligor shall:
 - (i) engage in any transaction that violates in any material respect any of the applicable prohibitions set forth in any Anti-Money Laundering Law applicable to such Obligor;
 - (ii) contribute or otherwise make available all or any part of the proceeds of the Facility, directly or knowingly (acting with due care and enquiry) indirectly, to, or for the benefit of, any person (whether or not related to any member of the Group) for the purpose of financing the activities or business of, other transactions with, or investments in, any Designated Person;

- (iii) knowingly (acting with due care and enquiry) engage in any transaction, activity or conduct that would violate Economic Sanctions Laws, that would cause any Finance Party to be in breach of any Economic Sanctions Law or that could reasonably be expected to result in it or any other member of the Group's or any Finance Party being designated as a Designated Person; or
 - (iv) directly, or knowingly (acting with due care and enquiry) indirectly, use the proceeds of the Facility to make any unlawful payment which would breach any applicable Anti-Bribery Law or Anti-Money Laundering Law.
- (b) The Parent Guarantor shall take reasonable measures to institute and maintain (or procure that there is instituted and maintained) policies and procedures designed to ensure compliance by the Group with applicable Anti-Bribery Laws.
- (c) None of the funds or assets of a Group Company that are used to repay or prepay the Facility shall constitute property of, or shall be beneficially owned by, any Designated Person or be the direct proceeds derived from any transactions that violate the prohibitions set forth in any applicable Economic Sanctions Laws, and no Designated Person shall have any direct or indirect interest in an Obligor insofar as such interest would violate any Economic Sanctions Laws applicable to such Obligor.
- (d) With respect to a Group Company, nothing in this Clause 23.7 with respect to the use of proceeds of the Facility shall create or establish an obligation or right for any such Obligor or any of its Subsidiaries to the extent that, by agreeing to it, compliance with it, exercising it, having such obligation or right, or otherwise, would be placed in violation of any law applicable to it.
- (e) In relation to each Lender that notifies the Agent to this effect (each, a "**Restricted Lender**"), this Clause 23.7 shall only apply for the benefit of that Restricted Lender to the extent that the acceptance of the undertakings in this Clause would not result in (i) any violation of, conflict with or liability under EU Regulation (EC) 2271/96 or (ii) a violation or conflict with section 7 foreign trade rules (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 no. 3 foreign trade law (AWG) (*Außenwirtschaftsgesetz*)) or a similar anti-boycott statute. In connection with any amendment, waiver, determination or direction relating to any part of this Clause 23.7 of which a Restricted Lender does not have the benefit, the Commitments of that Restricted Lender will be excluded for the purpose of determining whether the consent of the Majority Lenders or Super Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders or Super Majority Lenders has been made.

23.8 Acquisition Undertakings

- (a) The Company shall comply at all times in all material respects with the City Code (subject to any direction, waiver or dispensation given or granted by the Panel) and all applicable laws or regulations relating to the Acquisition, save

where non-compliance would not be materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents.

- (b) The Company shall not amend or waive any material term of the Announcement, any Scheme Circular or, as the case may be, Offer Document, in a manner or to the extent that would be materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents, other than any amendment or waiver:
 - (i) made with the consent of all the Arrangers (acting reasonably);
 - (ii) required by the Panel or the High Court or reasonably determined by the Company (acting on the advice of its legal advisers) as being necessary or desirable to comply with the requirements of the City Code, the Panel or the High Court or any other relevant regulatory body or applicable law or regulation;
 - (iii) increasing the price to be paid for the Target Shares provided that either (A) such increase is funded from New Equity and/or Subordinated Debt (to be evidenced by a cash confirmation only) or (B) each Lender has consented to such increase;
 - (iv) in the case of an Offer, reducing the Acceptance Condition to no lower than the Minimum Acceptance Condition;
 - (v) extending the period in which holders of Target Shares may vote in favour of the Scheme or, as the case may be, accept the terms of the Offer (including by reason of the adjournment of any meeting or court hearing); or
 - (vi) subject to paragraph (e) below, of a condition, or a declaration that a condition is or has been satisfied, in each case as may be required to enable the Scheme to be sanctioned by the High Court or to become effective or, as the case may be, the Offer to become or be declared wholly unconditional.
- (c) For the avoidance of doubt, in the event that:
 - (i) the Company has issued a Scheme Circular, nothing in this paragraph shall prevent the Company from subsequently proceeding with an Offer, provided that the terms and conditions contained in the relevant Offer Document include an Acceptance Condition of no lower than the Minimum Acceptance Condition; and
 - (ii) the Company has issued an Offer Document, nothing in this paragraph shall prevent the Company from subsequently proceeding with a Scheme.
- (d) Save as required by the Panel, the High Court or any other applicable law, regulation or regulatory body, the Company shall not make any press release or other public statement in respect of the Acquisition which would be materially prejudicial to the interests of the Lenders taken as a whole under the

Finance Documents (other than the Announcement, any Scheme Circular or any Offer Document) which refers to the Facility, any Finance Document or the Finance Parties or any of them (in such capacity), without first obtaining the prior approval of the Agent (not to be unreasonably withheld or delayed). If the Company does become so required, it shall notify the Agent as soon as practicable upon becoming aware of the requirement and to the extent practical shall consult with the Agent on the terms of the reference. For the avoidance of doubt, this paragraph (d) shall not restrict the Company from making any disclosure that is required in relation to the Finance Documents or the identity of the Finance Parties in the Announcement, any Scheme Circular or any Offer Document or making any filings as required by law or its auditors or in its audited financial statements.

- (e) The Company shall not without the consent of the Arrangers (acting reasonably) save as required by the Panel, the High Court or any other applicable law, regulation or regulatory body or by any applicable court declare, accept, treat as satisfied or waive any condition of the Scheme or the Offer where the Company (acting on the advice of its legal advisers) considers it is not actually satisfied or has not been complied with, in each case to the extent that doing so would be materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents.
- (f) The Company shall provide the Agent with such information as it may reasonably request regarding the status and progress of the Acquisition (including, the current level of acceptances in respect of any Offer) (in each case subject to any confidentiality, legal, regulatory or other restrictions relating to the supply of such information).
- (g) If the Scheme or the Offer, as applicable, lapses or is withdrawn (without the Company subsequently switching to an Offer or a Scheme, as applicable), the Company shall promptly (and in any event within 2 Business Days) notify the Agent.
- (h) In the case of an Offer, where becoming entitled to do so, the Company shall promptly give notices under Section 979 of the Companies Act 2006 in respect of the Target shares and shall promptly (and in any event within the maximum time period prescribed by such sections) complete a Squeeze Out.
- (i) Subject always to the Companies Act 2006 and any applicable listing rules, in the case of a Scheme, within 15 days after the Scheme Effective Date, and in relation to an Offer, within 15 days after the date upon which the Company (directly or indirectly) owns Target shares (excluding any shares held in treasury) which, when aggregated with all other Target shares owned directly or indirectly by the Company, represent not less than 75% of all Target shares (excluding any shares held in treasury), procure that such action as is necessary is taken to procure that trading in the Target Shares on the London Stock Exchange is cancelled and as soon as reasonably practicable thereafter, procure that the Target is re-registered as a private limited company.

23.9 Other Covenants

Each Obligor shall (and the Parent Guarantor shall procure that each Group Company shall) comply with the covenants set out in Schedule 12 (*General Undertakings*)

23.10 Centre of main interests and establishments

No Obligor shall without the prior written consent of the Agent or unless otherwise required for genuine tax benefit reasons deliberately cause or allow its centre of main interest (as that term is used in Article 3(1) of the Regulation) to change.

23.11 Intellectual Property

(a) Each Obligor shall (and the Parent Guarantor shall procure that each Group Company shall):

- (i) preserve and maintain the subsistence and validity of the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being currently conducted (the “**Relevant Intellectual Property**”);
- (ii) use reasonable endeavours to prevent any infringement in any material respect of the Relevant Intellectual Property;
- (iii) make registrations and pay all registration fees and taxes necessary to maintain the Relevant Intellectual Property in full force and effect and record its interest in that Relevant Intellectual Property;
- (iv) not use or permit the Relevant Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Relevant Intellectual Property which may materially and adversely affect the existence or value of the Relevant Intellectual Property or imperil the right of any member of the Group to use such property; and
- (v) not discontinue the use of the Relevant Intellectual Property,

where failure to do so, in the case of paragraphs (i) and (ii) above, or, in the case of paragraphs (iv) and (v) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

(b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 23.11 to the extent that any dealing with Relevant Intellectual Property which would otherwise be a breach of paragraph (a) above is contemplated by the definition of Permitted Transaction.

23.12 Condition subsequent

The Parent Guarantor shall procure that within 30 days of the Closing Date, the Reports are either addressed to the Finance Parties or are capable of being relied upon by the Finance Parties subject to the conditions set out in the relevant reliance letters.

23.13 [Reserved]

24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.16 (*Acceleration*), Clause 24.17 (*Clean-Up Period*) and Clause 24.18 (*Excluded and Other Matters*)).

24.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable within three (3) Business Days of its due date, provided that such grace period will only apply to failure to pay principal or interest if its failure to pay is caused by:

- (a) an administrative or technical error; or
- (b) a Disruption Event.

24.2 Other Obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days of the earlier of the Agent giving written notice to the Company or the relevant Obligor or the Company and the relevant Obligor becoming aware of the failure to comply.

24.3 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or pursuant to any Finance Document is or proves to have been incorrect or misleading in any material respect (or, where such representation is already qualified by materiality, in any respect) when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within twenty (20) Business Days of the earlier of the Agent giving written notice to the Company or the relevant Obligor or the Company and the relevant Obligor becoming aware of such misrepresentation.

24.4 Cross Default

- (a) Any Indebtedness of any Group Company is not paid when due nor within any originally applicable grace period.

- (b) Any Indebtedness of any Group Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any creditor of any Group Company becomes entitled to declare any Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) No Event of Default will occur under this Clause 24.4 if the aggregate amount of Indebtedness or commitment for Indebtedness falling within paragraphs (a) to (c) above is less than or equal to GBP 10,000,000 (or its equivalent in other currencies) (provided that in this paragraph (d) only, Indebtedness in respect of any Permitted Treasury Transaction shall take into account the marked to market value after any applicable netting).

For the purpose of this Clause 24.4, Indebtedness shall not include Indebtedness incurred under Subordinated Debt or any loans made by one Group Company to another Group Company.

24.5 Insolvency

A Material Company is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts (other than as a result of Section 123(1)(a) of the Insolvency Act 1986 or debts owed to a Material Company or solely by reason of balance sheet liabilities exceeding balance sheet assets) under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more groups of its creditors with a view to rescheduling any of its indebtedness, other than any solvent liquidation.

24.6 Insolvency Proceedings

- (a) Any corporate action, legal proceedings or other formal procedure or formal step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, judicial management, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement, deed of company arrangement or otherwise) of any member of the Group that is a Material Company;
 - (ii) (by reason of actual or anticipated financial difficulties) a composition, compromise, assignment or arrangement with any class of creditors of any Material Company (excluding, for the avoidance of doubt, in respect of the Finance Documents, any Take-out Financing or any Additional Debt Financing);
 - (iii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, judicial manager, administrator, compulsory manager, voluntary administrator, receiver and manager or other similar officer in respect of any Material Company or any of its assets

having an aggregate value, in excess of GBP 10,000,000 (or its equivalent in other currencies);

- (iv) enforcement of any Security over any assets of any Obligor having an aggregate value, in excess of GBP 10,000,000 (or its equivalent in other currencies); or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) above shall not apply to:

- (i) any proceeding or step which is discharged, stayed or dismissed within twenty (20) Business Days of commencement or, if earlier, the date on which it is advertised (or such other period as agreed between the Company and the Majority Lenders);
- (ii) in the case of an application to appoint an administrator in any proceedings which the Agent is satisfied (acting on the instructions of the Majority Lenders) will be withdrawn before it is heard or will be unsuccessful; or
- (iii) any step or procedure contemplated in relation to a reorganization, merger or liquidation that is permitted by Schedule 12 (*General Undertakings*).

24.7 Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company having an aggregate value of GBP 10,000,000 (or its equivalent in other currencies) that is not discharged or dismissed within thirty (30) Business Days.

24.8 United States Bankruptcy Laws

- (a) Any of the following occurs in respect of a U.S. Debtor:
 - (i) it makes a general assignment for the benefit of creditors;
 - (ii) it commences a voluntary case or proceeding under any U.S. Bankruptcy Law;
 - (iii) an involuntary case under any U.S. Bankruptcy Law is commenced against it and is not dismissed or stayed within 60 days after commencement of the case;
 - (iv) it applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property under any U.S. Bankruptcy Law; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed under any U.S. Bankruptcy Law without its application or its consent and the

appointment continues undischarged or unstayed for a period of 60 days; or

- (v) an order for relief or other order approving any case or proceeding is entered under any U.S. Bankruptcy Law.
- (b) Any of the following occurs in respect of any Obligor (other than a U.S. Debtor):
- (i) it commences a voluntary case or proceeding under any U.S. Bankruptcy Law; or
 - (ii) an involuntary case under any U.S. Bankruptcy Law is commenced against it and is not dismissed or stayed within 60 days after commencement of the case;
 - (iii) it applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property under any U.S. Bankruptcy Law; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed under any U.S. Bankruptcy Law without its application or its consent and the appointment continues undischarged or unstayed for a period of 60 days; or
 - (iv) an order for relief or other order approving any case or proceeding is entered under any U.S. Bankruptcy Law.

24.9 Unlawfulness and Invalidity

Subject to the Legal Reservations and the Perfection Requirements:

- (a) it is or becomes unlawful for an Obligor to perform any of its material obligations under the Finance Documents or any material provision of any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any material subordination provision created under the Intercreditor Agreement is or becomes unlawful;
- (b) any material obligation or obligations of or an Obligor under any Finance Documents are not or cease to be legal, valid, binding or enforceable; and
- (c) any Finance Document ceases to be in full force and effect or any material provision of any Transaction Security or any material subordination provision created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective in any respect or is alleged to be ineffective in any respect by a party to it (other than a Finance Party), and in each case, where capable of remedy, the relevant circumstance is not remedied within twenty (20) Business Days of the earlier of the Agent giving written notice to the Company or an Obligor becoming aware of the relevant circumstance, and provided further that no Event of Default shall occur under this Clause 24.8 if

the relevant event or occurrence is not materially adverse to the interests of the Lenders under the Finance Documents as a whole.

24.10 Intercreditor Agreement

- (a) Any Group Company or Holding Company of a Group Company, in each case, that is party to the Intercreditor Agreement fails to comply with a material provision thereof, or does not perform its material obligations thereunder; or
- (b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect (or, where such representation is already qualified by materiality, in any respect), and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within twenty (20) Business Days of the earlier of the Agent giving notice to the Company and the relevant party or that party or the Company becoming aware of the non-compliance or misrepresentation.

24.11 Cessation of Business

The Group as a whole (or substantially all of the Group) suspends or ceases to carry on business.

24.12 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other proceedings are commenced which are reasonably likely to be adversely determined and if adversely determined, has or would reasonably be expected to have a Material Adverse Effect.

24.13 Repudiation and Rescission of Agreements

An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security, in each case which is materially adverse to the interests of the Lenders under the Finance Documents as a whole.

24.14 Expropriation

The authority or ability of any Group Company to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority in relation to any Group Company or any of its assets in a way which has or would reasonably be expected to have a Material Adverse Effect.

24.15 Material Adverse Change

Any event or series of events occurs that has a Material Adverse Effect.

24.16 Acceleration

Subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), on and at any time after the occurrence of an Event of Default which is continuing the Agent shall if so directed by the Majority Lenders by notice to the Company:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents,

and provided that, if an Event of Default described in Clause 24.8 (*United States Bankruptcy Laws*) occurs, all Loans borrowed by such U.S. Debtor or such Obligor, interest thereon and all other amounts owed by such U.S. Debtor or such Obligor shall become immediately and automatically due and payable, without the requirement of notice or any other formality.

24.17 Clean-Up Period

- (a) For the purpose of, and notwithstanding any other provision of, the Finance Documents, until and including the Clean-Up Date:
 - (i) a breach of the representations and warranties under Clause 20 (*Representations*); or
 - (ii) a breach of the undertakings specified in Clause 23 (*General Undertakings*) and Schedule 12 (*General Undertakings*); or
 - (iii) an Event of Default under this Clause 24,

in each case, to the extent that it relates to the Group in respect of the Acquisition or the target of an acquisition permitted or not prohibited by the terms of this Agreement (each a “**Permitted Acquisition**”) and its subsidiaries in respect of a Permitted Acquisition (for the purposes of this Clause 24.17 the “**Permitted Acquisition Target Group**”), will be deemed not to be a misrepresentation, breach of warranty, breach of covenant or an Event of Default (as the case may be), and will not have any of the consequences that such a misrepresentation, breach of warranty, breach of covenant or Event of Default would ordinarily have under this Agreement, if it would have been (if it were not for this provision) a breach of representation or warranty or a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to any member of the Group or the relevant Permitted

Acquisition Target Group (as applicable) (or any obligation to procure or ensure in relation to a member of that Group or Permitted Acquisition Target Group (as applicable)) if and for so long as the circumstances giving rise to the relevant breach of representation or warranty or breach of covenant or Event of Default:

- (A) have not been procured by or approved by the Company in respect of the Acquisition or, in respect of a future Permitted Acquisition, a Group Company which was not the subject of the Permitted Acquisition where knowledge does not in itself entail procurement by such entity;
- (B) does not have a Material Adverse Effect;
- (C) are either (i) capable of remedy within the Clean-Up Period and the Company is taking steps to remedy it within that period, or (ii) to the extent that the breach is not capable of such remedy, then such breach or Event of Default is subject to a shorter Clean-Up Period of thirty (30) days (the “**30 Day Period**”) and such 30 Day Period will be available provided that the Company is actively seeking a waiver from the Lenders in relation to the relevant breach during that period; and
- (D) are not existing at the end of the relevant Clean-Up Period,

provided that, if the relevant circumstances are continuing after the Clean-Up Date (or, in the case of a breach that is not capable of remedy, has not been waived within the 30 Day Period), there shall be a breach of representation or warranty or breach of covenant or Event of Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).

- (b) Until the expiry of the Clean-Up Period in respect of the Acquisition or, as the case may be, a relevant Permitted Acquisition, any intra-Group indebtedness (including that arising from any on-lending of Loans) shall be permitted without restriction.

For the avoidance of doubt, subject to Clause 4.4 (*Utilisations during the Certain Funds Period*) paragraph (a) of this Clause 24.17 shall not restrict the Agent’s right to give any notice under Clause 24.16 (*Acceleration*) after the Clean-Up Period.

24.18 Excluded and Other Matters

The provisions of this Clause 24.18 shall apply irrespective of any provision of the Finance Documents to the contrary.

- (a) No Default or Event of Default or breach of any representation, warranty, undertaking or other terms of a Finance Document will arise in respect of any monetary threshold being exceeded merely as the result of a subsequent change in the GBP equivalent of an amount that has been converted into GBP for the purpose of calculating such monetary threshold which is due to

fluctuations in the exchange rate since the date on which such amount was first converted into GBP (and such GBP equivalent shall be calculated at the Agent's Spot Rate of Exchange as at the date of the relevant Group Company incurring or making the relevant disposal, acquisition, investment, lease, loan, debt or guarantee or taking any other relevant action).

- (b) If a Group Company which is not an Obligor subsequently accedes to this Agreement as an Obligor, any items relating to that Group Company which, prior to such accession, had counted towards a monetary threshold which was applicable to Group Companies which are not Obligors only shall thereafter be ignored for the purposes of calculating whether or not any such monetary threshold has been exceeded.

25. CHANGES TO THE LENDERS

25.1 Assignments and Transfers by the Lenders

- (a) Subject to this Clause 25 and Clause 26 (*Debt Purchase Transactions*) and as otherwise agreed with the Company in writing, a Lender (the “**Existing Lender**”) may:
 - (i) assign any of its rights (including that Existing Lender's participation in any Loan);
 - (ii) transfer by novation any of its rights and obligations; or
 - (iii) grant any sub-participation in respect of any of its right or obligations, under any Finance Document

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets other than any such entity that is itself or is an Affiliate or is acting on behalf of an industrial competitor, supplier or sub-contractor of any Group Company (the “**New Lender**”).

Notwithstanding the foregoing, the term “**industrial competitor**” shall not include any bank, financial institution or trust, fund or other entity whose principal business is arranging, underwriting or investing in debt provided that such bank, financial institution, trust, fund or other entity is (a) acting on the other side of appropriate information barriers implemented or maintained as required by law, regulation or internal policy from the entity which otherwise would constitute an industrial competitor or (b) has separate personnel responsible for its interests under the Finance Documents, such personnel are independent from its interests as an industrial competitor and no information provided under the Finance Documents, which is not otherwise publicly available, is disclosed or otherwise made available to any personnel responsible for its interests as an industrial competitor.

- (b) Each New Lender must meet (and is responsible for meeting) all regulatory requirements for lending to the Company to which it will lend at the time it becomes a Party provided that failure by a New Lender to meet all such regulatory requirements for lending to the Company shall not invalidate any transfer to such New Lender that complies with the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*).
- (c) The Agent shall maintain a book entry transfer register (the “**Register**”) solely in this capacity as agent for the Company for the purposes of all assignments or transfers made pursuant to this Clause 25 and shall provide a copy of the Register to the Company on reasonable request by the Company.

25.2 Conditions of assignment or transfer

- (a) With respect to an assignment, transfer, sub-participation or derivative transaction in relation to the Facility, the prior written consent of the Company must be obtained before an Existing Lender may make an assignment, transfer, sub-participation (funded or unfunded) or derivative transaction which is a sub-participation or derivative transaction which transfers any discretion with regard to voting rights (such transaction (including, for the avoidance of doubt, exposure transfers) being a “**controlled sub-participation**”) in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*) unless the assignment, transfer or controlled sub-participation is:
 - (i) to another Lender or an Affiliate of a Lender (excluding any Lender or any Affiliate of a Lender that is a Loan to Own/Distressed Debt Investor);
 - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender but excluding any Related Fund that is a Loan to Own/Distressed Debt Investor;
 - (iii) made at a time when an Event of Default under Clauses 24.1 (*Non-payment*), 24.5 (*Insolvency*), 24.6 (*Insolvency Proceedings*) or 24.7 (*Creditors’ Process*) is continuing; or
 - (iv) to an entity named on the White List but excluding any group entity, Affiliate or Related Fund that is a Loan to Own/Distressed Debt Investor,

provided that, notwithstanding the foregoing no such assignment, transfer or controlled sub-participation may be entered into with a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender to the extent that the Existing Lender or the Agent is aware of the status thereof (and each Existing Lender should confirm if the Agent is so aware before entering into any assignment, transfer or controlled sub-participation).

- (b) The consent of the Company under paragraph (a) above shall not be unreasonably withheld or delayed and in any event, such consent shall be deemed given if the Company does not give its decision within ten (10)

Business Days of a request for consent from the Existing Lender or the Agent provided that it shall not be unreasonable for the Company to withhold consent on the basis that the New Lender is a Loan to Own/Distressed Debt Investor and no such deemed consent shall be applicable in respect of any New Lender that is a Loan to Own/Distressed Debt Investor.

- (c) Notwithstanding any other provision of this Agreement:
 - (i) during the Certain Funds Period, the prior written consent of the Company (as determined in its sole discretion) must be obtained before an Existing Lender may make an assignment, transfer or sub-participation in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*) in respect of any of its rights and obligations unless the assignment, transfer or sub-participation is to an Affiliate or Subsidiary of that Existing Lender (a “**Lender Delegate**”) and the relevant Original Lender remains liable for the performance of the rights and obligations of that Lender Delegate in accordance with paragraph (d) below); and
 - (ii) prior to the Closing Date, the prior written consent of the Company (in its sole discretion) must be obtained before an Existing Lender may make an assignment, transfer or sub-participation.
- (d) Notwithstanding the terms of this Agreement, if an Original Lender transfers any or all of its unfunded Commitments to a New Lender (including an Affiliate or Related Fund) during the Certain Funds Period (the “**Relevant Transferred Commitments**”), then, provided that the Lenders are obliged to comply with Clause 5.4 (*Lenders’ Participation*) pursuant to Clause 4.4 (*Utilisations during the Certain Funds Period*) in relation to a Utilisation of the Facility requested by the Company in a Utilisation Request, that Original Lender shall remain obligated to fund and, subject to Clause 4.4 (*Utilisations during the Certain Funds Period*), will fund the Relevant Transferred Commitments in respect of the proposed Loan if that New Lender has failed to so fund (or has confirmed that it will not be able to fund) by 9:30 am on the relevant Utilisation Date during the Certain Funds Period in circumstances where such New Lender is contractually obliged to do so under this Agreement.
- (e) Where an Existing Lender has sub-participated, sub-divided or sub-allocated its rights under the Finance Documents for voting purposes (including pursuant to a derivative instrument or derivative transaction), that Existing Lender will, where such Existing Lender has entered into a sub-participation agreement, be required to promptly provide to the Company a written notice of the identity of the person ultimately determining the exercise of its voting rights under the Finance Documents and, subject to any confidentiality restrictions binding on such Existing Lender (negotiated on an arm’s length basis), any other information in reasonable detail regarding any sub-participant at any time upon reasonable request provided that a Lender shall not be required to disclose the identity of a sub-participant if that Lender retains exclusive control over all rights and obligations in relation to the commitments the subject of the relevant participation, including all voting rights (for the

avoidance of doubt, free of any agreement or understanding pursuant to which it is required to or will consult with any other person in relation to the exercise of any such rights and/or obligations).

- (f) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent, and the Agent not being aware that the relevant New Lender is a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;
 - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
 - (iii) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Lender and the New Lender.
- (g) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 25.5 (*Procedure for Transfer*) is complied with.
- (h) Each Lender and sub-participant shall ensure that the terms of any derivative transaction or sub-participation which transfers voting rights to a third party shall contain restrictions on transfers, operating for the benefit of the Company, in substantially similar terms to this Clause 25.2.
- (i) If:
 - (i) a Lender assigns or transfers or grants a sub-participation of any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer, sub-participation or derivative transaction or change occurs, the Company or an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax Gross-up and Indemnities*), Clause 15.1 (*Increased Costs*) or Clause 16 (*Other Indemnities*), then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (j) Any transfer by an Existing Lender (together with its Affiliates and Related Funds to the extent transferring to the same New Lender at the same time) shall be of a minimum amount of GBP 5,000,000 and shall not be permitted if it would result in the aggregate Commitments of any Lender being less than GBP 5,000,000 (and, if the Lender is a bank, such Lender's Commitment will be aggregated with the Commitment of such Lender's Affiliates, and if the Lender is a trust or fund, such Lender's Commitment will be aggregated with the Commitment of Related Funds) unless the Existing Lender assigns or transfers all of its Commitments. For the purposes of this sub-paragraph, any Lender's Commitment shall be deemed to include the Commitments of the Affiliates and Related Funds of that Lender, and participation under the Facility to the relevant assignee or transferee.
- (k) If the Existing Lender has consented to an amendment or waiver request which is outstanding at the time of assignment or transfer, the New Lender shall also be deemed to have consented to that request.
- (l) If (i) an actual or purported assignment or transfer (or sub-participation which transfers any discretion with respect to the exercise of any voting rights) of a Lender's Commitments or outstandings takes place without the prior consent of the Company (where such consent is required) or otherwise in breach of the conditions set out in this Clause 25, or (ii) any actual or purported assignment, transfer, sub-participation or derivative transaction referred to in paragraph (a) above is entered into with a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender, the related commitments and participations shall not be included when ascertaining whether a certain percentage of total Commitments and/or participations has been obtained to an amendment or waiver.
- (m) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

25.3 Assignment or Transfer Fee

Unless the Agent otherwise agrees to waive such fees and excluding an assignment or transfer (i) by an Original Lender to an Affiliate of that Original Lender or (ii) made in connection with the primary syndication of the Facility, the New Lender shall, on or before the date upon which an assignment or transfer to it takes effect pursuant to this Clause 25, pay to the Agent (for its own account) a fee of GBP 2,500.

25.4 Limitation of Responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or any other Group Company of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

25.5 Procedure for Transfer

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender upon its completion of all “know your customer” or similar checks under all applicable laws and

regulations in relation to the transfer to such New Lender, and if it is not aware that the relevant New Lender is a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender. The Obligors and the other Finance Parties irrevocably authorise the Agent to execute any Transfer Certificate on their behalf, without any consultation with them.

- (c) Subject to Clause 25.10 (*Pro rata interest settlement*), on the Transfer Date:
- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other Group Company and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Arrangers, the Security Agent, the New Lender and the other Lenders, shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arrangers, the Security Agent shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a Lender.

25.6 Procedure for Assignment

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks

under all applicable laws and regulations in relation to the assignment to such New Lender.

- (c) Subject to Clause 25.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 25.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.5 (*Procedure for Transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*).

25.7 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Increase Confirmation, send to the Company a copy of that Transfer Certificate, Assignment Agreement or Increase Confirmation.

25.8 Security over Lenders’ Rights

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or (other than upon enforcement by the beneficiary of such charge, assignment or Security) substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

25.9 Information to Company

The Agent shall provide to the Company, within five (5) Business Days of a request by the Company (but no more frequently than once per calendar month unless required in order to determine whether a Tax Deduction should be made), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents and the electronic mail address of each Lender held by the Agent on file.

25.10 *Pro rata* interest settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 (*Procedure for Transfer*) or any assignment pursuant to Clause 25.6 (*Procedure for Assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six (6) Months, on the next of the dates which falls at six (6) Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

26. DEBT PURCHASE TRANSACTIONS

26.1 Permitted Debt Purchase Transactions

The Parent Guarantor shall not, and shall procure that each other Group Company shall not (i) enter into any Debt Purchase Transaction or (ii) beneficially own or be able to exercise control over all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraph (b) or (c) of the definition of Debt Purchase Transaction.

26.2 Disenfranchisement on Debt Purchase Transactions entered into by an Equity Party

- (a) For so long as an Equity Party (excluding, for the avoidance of doubt, any Independent Debt Fund) (i) beneficially owns or is able to exercise control over a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining the Majority Lenders, the Super Majority Lenders or whether any given percentage of the Total Commitments has been obtained (including for the avoidance of doubt, unanimity) to approve any request for a consent, waiver, amendment or other vote or to give instructions under the Finance Documents, such Commitment shall be deemed to be zero; and
 - (ii) for the purposes of Clause 30.5 (*Exceptions*), such Equity Party or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person not being an Equity Party it is a Lender by virtue otherwise than by beneficially owning or being able to control the relevant Commitment).
- (b) Paragraph (a) above does not apply to any request for a consent, waiver, amendment or other vote or instruction under the Finance Documents which would result in the Commitment of the relevant Equity Party under the Facility being treated in any manner which is less favourable to it (in its capacity as a Lender) than the treatment proposed to be applied to any Commitment of another Lender under the Facility.
- (c) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with an Equity Party (excluding, for the avoidance of doubt, any Independent Debt Fund) (a “**Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Part 1 of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (d) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

- (i) is terminated; or
- (ii) ceases to be with an Equity Party,

such notification to be substantially in the form set out in Part 2 of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (e) Each Equity Party (excluding, for the avoidance of doubt, any Independent Debt Fund) that is a Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the request of, or on the instructions of, the Agent or one or more of the Lenders (save for interest rate notifications and other communications or documents relating to the administration of the Loans under this Agreement).

27. CHANGES TO THE OBLIGORS

27.1 Assignment and Transfers by Obligors

The Obligors and any other Group Company may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

27.2 Additional Guarantors

- (a) Subject to the Security Principles, the Parent Guarantor may request that any Group Company become an Additional Guarantor and grant such Security as the Agent may require and shall accede to the Intercreditor Agreement. A Group Company shall become an Additional Guarantor if:
 - (i) the Parent Guarantor delivers to the Agent a duly completed and executed Accession Deed;
 - (ii) the Parent Guarantor has complied with the provisions of Clause 21.8 (*"Know your Customer" checks*) in respect of each such Additional Guarantor; and
 - (iii) the Agent has received all of the documents and other evidence listed in Part 2 (*Conditions Precedent Required to be delivered by an Additional Guarantor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent (acting reasonably).
- (b) The Agent shall notify the Parent Guarantor and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it

(acting reasonably)) all the documents and other evidence listed in Part 2 (*Conditions Precedent Required to be delivered by an Additional Guarantor*) of Schedule 2 (*Conditions Precedent*)

27.3 Resignation and Release of Security on Disposal

- (a) If an Obligor disposes of any asset (or any member of the Group disposes of shares in an Obligor or any Holding Company of an Obligor):
 - (i) and such disposal is not prohibited under the terms of this Agreement;
 - (ii) with the prior consent of the Agent (pursuant to the terms of this Agreement), and such asset (or shares) is subject to Transaction Security, the Security Agent and/or any other Secured Party (as applicable) shall, at the cost and request of the Company, release Transaction Security over that asset (or shares) and, in the case of any such disposal of shares in an Obligor or a Holding Company of an Obligor to a person who is not a member of the Group, over the respective assets of such Obligor and its Subsidiaries (and the shares in any such Obligor and/or Subsidiary), issue any certificate of non-crystallisation of any floating charge and carry out any other action (including notification and filings for cancelling any registration) that may reasonably be required or considered necessary or desirable in connection with that disposal and that release, provided that in the case that such assets are transferred by that Obligor to another Group Company in a manner not prohibited by this Agreement, the Security granted by that transferee shall be limited to its shares, bank accounts and intercompany receivables (and for the avoidance of doubt, no Group Company shall be required to grant any Security if such assets are substantially and simultaneously disposed, or committed to be disposed, to a third party in a manner not prohibited by this Agreement) (in which case no Security shall be granted over its assets).
- (b) Subject to the Intercreditor Agreement, the Security Agent will, at the request and cost of the Company, release, for and on its own behalf and for and on behalf of the other Secured Parties, from the Transaction Security Documents, and issue certificates of non-crystallisation of any floating charge in respect of, any Security granted over any asset, the release of which is necessary to allow any transaction not prohibited under the terms of this Agreement.

28. ROLE OF THE AGENT, THE ARRANGERS AND OTHERS

28.1 Appointment of the Agent

- (a) Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arrangers and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in

connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

28.2 Duties of the Agent

- (a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 25.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*), paragraph (a) above shall not apply to any Transfer Certificate, any Assignment Agreement.
- (c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (g) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

28.3 Role of the Arrangers

Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

28.4 No Fiduciary Duties

- (a) Nothing in any Finance Document constitutes the Agent and/or the Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Security Agent and/or the Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

28.5 Business with the Group

The Agent, the Security Agent and the Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Group Company.

28.6 Rights and Discretions

- (a) The Agent may:
- (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraph (c) or (d) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by an Equity Party*)) believed by it to be genuine, correct and appropriately authorised;
 - (ii) rely on any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
 - (iii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iv) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of subparagraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;

- (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; and
 - (iv) no Notifiable Debt Purchase Transaction:
 - (A) has been entered into;
 - (B) has been terminated; or
 - (C) has ceased to be with an Equity Party.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part, of any such person, unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and Company and shall disclose, as soon as reasonably practicable, the same upon the written request of Company or the Majority Lenders.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Arrangers is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a) of Clause 12.2 (*Market Disruption*).
- (i) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (j) Without prejudice to the generality of paragraphs (c) or (i) above, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed

by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.

- (k) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

28.7 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
 - (B) the Super Majority Lenders if the relevant Finance Document stipulates the matter is a Super Majority Lender decision; and
 - (C) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders (or Super Majority Lenders (as appropriate)) shall override any conflicting instructions given by any other Parties and will be binding on all the Finance Parties other than the Security Agent.
- (d) The Agent may refrain from acting in accordance with the instructions of any Lender or group of Lenders until it has received any indemnification and/or security as it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

- (e) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Super Majority Lenders or the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

28.8 Responsibility for Documentation

None of the Agent or the Arrangers:

- (a) is responsible or liable for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arrangers, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) is responsible or liable for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) is responsible or liable for any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

28.9 No duty to monitor

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

28.10 Exclusion of Liability

- (a) Without limiting paragraph (b) below and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
 - (iii) without prejudice to the generality of sub-paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
 - (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
 - (d) Nothing in this Agreement shall oblige the Agent or the Arrangers to carry out
 - (i) any “know your customer” or other checks in relation to any person or
 - (ii) any check on the extent to which any transaction contemplated by this

Agreement might be unlawful for any Lender, on behalf of any Lender and each Lender confirms to the Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arrangers.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

28.11 Lenders' Indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Company shall within three (3) Business Days of demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

28.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates as its successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent may resign by giving thirty (30) days' notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.

- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent.
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade a proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 28 and, with the consent of the Company (such consent not to be unreasonably withheld): (A) any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees and (B) any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 14.8 (*FATCA Information*) and the Company or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after the FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 14.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

- (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Company or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Agent, requires it to resign.

28.13 Replacement of the Agent

- (a) After consultation with Company, the Majority Lenders may, by giving thirty (30) days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.14 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arrangers are obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

28.15 Relationship with the Lenders

- (a) Subject to Clause 25.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day, unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.
- (c) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 33.6 (*Electronic Communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and paragraph (a)(ii) of Clause 33.6 (*Electronic Communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

28.16 Credit Appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each Group Company;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement

or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

28.17 Deduction from Amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

28.18 Reliance and Engagement Letters

Each Finance Party and Secured Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent) the terms of any reliance letter or engagement letters relating any reports, analyses or letters provided by accountants, due diligence report providers or other professional advisors in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

30. SHARING AMONG THE FINANCE PARTIES

30.1 Payments to Finance Parties

- (a) If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 31 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:
 - (b) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the Agent;
 - (c) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
 - (d) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (*Partial Payments*).

30.2 Redistribution of Payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 31.6 (*Partial Payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

30.3 Recovering Finance Party’s Rights

- (a) To the greatest extent permitted by law, on a distribution by the Agent under Clause 30.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.
- (b) Where the provisions of paragraph (a) above are not permitted under applicable law, on a distribution by the Agent under Clause 30.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from an Obligor, the Recovering Finance Party shall be deemed subrogated in the rights of each of the Sharing Finance Parties, up to the amount of the Sharing Payment each Sharing Finance Party has received, towards the obligations of any Obligor to the Sharing Finance Parties.

30.4 Reversal of Redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

30.5 Exceptions

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

31. PAYMENT MECHANICS

31.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State as specified by the Agent) and with such bank as the Agent in each case specifies.

31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (*Distributions to an Obligor*) and Clause 31.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

31.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 Clawback

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent is willing to make available amounts for the account of the Company before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Company:
 - (i) the Company shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Company shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

31.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the

Agent in accordance with Clause 31.1 (*Payments to the Agent*) may instead either:

- (i) pay that amount direct to the required recipient(s); or
- (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (b) of the definition of Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the “**Paying Party**”) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the “**Recipient Party**” or “**Recipient Parties**”).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 28.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 31.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party, give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

31.6 Partial Payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the

Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

- (i) *first*, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent and the Security Agent under those Finance Documents;
 - (ii) *secondly*, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
 - (iii) *thirdly*, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

31.7 No Set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim save that an Obligor may set off any matured obligation due from a Defaulting Lender (other than an Arranger or an Affiliate of an Arranger) against any matured obligation owed by that Obligor or another Group Company to that Defaulting Lender, in each case under the Finance Documents (and in such circumstances, the Agent or, as the case may be, the Security Agent shall treat such set off as reducing only payments due from the relevant Defaulting Lender).

31.8 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

31.9 Currency of Account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.

- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

31.10 Change of Currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

31.11 Disruption to Payment Systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

32. SET-OFF

- (a) Subject to paragraph (b) below, following the taking of any action by the Majority Lenders under Clause 24.16 (*Acceleration*), a Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Before exercising any right of set-off under paragraph (a) above, the relevant Finance Party shall give the Company and the relevant Obligor written notice of its intention to exercise such rights of set-off.

33. NOTICES

33.1 Communications in Writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

33.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Company that identified under its name below;
- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Agent, that identified under their respective names below, or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may

notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

33.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

33.4 Notification of Address and Fax Number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 33.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

33.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

33.6 Electronic Communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by unencrypted electronic mail or other electronic means to the extent that those two Parties

agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
 - (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
 - (d) For reasons of technical practicality, electronic communication may be sent in unencrypted form, even if the content may be subject to confidentiality and banking secrecy.

33.7 Use of Websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the “**Designated Website**”) if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Agent under paragraph (c)(i) or (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall at its own cost comply with any such request within ten Business Days.

33.8 English Language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents (excluding any constitutional documents of a member of the Group) provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent (acting reasonably), accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

34. CALCULATIONS AND CERTIFICATES

34.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

34.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

34.3 Day Count Convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

35. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

37. AMENDMENTS AND WAIVERS

37.1 Intercreditor Agreement

This Clause 37 is subject to the terms of the Intercreditor Agreement.

37.2 Required Consents

- (a) Any term of the Finance Documents may be amended or waived with the consent of the Majority Lenders (subject to Clause 37.3 (*Exceptions*)) and the Company and any such amendment or waiver will be binding on all Parties.

- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.
- (c) Without prejudice to the generality of paragraphs (c), (i) and (j) of Clause 28.6 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Parent Guarantor.
- (e) For the avoidance of doubt, any waiver of a right of prepayment under Clause 8.5 (*General*) and/or Schedule 12 (*General Undertakings*) shall require only the consent of the Majority Lenders and the Company.
- (f) Notwithstanding anything to the contrary in this Clause 37, a Finance Party may unilaterally waive, relinquish or otherwise irrevocably give up all or any of its rights with the consent of the Company.
- (g) Any term of the Finance Documents may be amended or waived by the Company and the Agent without the consent of any other party in order to cure defects or omissions or resolve ambiguities or inconsistencies or correct manifest errors, if such amendment or waiver is of a minor, technical or administrative nature, or otherwise if such amendment or waiver is otherwise for the benefit of all or any of the Lenders where the remaining Lenders are not adversely affected thereby.

37.3 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of “**Change of Control**”, “**Majority Lenders**” or “**Super Majority Lenders**” in Clause 1.1 (*Definitions*), paragraph (b) of Clause 8.1 (*Change of Control*), Clause 37.1 (*Intercreditor Agreement*), Clause 37.2 (*Required Consents*) or this Clause 37.3;
 - (ii) an extension to the date of payment of, or change to, any amount under the Finance Documents (other than in relation to the provisions set out in Clause 8 (*Mandatory Prepayment*) but not including provisions in relation to any prepayments following a Change of Control);
 - (iii) any provision which expressly requires the consent of all the Lenders;
 - (iv) Clause 2.2 (*Finance Parties’ Rights and Obligations*), Clause 7.1 (*Illegality*), Clause 25 (*Changes to the Lenders*) or (except solely to include provisions for any Additional Debt Financing into this Agreement) Clause 30 (*Sharing among the Finance Parties*);
 - (v) any amendment to the order of priority or subordination under the Intercreditor Agreement or the manner in which the proceeds of

- enforcement of Transaction Security are distributed (in each case, other than resulting from any new Indebtedness which is subordinated to the Facility);
- (vi) any change to the Company in respect of an existing Utilisation (other than pursuant to the terms of this Agreement);
 - (vii) a change in currency of payment of any amount under the Finance Documents; or
 - (viii) any change to the governing law of this Agreement, shall not be made without the prior consent of all the Lenders.
- (b) Any amendment or waiver which relates to the rights or obligations applicable to a particular Utilisation, Loan or class of Lenders which does not materially and adversely affect the rights or interests of Lenders in respect of other Utilisations, Loans or another class of Lenders, shall only require the consent of the Majority Lenders (or the relevant Super Majority Lenders or the relevant Lenders, as the case may be) as if reference in this Clause to “**Majority Lenders**” or “**Lenders**” were only to “**Majority Lenders**” or “**Lenders**” participating in that Utilisation, Loan or forming part of that affected class.
- (c) No consent from any Lenders shall be required in connection with any Additional Debt Financing (other than the consent of the relevant Lender(s) providing the Additional Debt Financing).
- (d) An amendment or waiver which has the effect of changing or which relates to the release of any Transaction Security from its obligations shall not be made without the prior written consent of the Super Majority Lenders unless:
- (i) permitted under this Agreement or any other Finance Document;
 - (ii) relating to a Permitted Transaction, a Listing or to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document or in circumstances where the Security Agent would be obliged and authorised to release the relevant Transaction Security pursuant to the terms of the Intercreditor Agreement; or
 - (iii) such release is consequential on or required to implement an Additional Debt Financing, and, for the avoidance of doubt, in the circumstances described in sub-paragraphs (i) to (iii) above, no consent shall be required from the Secured Parties for the relevant release which shall be made promptly by the Security Agent, or the relevant Secured Parties, following the request of the Company.
- (e) Any amendment or waiver in respect of a provision which expressly requires the consent of the Super Majority Lenders will require consent of the Super Majority Lenders.

- (f) Any reduction in the Margin (other than by reason of the provisions of the definition thereof which do not require consent) or fees shall only require the consent of the Lenders affected by such reduction.
- (g) [Reserved.]
- (h) If any Lender fails to respond to a request (or abstains from accepting or rejecting such request) for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document or other vote of the Lenders under the terms of this Agreement within the period of time specified by the Agent (being ten (10) Business Days unless the Company and the Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participation under the Facility when ascertaining whether any relevant percentage of Total Commitments and/or participations has been obtained to approve that request.
- (i) An amendment or waiver which relates to the rights or obligations of the Agent, any Arranger, or the Security Agent may not be effected without the consent of the Agent, that Arranger or the Security Agent (as applicable).
- (j) An amendment or waiver which relates to paragraph (d) of Clause 20.21 (*Sanctions, Anti-Money Laundering and Anti-Bribery*) or paragraph (e) of Clause 23.7 (*Sanctions, Anti-Money Laundering and Anti-Bribery*) may not be effected without the consent of each of the Restricted Lenders (as defined therein).
- (k) Subject to paragraph (b) above, if any Screen Rate is not available for a currency which can be selected for a Loan, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to that currency in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Majority Lenders and the Company.
- (l) Notwithstanding any other provision of this Agreement, any waivers or amendments requiring consent of the Majority Lenders that may be sought by the Company during the Certain Funds Period shall, notwithstanding any such assignment or transfer of rights or obligations by any Original Lender pursuant to Clause 25 (*Changes to the Lenders*), be capable of being consented to only with the consent of the Original Lenders.

37.4 Replacement of a Lender

- (a) If at any time:
 - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below);
 - (ii) any Lender becomes an industrial competitor (as interpreted in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*)) following the date upon which it becomes a Lender; or

- (iii) an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (*Illegality*) or to pay additional amounts pursuant to Clause 15.1 (*Increased Costs*), Clause 14.2 (*Tax Gross-up*) or Clause 14.3 (*Tax Indemnity*) to any Lender in excess of amounts payable to the other Lenders generally, or any Lender requests payment based on the occurrence of a Market Disruption Event,

(each such Lender being a “**Relevant Lender**”) then the Company may (but is not obliged to), on not less than three (3) Business Days’ prior written notice to the Agent and such Relevant Lender:

- (A) replace such Relevant Lender by requiring it to (and such Relevant Lender shall, or following the expiry of three (3) Business Days, shall be deemed to under paragraph (c) below) transfer pursuant to Clause 25 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity which is not a Group Company (a “**Replacement Lender**”) which:

- (1) is selected by the Company; and
- (2) confirms its willingness to assume and does assume all the obligations of the transferring Relevant Lender (including the assumption of the transferring Relevant Lender’s participations on the same basis as the transferring Relevant Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable that applying to the voluntary prepayment provisions under paragraph (a) of Clause 7.3 in relation thereto under the Finance Documents (where such transfer shall be deemed to occur three (3) Business Days following the delivery of the relevant Transfer Certificate to the Company by the Replacement Lender together with the payment of the relevant amount (as set out above) to the Agent for the account of the exiting Lender in the event that the Relevant Lender does not execute the relevant Transfer Certificate); or

- (B) prepay the Relevant Lender and/or cancel the Relevant Lender’s Available Commitments together with all interest accrued; provided that, in respect of any Relevant Lender referred to in paragraphs (a)(i) to (iii) above, unless the Majority Lenders otherwise agree, such prepayment is funded from New Equity or Subordinated Debt received after the Closing Date or any other monies which would otherwise be permitted to be distributed to the Investors under the Finance Documents as a Permitted Payment (without double counting).

- (b) The replacement or prepayment/repayment of a Lender pursuant to this Clause shall be subject to the following conditions:
- (i) subject to paragraph (vi) below, the Company shall have no right to replace the Agent or Security Agent (in its capacity as Agent or Security Agent);
 - (ii) neither the Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than three (3) Months after the date the Non-Consenting Lender notifies the Company and the Agent of its failure or refusal to agree to any consent, waiver or amendment to the Finance Documents requested by the Company;
 - (iv) in the event of a replacement of a Lender in respect of which an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (*Illegality*), such replacement must take place no later than ten (10) Business Days after the date of the Notice to the Company;
 - (v) in no event shall the Relevant Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (vi) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to a Replacement Lender, the completion of which the Agent shall promptly notify to the Company and the Replacement Lender. If the Agent is not satisfied with the results of such checks in relation to a Replacement Lender that is proposed to replace a Relevant Lender, then the Company may require the Agent to promptly notify the Lenders of its resignation as Agent in accordance paragraph (b) of Clause 28.12 (*Resignation of the Agent*) and such notice shall be irrevocable.
- (c) Any transfer by a Relevant Lender shall be deemed to occur three (3) Business Days following the delivery of a Transfer Certificate to the Agent by the relevant Replacement Lender along with the payment of the relevant amount to the Agent for the account of such Relevant Lender in the event that such Relevant Lender does not execute the Transfer Certificate.
- (d) In the event that:
- (i) the Company or the Agent (at the request of the Company) has requested the Lenders to consent to a waiver or amendment of any provisions of the Finance Documents;
 - (ii) the waiver or amendment in question requires the consent of the Super Majority Lenders or all the Lenders (or all of the Lenders under the Facility, as the case may be); and

- (iii) the Majority Lenders (or the Majority Lenders under the Facility, as the case may be) have consented to such waiver or amendment, then any Lender who does not and continues not to agree to such request, waiver or amendment shall be deemed a “**Non-Consenting Lender**”.

37.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders, the Super Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender’s participations shall not be included when ascertaining whether a certain percentage of total Commitments and/or participations has been obtained to an amendment or waiver.
- (b) For the purposes of this Clause 37.5, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of Defaulting Lender has occurred, unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

37.6 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender (and for these purposes a Lender shall be deemed to be a Defaulting Lender even if it is disputing in good faith whether it is contractually obliged to make the relevant payment if such dispute has occurred and is continuing for more than ten (10) Business Days), by giving not less than five (5) Business Days’ prior written notice to the Agent and such Lender replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 25 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a “**Defaulting Lender Replacement**”) selected by the Company, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender’s participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents (where such transfer shall be deemed to occur three (3) Business Days following the delivery of the relevant Transfer Certificate to the

Company by the Defaulting Lender Replacement together with the payment of the relevant amount (as set out above) to the Agent for the account of the exiting Defaulting Lender in the event that the exiting Defaulting Lender does not execute the relevant Transfer Certificate).

- (b) Alternatively, the Company may repay the relevant Defaulting Lender and/or cancel the relevant Defaulting Lender's Available Commitments provided that, unless the Majority Lenders otherwise agree, such prepayment is funded from New Equity or Subordinated Debt received after the Closing Date or any other monies which would otherwise be permitted to be distributed to the Investors under the Finance Documents as a Permitted Payment (without double counting).
- (c) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Defaulting Lender Replacement;
 - (iii) the transfer must take place no later than ten (10) Business Days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Defaulting Lender Replacement any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to a Defaulting Lender Replacement, the completion of which the Agent shall promptly notify to the Company and the Defaulting Lender Replacement.

38. CONFIDENTIALITY

38.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clauses 38.2 (*Disclosure of Confidential Information*) and 38.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

38.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, insurers, credit protection providers, partners and representatives such Confidential

Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 28.15 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.8 (*Security over Lenders' Rights*);
 - (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (viii) who is a Party; or

- (ix) with the consent of the Company;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

and a copy of any such Confidentiality Undertaking and any amendment thereto shall (unless otherwise agreed by the Company in writing) be provided to the Company within ten (10) Business Days of the Confidentiality Undertaking being agreed with the relevant party (and in any event before any information is disclosed or any transfer, assignment or other transaction described in paragraph (b) above is executed).

- (c) to any person appointed by that Finance Party or by a person to whom paragraphs (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers (amended to the extent necessary to state that the Company can rely on it by virtue of reliance on the Third Parties Act and that it is not capable of being materially amended without the prior written consent of the Company) or such

other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

38.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) the names of the Agent and the Arrangers;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currencies of the Facility;
 - (ix) names and types of the Facility (and any tranches thereof);
 - (x) amount of Commitments under the Facility (and any tranches thereof);
 - (xi) ranking of the Facility;
 - (xii) Maturity Date for Facility;
 - (xiii) governing law of the Facility;
 - (xiv) changes to any of the information previously supplied pursuant to subparagraphs (i) to (xii) above; and
 - (xv) such other information agreed between such Finance Party and the Company, to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may

be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) Each Obligor represents that none of the information set out in paragraphs (a)(i) to (a)(xiii) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

38.4 Entire Agreement

This Clause 38 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

38.5 Inside Information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

38.6 Notification of Disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38.

38.7 Continuing Obligations

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 24 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

39. CONFIDENTIALITY OF FUNDING RATES

39.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the Company pursuant to Clause 10.4 (*Notification of Rates of Interest*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for use with Administration/Settlement Services Providers or such other form of confidentiality undertaking agreed between the Agent and the Relevant Lender, as the case may be.
- (c) The Agent may disclose any Funding Rate, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives if any person to whom that Funding Rate is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the relevant Lender, as the case may be.

39.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 39.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 39.

39.3 No Event of Default

No Default or Event of Default will occur under Clause 24.2 (*Other Obligations*) by reason only of an Obligor's failure to comply with this Clause 39.

40. DISCLOSURE OF LENDER DETAILS BY AGENT

40.1 Supply of Lender details to Company

The Agent shall provide to the Company within three (3) Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

40.2 Supply of Lender details at Company's discretion

- (a) The Agent shall, at the request of the Company, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
 - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
 - (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Company shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

40.3 Supply of Lender details to other Lenders

- (a) If a Lender (a "**Disclosing Lender**") indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

40.4 Lender enquiry

If any Lender believes that any entity is, or may be, a Lender and:

- (a) that entity ceases to have an Investment Grade Rating; or
- (b) an Insolvency Event occurs in relation to that entity, the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

40.5 Lender details definitions

In this Clause 40:

"Requisite Lenders" means a Lender or Lenders whose Commitments aggregate fifteen per cent. (15%) (or more) of the Total Commitments (or if the Total

Commitments have been reduced to zero, aggregated fifteen per cent. (15%) (or more) of the Total Commitments immediately prior to that reduction).

41. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

42. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law, provided Schedule 12 (*General Undertakings*) and Schedule 13 (*Certain New York Law Defined Terms*) and shall be interpreted in accordance with New York law (without prejudice to the fact that this Agreement is governed by English law).

43. ENFORCEMENT

43.1 Jurisdiction of English Courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 43.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

43.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints Willkie Farr & Gallagher (UK) LLP, CityPoint, 1 Ropemaker Street, London EC2Y 9AW, United Kingdom (for the attention of Mark Fine and Aymen Mahmoud) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must promptly (and in any event within five (5) Business Days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Obligor expressly agrees and consents to the provisions of this Clause 43 and Clause 42 (*Governing Law*).

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
THE ORIGINAL LENDERS**

Name of Original Lender	Commitment in GBP
Barclays Bank PLC	£208,000,000
Total	£208,000,000

SCHEDULE 2
CONDITIONS PRECEDENT

Part 1 – Initial Conditions Precedent

1. Obligors

- (a) A copy of the constitutional documents of the Company and the Parent Guarantor.
- (b) A copy of a resolution of the board of directors or managers of the Company and the Parent Guarantor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above or otherwise in relation to the Finance Documents and related documents.
- (d) If applicable, a copy of a resolution signed by all the holders of the issued shares in the Company and the Parent Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Company and the Parent Guarantor is a party.
- (e) A certificate of the Company and the Parent Guarantor (signed by an authorised signatory) confirming that, borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or other similar limit binding on the Company or the Parent Guarantor to be exceeded;
- (f) A formalities certificate of an authorised signatory of the Company and the Parent Guarantor certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2. Finance Documents

Copies of:

- (a) the Intercreditor Agreement;

- (b) this Agreement; and
- (c) the Fee Letters executed by the Company; and
- (d) the following Transaction Security Documents:
 - (i) an English law share charge granted by the Parent Guarantor over the shares it holds in the Company;
 - (ii) a New York law share pledge granted by the Parent Guarantor over the shares it holds in OSG Holdings Inc; and
 - (iii) English law debenture for all asset security over the Company's assets.

3. **Legal Opinions**

The following legal opinions in relation to the validity and enforceability of the Finance Documents and the status, authority, power and capacity of the Company each addressed to the Agent, the Security Agent and the Original Lenders:

- (a) a legal opinion of White & Case LLP, legal advisers to the Agent and the Arrangers as to English law; and
- (b) a legal opinion of Willkie Farr & Gallagher, legal advisers to the Company and the Parent Guarantor as to matters of New York law.

4. **Other Documents and Evidence**

- (a) The Funds Flow Statement, which shall be provided for information purposes only and shall not be required to be in form and substance satisfactory to the Agent.
- (b) A copy of the Bank Case Model.
- (c) The Reports, substantially in the form of the drafts delivered to and approved by the Arrangers on or around 17 October 2018 with such amendments or modifications as are notified to the Arrangers and do not materially and adversely affect the interest of the Lenders under the Finance Documents or which have been made with the consent of the Arrangers (acting reasonably), which may, to the extent that such reliance can be agreed with the providers of such Reports prior to the Closing Date, be relied upon or addressed to the Finance Parties subject to the conditions set out in the relevant reliance letters, together with (for information purposes only) modifications thereto in order to expand on the information set out therein to an extent customary for reports of this nature, provided that any such modifications shall not report on such matters which materially and adversely affect the interests of the Lenders.
- (d) A copy of the Announcement (provided that it is confirmed that the Announcement will be in form and substance satisfactory to the Agent if in the form of the draft most recently delivered to the Arrangers prior to the date of this Agreement, with any changes which (i) are not materially prejudicial to

the interests of the Lenders taken as a whole under the Finance Documents or (ii) are approved by the Arrangers (acting reasonably)).

- (e) A copy of (i) the Scheme Circular or (ii) as the case may be, the Offer Document dispatched to shareholders of the Target by or on behalf of the Company and the Implementation Agreement (if any), in either case in a form containing terms and conditions consistent in all material respects with those contemplated by the Announcement (and, in the case of an Offer, including an Acceptance Condition no lower than the Minimum Acceptance Condition), together with any changes which (i) are not materially prejudicial to the interests of the Lenders taken as a whole under the Finance Documents or (ii) are approved by the Arrangers (acting reasonably))
- (f) Evidence of satisfaction of any customary and reasonably required “know your customer” checks or other similar checks under all applicable laws and regulations pursuant to the Finance Documents in respect of the Company, as notified to the Company not less than five (5) Business Days prior to the date of this Agreement (or later if a direct response for further information arising from delivery of documentation by the Company in response to notifications received by it prior to such five (5) Business Day deadline).
- (g) A certificate from the Parent Guarantor confirming that the Scheme Effective Date has occurred or in the case of an Offer, the Offer has become or has been declared unconditional in all respects
- (h) A copy of the Group Structure Chart which shall be satisfied by delivery of the Tax Structure Report.
- (i) A copy of the Original Financial Statements.
- (j) Evidence that the agreed fees, costs and expenses due to the Arrangers and the Agent have been or will be paid on or by the first Utilisation Date of the Facility.

Part 2 – Conditions Precedent Required to be Delivered by an Additional Guarantor

1. An Accession Deed executed by the Additional Guarantor and the Parent Guarantor.
2. A copy of the constitutional documents of the Additional Guarantor .
3. A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
 - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Parent Guarantor to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. If applicable, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. If applicable, a copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 5 above.
7. A certificate of an authorised signatory of the relevant Additional Guarantor:
 - (a) Confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
 - (b) Certifying that each copy document relating to it and specified in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
8. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
 - (a) A legal opinion of the legal advisers to the Agent, as to English law in the form distributed to the Lenders prior to signing the Accession Deed;
 - (b) A legal opinion of the legal advisers to the Agent in the jurisdiction of incorporation of that Additional Guarantor or, if not incorporated in England

and Wales and market convention or practice requires this, the legal advisers to the Additional Guarantor.

9. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 43.2 (*Service of Process*), if not a Guarantor, has accepted its appointment in relation to the proposed Additional Guarantor.
10. Each Transaction Security Document which is required by the Agent to be executed by the proposed Additional Guarantor.
11. Any notices or documents required to be given or executed under the terms of those security documents.
12.
 - (a) If the Additional Guarantor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Guarantor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Guarantor to enter into the Finance Documents and perform its obligations under the Finance Documents.
 - (b) If the Additional Guarantor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Additional Guarantor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

**SCHEDULE 3
REQUESTS AND NOTICES**

**PART 1
UTILISATION REQUEST – LOANS**

From: [Company]

To: [Agent]

Dated:

Dear Sirs

**Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
 - (b) Facility to be utilised: Facility
 - (c) Currency of Loan: [•]
 - (d) Amount: [•] or, if less, the Available Facility***
 - (e) Interest Period: [•]
3. We confirm that each condition specified in Clause 4.2 (*Further Conditions Precedent*) of the Facility Agreement [or, the extent applicable, Clause 4.4 (*Utilisations during the Certain Funds Period*) of the Facility Agreement] is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for

[the Company]*

NOTES:

PART 2
SELECTION NOTICE APPLICABLE TO A TERM LOAN

From: [Company]

To: [Agent]

Dated:

Dear Sirs

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on [•]*.
3. [We request that the above Loan[s] be divided into [•] Loans with the following Base Currency Amounts and Interest Periods:] **

or

[We request that the next Interest Period for the above Loan[s] is [•]].***

4. This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for

[Company]*

NOTES:

* Insert details of all Term Loans for the Facility which have an Interest Period ending on the same date.

** Use this option if divisions of Loans are requested.

*** Use this option if Selection Notice relates to Loans, which are not being divided.

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [•] as Agent and [•] as Security Agent

From: [The Existing Lender] (the “**Existing Lender**”) and [The New Lender] (the “**New Lender**”)

Dated:

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as a Transfer Certificate for the purpose of the Facility Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.5 (*Procedure for Transfer*) of the Facility Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.5 (*Procedure for Transfer*) of the Facility Agreement all or part of the Existing Lender’s Commitment, rights and obligations under the Facility Agreement and other Finance Documents referred to in the Schedule in accordance with Clause 25.5 (*Procedure for Transfer*) of the Facility Agreement.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 25.4 (*Limitation of Responsibility of Existing Lenders*) of the Facility Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].

5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]²
6. The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify each Obligor which is a Party as an Obligor as at the Transfer Date that it wishes that scheme to apply to the Facility Agreement.]**
7. The New Lender confirms that it [is]/[is not]* an Equity Party.
8. The New Lender confirms that it is not (a) a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender or (b) an industrial competitor (as such term is interpreted in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*) of the Facility Agreement) of any Group Company.
9. We refer to clause 15.2 (*Change of Senior Secured Bridge Term Lender*) of the Intercreditor Agreement.

In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and

² Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 14.1 (*Definitions*).

* Insert jurisdiction of tax residence.

** Include if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facility Agreement.

agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

10. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
11. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

Note Before entering into a Transfer Certificate the Existing Lender should read the requirements of Clause 25 (Changes to the Lenders) of the Facility Agreement carefully and ensure that the relevant transfer complies with the terms thereof.

THE SCHEDULE

COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [•].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 5
FORM OF LENDER ASSIGNMENT

To: [•] as Agent, [•] as Security Agent and [•] as the Company for and on behalf of each Obligor From: [the Existing Lender] (the “**Existing Lender**”) and [the New Lender] (the “**New Lender**”)

Dated:

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This is an Assignment Agreement. This agreement (the “**Agreement**”) shall take effect as an Assignment Agreement for the purpose of the Facility Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.6 (*Procedure for Assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facility Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [•].
4. On the Transfer Date the New Lender becomes:
 - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - (b) party to the Intercreditor Agreement as a Senior Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (*Limitation of Responsibility of Existing Lenders*) of the Facility Agreement.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].
8. The New Lender confirms that it [is]/[is not]* an Equity Party.
9. The New Lender confirms that it is not (a) a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender or (b) an industrial competitor (as such term is interpreted in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*) of the Facility Agreement) of any Group Company.
10. We refer to clause 15.2 (*Change of Senior Secured Bridge Term Lender*) of the Intercreditor Agreement.

In consideration of the New Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

11. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Company*) of the Facility Agreement, to the Company (on behalf each Obligor) of the assignment referred to in this Agreement.
12. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
13. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
14. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

Note: Before entering into an Assignment Agreement the Existing Lender should read the requirements of Clause 25 (*Changes to the Lenders*) of the Facility Agreement carefully and ensure that the relevant transfer complies with the terms thereof.

THE SCHEDULE

**COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED BY
ASSIGNMENT, RELEASE AND ACCESSION**

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [•].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

[Security Agent]

By:

**SCHEDULE 6
TIMETABLES³**

	Loans in sterling*	Loans in other currencies
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 11.1 (<i>Interest Periods; Selection of Interest Periods</i>))	U-1 9.30 am	U-3 9.30 am
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (<i>Lenders' Participation</i>) and notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' Participation</i>)	U-1 Noon	U-3 Noon
LIBOR, is fixed	Quotation Day as of 11:00 a.m.	Quotation Day as of 10.30 a.m.

“U” = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

“U - X” = X Business Days prior to date of utilisation.

* Utilisations during the Certain Funds Period in respect of the Facility shall be made on one Business Days’ notice and a duly completed Utilisation Request shall be delivered no later than 9.00 a.m. London time on the day that is at least one (1) Business Day prior to the date of utilisation (U-1).

³ Banks to confirm.

SCHEDULE 7 SECURITY PRINCIPLES

1. General

- (a) The guarantees and Security to be provided under the Finance Documents will be given in accordance with these Security Principles. This Schedule identifies the Security Principles and addresses the manner in which the Security Principles will impact on and determine the extent and terms of the guarantees and Security proposed to be taken in relation to this transaction.
- (b) The Security Principles embody recognition by all parties that there may be certain legal and practical difficulties in obtaining guarantees and Security from all proposed Obligors in every jurisdiction in which the Obligors are incorporated. In particular:
 - (i) general legal and statutory limitations, regulatory restrictions, financial assistance, anti-trust and other competition authority restrictions, corporate benefit, fraudulent preference, equitable subordination, “controlled foreign corporation” and other tax restrictions, transfer pricing or “thin capitalisation” rules, “earnings stripping”, capital maintenance rules, retention of title claims, exchange control restrictions, employee consultation or approval requirements, minority shareholder protection / equal treatment of shareholders rules and similar principles may limit the ability of an Obligor to provide a guarantee or Security or may require that the guarantee or Security be limited as to its amount or otherwise and, if so, the guarantee or Security will be limited accordingly;
 - (ii) the Security (including, for the avoidance of doubt, the maximum amount secured thereunder) and extent of its perfection will be agreed taking into account the economic cost to the Group of providing Security (including, but not limited to, any notarial costs or increase to the tax cost of the Group, stamp duty and registration taxes, interest deductibility and all applicable legal fees) so as to ensure that it is proportionate to the benefit accruing to the Finance Parties as determined by the Security Agent (acting reasonably) having regard to, amongst other things, the extent of the obligations which can be secured by that Security and the priority that will be offered by taking or perfecting the Security;
 - (iii) certain supervisory board, works council, regulator or regulatory board (or equivalent), minority shareholder or other external body may be required to consent to enable a Group Company to provide a guarantee or Security. Such guarantee and/or Security shall not be required unless such consent has been received provided that reasonable endeavours (taking into account any adverse impact on relationships with third parties) have been used by the relevant Group Company to obtain the relevant consent;

- (iv) Obligors will not be required to give guarantees or enter into Transaction Security Documents if that would conflict with the fiduciary or statutory duties of their or any Affiliates' directors or contravene any legal or regulatory prohibition or restriction or have the potential to result in a risk of personal or criminal liability on the part of any director or officer or member of such company provided that the relevant Obligor shall use reasonable endeavours to overcome any such obstacle to the extent that that can be done at reasonable cost (one implication of this principle being that the relevant granting of guarantee or Security may be subject to a limitation language);
- (v) Obligors will not be required to give guarantees or enter into Security where the Parent Guarantor can demonstrate that there would be a significant Tax or other cost or disadvantage in doing so such that the costs of giving such guarantees or entering into such Security would be disproportionate to the benefit of such guarantee and/or Security to the Lenders, provided that the relevant Obligor shall use reasonable endeavours to overcome any such obstacle to the extent that that can be done at reasonable cost;
- (vi) having regard to the principle in paragraph (ii) above, the Company and the Security Agent shall discuss in good faith (having regard to customary practice in applicable jurisdictions) with a view to determining whether certain Security can be provided by the relevant member of the Group granting a promise to pledge in favour of the Finance Parties coupled with an irrevocable power of attorney to the Security Agent as opposed to a definitive legal mortgage or pledge over the relevant asset;
- (vii) guarantees and Security will be limited so that the aggregate of notarial costs and all registrations and like taxes and duties relating to the provision of security will not exceed an amount to be agreed between the relevant Obligor and the Security Agent;
- (viii) it is expressly acknowledged that it may be impossible to create Security over certain categories of assets in which event Security will not be taken over such assets;
- (ix) any asset subject to a legal requirement, contract, lease, licence, instrument or other third party arrangement, which prevents or conditions the asset from being charged, secured or being subject to the applicable Transaction Security Document (including requiring a consent of any third party, supervisory board or works council (or equivalent)) and any asset which, if subject to the applicable Transaction Security Document, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations with respect to any Obligor in respect of the asset or require the relevant Obligor to take any action materially adverse to the interests of the Obligors, in each case will be excluded from a guarantee or Transaction Security Document provided that reasonable endeavours (for a period of 20 Business Days and without incurring material cost)

to obtain consent to charging any such assets shall be used by the Obligor if the relevant asset is material in the context of the business of the Group and the relevant member of the Group is satisfied that such endeavours will not involve placing material commercial relationships with third parties in jeopardy;

- (x) prior to a Declared Default, each grantor of Security shall continue to have the sole right to deal with any asset subject to Security (including making any disposal of or in relation thereto) and with all contractual counterparties in respect thereof, and to amend, waive, terminate or allow to lapse (including agreeing to surrender or terminate any lease) any rights, benefits and/or obligations in respect of such secured assets, in each case without reference to any of the Finance Parties; and to operate and transact business in relation to any asset subject to Security, including making withdrawals from and effecting closures of the bank accounts, in each case other than to the extent agreed to be restricted pursuant to any Finance Document (save where applicable consents have been obtained);
- (xi) the giving of guarantees or the granting of Security, or the registration and /or perfection of Security, when required, and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified in the Finance Documents therefor or (if earlier or to the extent no such time periods are specified in the Finance Documents) within the time periods specified by applicable law in order to ensure due perfection. The giving of guarantees or the granting of Security, or the registration and /or perfection of Security will not be required if it could or is reasonably expected to have an adverse effect on the commercial reputation of the relevant Obligor or on its ability to conduct its operations and business in the ordinary course as otherwise not prohibited by the Finance Documents (including, without limitation, notification of receivables Security to third party debtors until a Declared Default has occurred provided that, for the avoidance of doubt, if it is only the perfection of Security which would give rise to such a material adverse effect then the Security will still be granted but not perfected);
- (xii) access to the assets of an Obligor, the maximum guaranteed or secured amount may be restricted or limited by guarantee limitation language agreed to reflect these principles and to the extent consistent with them, customary practice in the relevant jurisdiction to minimise stamp duty, notarisation, registration or other applicable fees where the economic benefit of increasing the guaranteed or secured amount is disproportionate to the level of such fee, Taxes and duties or where registration, notarial or other fees are payable by reference to the stated amount secured in which case, any asset Security granted by that Obligor shall be limited to the maximum recoverable amount under the guarantee;
- (xiii) where a class of assets to be secured includes material and immaterial assets, if the cost of granting Security over the immaterial assets is

disproportionate to the benefit of such Security, Security will be granted over the material assets only;

- (xiv) no guarantee from, or Security will be required to be given by, persons or over (and no consent shall be required to be sought with respect to) assets which are required to support acquired indebtedness to the extent such acquired indebtedness is permitted by this Agreement to remain outstanding after an acquisition. No member of a target group acquired pursuant to an acquisition not prohibited by this Agreement shall be required to become a guarantor or grant Security with respect to the Facility if prevented by the terms of the documentation governing that acquired indebtedness; no Security will be granted over any asset secured for the benefit of any Permitted Indebtedness and/or to the extent constituting a Permitted Lien;
- (xv) to the extent possible and unless required by applicable law, there should be no action required to be taken in relation to the guarantees or Security when any Finance Party assigns or transfers its participation (in part or in whole) to another party or to a third party (and, unless explicitly agreed to the contrary in this Agreement, no member of the Group shall bear or otherwise be liable for any taxes, any notarial, registration or perfection fees or any other costs, fees or expenses that result from any assignment or transfer by a Finance Party);
- (xvi) no fixed Security shall be granted over real property, provided that this shall not restrict (subject to these Security Principles) any real property being secured under a floating charge (or other similar Security) under a Transaction Security Document but excluding: (i) any unregistered real property which, if subject to any such Security would be required to be registered under the relevant land registry laws (provided that such real property shall only be excluded for so long as it remains unregistered); and (ii) any leasehold real property that has 25 years or less to run on the lease or has a rack rent payable in respect thereof;
- (xvii) no title investigations or other diligence on assets will be required and no title insurance will be required;
- (xviii) Security will not be required over any assets subject to Security in favour of a third party or any cash constituting regulatory capital or customer cash (and shall be excluded from any relevant Transaction Security Document);
- (xix) guarantees and Security will not be required from or over the assets of, any joint venture or similar arrangement, any minority interest or any member of the Group that is not wholly owned by another member of the Group;
- (xx) unless granted under a global Transaction Security Document governed by the law of the jurisdiction of an Obligor or under English law, all Security (other than share Security over its Obligor subsidiaries) shall be governed by the law of and secure assets located

in the jurisdiction of incorporation of the that Obligor and share Security over any subsidiary will be governed by the law and the place of incorporation of that subsidiary;

- (xxi) no perfection action will be required in jurisdictions where the Obligors are not incorporated but perfection action may be required in the jurisdiction of incorporation of one Obligor or a Material Company in relation to security granted by another Obligor incorporated in a different jurisdiction;
- (xxii) other than general security agreements and related filing, no perfection action will be required with respect to assets of a type not owned by members of the Group;
- (xxiii) the Security Agent will hold one set of Security (if applicable, on the basis of a parallel debt) for the Finance Parties (subject to applicable law);
- (xxiv) subject to the Security Principles, floating charge security (or its equivalent security interest (if applicable) in the relevant jurisdiction) will be granted over all assets of the relevant Obligor save where otherwise restricted by law or regulation;
- (xxv) local law restrictions or the operation of the Security Principles may mean that the Lenders may not be able to benefit from the same Security;
- (xxvi) Security will be taken on an “as is, where is” basis, meaning that Security shall be granted subject to the quality of title (and location of assets) held by the relevant Obligor and there shall be no requirement to represent as to title or to remedy defects in title and Group Companies will not be required to procure any changes to or correction of filings on external registers;
- (xxvii) no translation of any document relating to any Security or any asset subject to any Security will be required to be prepared or provided to the Finance Parties (or any agent or similar representative appointed by them at the relevant time), unless (i) required for such documents to become effective or admissible in evidence and (ii) a Declared Default is continuing.
- (xxviii) the Finance Parties (or any agent or similar representative appointed by them at the relevant time) will not be able to exercise any power of attorney or set-off granted to them under the terms of the Finance Documents prior to the occurrence of a Declared Default;
- (xxix) no Security may be provided on terms which are inconsistent with the turnover or sharing provisions in the Intercreditor Agreement; and
- (xxx) if any Obligor incorporated in the United Kingdom has current or contingent responsibility (either wholly or in part) for a funding deficit

in an occupational pension scheme, it will not be obliged to grant Transaction Security unless and until it has obtained such clearance (if any) as it shall reasonably require from the pensions regulator and such material assurances (if any) as it shall reasonably require from the trustees of the relevant scheme with regard to any exercise of their powers following the grant of Transaction Security, provided that it shall take prompt action with a view to obtaining such clearance and assurances. For this purpose, the issue of whether or not a funding deficit exists shall be determined by reference to the most recent actuarial valuation, or later annual funding update, of the scheme on the basis used for scheme specific funding under the Pensions Act 2004. The relevant Obligor will be required to comply with any requirement imposed by the pensions regulator as a condition of clearance provided that such request is not unduly onerous considering the position of the Obligor and such action would be permitted under the terms of the Finance Documents.

- (c) The Security Agent or the Finance Parties, as the case may be, shall promptly discharge any guarantees and release any Security which is or are or has become subject to any legal or regulatory prohibition as is referred to in paragraph (b) above.
- (d) Legal fees up to an amount to be agreed, disbursements, registration costs, taxes, notary fees and other reasonable costs and expenses related to the guarantees and Security incurred by legal counsel to the Company and by legal counsel to the Arrangers will be paid by the Company. It is recognised that a limitation on legal fees may result in less Security being available.
- (e) Before incurring material legal fees, disbursements, registration costs, taxes, notary fees and other costs and expenses relating to the granting of Security, the Arrangers will consult with the Company in respect of the incurrence of such fees, costs and expenses, taking into account the requirements of paragraph 71(b)(ii) above.
 - (i) Notwithstanding any term of any Finance Document, no loan or other obligation under any Finance Document may be, directly or indirectly:
 - (ii) guaranteed by a "*controlled foreign corporation*" (as defined in Section 957(a) of the United States Internal Revenue Code of 1986 (as amended) (*CFC*) or by an entity (a *FSHCO*) substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs, or guaranteed by a subsidiary of a CFC or FSHCO;
 - (iii) secured by any assets of a CFC, FSHCO or a subsidiary of a CFC or a FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO);
 - (iv) secured by a pledge or other security interest in excess of 65% of the voting equity interests (and 100% of the non-voting equity interests) of a CFC or FSHCO; or

- (v) guaranteed by any subsidiary or secured by a pledge of or security interest in any subsidiary or other asset, if it would result in material adverse US tax consequences as reasonably determined by the grantor of the Security and the Agent.

2. **Obligors and Security**

- (a) Each guarantee and Security will be an upstream, cross-stream and downstream guarantee and each guarantee and Security will be for all liabilities of the Obligors under the Finance Documents in accordance with, and subject to, the requirements of the Security Principles in each relevant jurisdiction.
- (b) To the extent possible, all Security shall be given in favour of the Security Agent and not the Finance Parties individually. “Parallel debt” provisions will be used where necessary; such provisions will be contained in the Intercreditor Agreement and not the individual Transaction Security Documents unless required under local law. To the extent possible, there should be no action required to be taken in relation to the guarantees or Security when any Lender assigns or transfers any of its participation in the Facility to a New Lender.
- (c) Any Transaction Security Document shall only be required to be notarised or notarially certified if required by law in order for the relevant Security to become effective, enforceable or admissible in evidence.
- (d) Notwithstanding anything to the contrary in the Security Principles or any other provision of this Agreement or any other Finance Document, neither The Company nor any Target Group Company shall provide any guarantees or Security under the Finance Documents.

3. **Terms of Transaction Security Documents**

The following principles will be reflected in the terms of any Security taken as part of this Agreement:

- (a) Subject to any Perfection Requirements the Security will be first ranking, to the extent possible;
- (b) Security will not be enforceable and will not crystallise until the occurrence of a Declared Default;
- (c) representations and undertakings shall only be included in each Transaction Security Document to the extent necessary or customary under local law to confirm authorisation, validity, enforceability, title to assets and any registration or perfection of the Security (in each case in relation to the asset subject to the Security) and shall not be repeated. Undertakings and/or representations given in this Agreement shall not be repeated in any Transaction Security Document; the provisions of each Transaction Security Document will not be unduly burdensome on the Obligor or interfere with the operation of its business or have an adverse effect on the commercial reputation of the Obligor and will be limited to those required by local law to

create effective Security and will not impose additional commercial obligations. Permitted Disposals, Permitted Transactions and the existence and creation of permitted security over assets (other than shares and intercompany loans) will be permitted. The Security Agent shall release any guarantees or Security in the event that such release is required to permit a Permitted Disposal or a Permitted Transaction;

- (d) the Transaction Security Documents should only operate to create or perfect security rather than to impose new commercial obligations or repeat clauses contained in other Finance Documents, accordingly (i) they should not contain additional representations, undertakings or indemnities (including, without limitation, in respect of insurance, information maintenance or protection of assets or the payment of fees, costs and expenses) unless these are the same as or consistent with those contained in this Agreement and are required for the creation, registration and perfection of Security and (ii) nothing in any Transaction Security Document shall (or be construed to) prohibit any transaction, matter or other step or dealing whatsoever in relation to any asset the subject of any Transaction Security Document if not prohibited by the terms of the other Finance Documents;
- (e) no Security will be granted over parts, stock, moveable plant or equipment or receivables if it would require labelling, segregation or periodic listing or specification of such parts, stock, moveable plant, equipment or receivables;
- (f) perfection will not be required in respect of (i) vehicles and other assets subject to certificates of title or (ii) letter of credit rights and tort claims (or applicable law equivalent);
- (g) in no event shall control agreements (or perfection by control or similar arrangements) be required with respect to any assets (including deposits or securities accounts) unless the Finance Documents expressly provide for any asset to be subject to specific restrictions on use;
- (h) information, such as lists of assets, will be provided if, and only to the extent, required by local law to be provided to perfect or register the Security and, if this information can be provided without breaching confidentiality requirements or damaging business relationships or commercial reputation and, when required, shall be provided no more frequently than annually (unless required to be provided by local law more frequently);
- (i) the Security Agent shall only be able to exercise a power of attorney following the occurrence of a Declared Default or if the relevant Obligor has failed to comply with a further assurance or perfection obligation within 10 Business Days of being notified of that failure (with a copy of that notice being sent to the Company) and being requested to comply;
- (j) subject to the other provisions of these Security Principles, Security will where legally possible and practicable automatically create Security over future assets of the same type as those already secured. Where local law requires supplemental pledges to be delivered in respect of future acquired assets in order for effective security to be created over that class of asset, such

supplemental pledges shall, to the extent required in accordance with these Security Principles, be provided at intervals no more frequent than twelve Months (unless required more frequently under local law); or if an Event of Default is continuing, at the request of the Security Agent;

- (k) each Transaction Security Document shall not operate to extend (or apply different levels of materiality to) the clauses set out in this Agreement (or the Intercreditor Agreement) such as those relating to notices, cost and expenses, indemnities, tax gross up, distribution of proceeds and release of Security other than if expressly required by local law to perfect the Security or make it enforceable or to facilitate the admissibility of a Transaction Security Document in court; and
- (l) each Transaction Security Document must contain a clause which records that if there is a conflict between the Transaction Security Document and this Agreement, or the Intercreditor Agreement then (to the fullest extent permitted by law) the provisions of this Agreement or of the Intercreditor Agreement, as applicable, will take priority over the provisions of the Transaction Security Document

4. **Floating charge**

No floating charge Security will be granted over any assets of any member of the Group unless that member of the Group is incorporated in a jurisdiction where floating charge Security is customarily granted.

5. **Acquisition Documents and Claim**

Rights of the Group under the Acquisition Documents shall be assigned or charged. If required by applicable local law to perfect the Security, notice of the assignment or charge will be served on the relevant counterparty within 10 Business Days of the Security being granted and the Company or the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice with 20 Business Days of service. If the Company or the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period.

6. **Bank accounts**

- (a) If an Obligor grants Security over its material bank accounts it shall be free to deal with, operate open and close and transact business in relation to those accounts in the course of its business until a Declared Default. For the avoidance of doubt, (unless the Finance Documents expressly provide for any specific account (by reference to its purpose) to be subject to specific restrictions on use) there will be no “fixed” Security over bank accounts, cash or receivables or any obligation to hold or pay cash or receivables in a particular account until the occurrence of a Declared Default.
- (b) If required by local law to create or perfect the Security and without disrupting operation of the account, notice of the Security will be served on the account bank as soon as reasonably practicable but, in any event, within 10 Business

Days of the Security being granted and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period. Irrespective of whether notice of the Security is required for perfection, if the service of notice would prevent the Obligor from using a bank account in the course of its business no notice of Security shall be served until the occurrence of a Declared Default. For the avoidance of doubt, subject to the provisions of the Finance Documents, there will be no restriction on the movement and dealing with cash and receivables into and out of any secured bank accounts until a Declared Default has occurred.

- (c) Any Security over bank accounts shall be subject to any prior security interests or similar rights in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of Security may request these are waived or subordinated by the account bank but the Obligor shall not be required to change its banking arrangements if these Security interests are not waived or subordinated or only partially waived.
- (d) Any Security over bank accounts shall provide for the release of such Security if the relevant account holder decides to close such bank account provided that, at the time of the closure, (i) there is no Declared Default and (ii) the positive balance of such bank account is transferred to an account charged in favour of the Security Agent.
- (e) If required under local law Security over bank accounts will be registered subject to the general principles set out in these Security Principles.
- (f) There will not be any blocked accounts or holding accounts.
- (g) Notwithstanding the above, the Parent Guarantor shall not be required to grant Security over any bank accounts.

7. Fixed assets

No Security shall be granted over fixed assets (other than under a floating charge (or other similar Security)).

8. Insurance Policies

No Security shall be granted over insurance policies (other than under a floating charge (or other similar Security)).

9. Intellectual Property

No Security shall be granted over intellectual property (other than under a floating charge (or other similar Security)).

10. **Intercompany Receivables**

- (a) Subject to the final paragraph below, if an Obligor grants Security over its material intercompany receivables it shall be free to deal with, amend, waive, terminate, pay, capitalise, compromise or forgive those receivables in the course of its business until a Declared Default.
- (b) If required by local law to perfect the Security, notice of the Security will be served on the relevant borrower within 10 Business Days of the Security being granted and the Company or the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the grantor of the security has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement will cease on the expiry of that 20 Business Day period. Irrespective of whether notice of the Security is required for perfection, if the service of notice would prevent the Obligor from dealing with a receivable in the course of its business no notice of Security shall be served until the occurrence of a Declared Default.
- (c) Any list of receivables will not include details of the underlying contracts and will not be required to be updated.

11. **Trade Receivables**

No security shall be granted over trade receivables (other than under a floating charge (or other similar Security)).

12. **Shares**

- (a) Where the an Obligor grants Security over shares, the Transaction Security Document will be governed by the laws of the company whose shares are being secured and not by the law of the country of the Obligor. The shares held by a guarantor in a Subsidiary that is not a guarantor and that is not incorporated in a jurisdiction of an existing Obligor shall not be required to be the subject of Security.
- (b) Until a Declared Default has occurred, the legal title to such shares shall remain with the relevant pledgor and the pledgor will be permitted to:
 - (i) retain and to exercise all voting and other rights to any shares pledged by it; and
 - (ii) to pay, receive and retain dividends and other payments in respect of such shares subject to the terms of this Agreement.
- (d) Where required by applicable law, the share certificate (or other documents evidencing title to the relevant shares) and a stock transfer form executed in blank (or local law equivalent) will be provided to the Security Agent and where required by law the share certificate or shareholders register will be endorsed or written up and the endorsed share certificate or a copy of the written up register provided to the Security Agent.

- (e) Unless the restriction is required by law or regulation, the constitutional documents of the company whose shares are to be pledged will be amended to the extent that it is within the power of the pledgor to do so (using reasonable endeavours to obtain the consent of third parties where relevant, provided that the Company determines (acting reasonably) that such endeavours will not involve putting material commercial relationships with third parties in jeopardy) to remove any restriction on the transfer or the registration of the transfer of the shares on enforcement of the Security granted over them.
- (f) For the avoidance of doubt, no guarantee or Security will be required from or over ownership interests in, or over the assets of, any joint venture or similar arrangement or any company in which a Group Company has a minority interest.
- (g) The enforcement of Security over shares and the acquisition or exercise by the Security Agent of voting rights in respect of shares may be subject to regulatory consent. Accordingly, enforcement of any security over shares and the exercise by the Security Agent of the voting rights in respect of such shares will be expressed to be conditional upon obtaining any consents required by law or regulation and no such consents shall be required to be sought or requested prior to a Declared Default and written request having been made by the Security Agent.
- (h) Where customary and applicable as a matter of law, following a request by the Security Agent prior to execution of a security or accession document, on, or as soon as reasonably practicable and after execution (and taking into account any stamping requirements in respect of any stock transfer form (or applicable law equivalent)) of that security or accession document, the applicable share certificate (or other documents evidencing title to the relevant shares) and a stock transfer form executed in blank (or applicable law equivalent) will be provided to the Security Agent upon its request.

13. **Real estate**

No Security shall be granted over real estate (other than under a floating charge (or other similar Security)).

14. **Release of Security**

Unless required by local law the circumstances in which the Security shall be released should not be dealt with in individual Transaction Security Documents but, if so required, shall, except to the extent required by local law, be the same as those set out in this Agreement and the Intercreditor Agreement.

SCHEDULE 8
FORM OF INCREASE CONFIRMATION

To: [•] as Agent, [•] as Security Agent and [•] as the Company, for and on behalf of each Obligor From: [the Increase Lender] (the “**Increase Lender**”)

Dated:

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as an Increase Confirmation for the purpose of the Facility Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.4 (*Increase*) of the Facility Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the “**Relevant Commitment**”) as if it was an Original Lender under the Facility Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the “**Increase Date**”) is [•].
5. On the Increase Date, the Increase Lender becomes:
 - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - (b) party to the Intercreditor Agreement as an Original Senior Secured Bridge Term Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 33.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders’ obligations referred to in paragraph (f) of Clause 2.4 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]

- (c) [not a Qualifying Lender].⁴
9. The Increase Lender confirms that it is not an Equity Party.
 10. The Increase Lender confirms that it is not (a) a Defaulting Lender or a person that is an Affiliate or acting on behalf of a Defaulting Lender or (b) an industrial competitor (as such term is interpreted in accordance with Clause 25.1 (*Assignments and Transfers by the Lenders*) of the Facility Agreement) of any Group Company.
 11. We refer to clause 15.2 (*Change of Senior Secured Bridge Term Lender*) of the Intercreditor Agreement.
 12. In consideration of the Increase Lender being accepted as an Original Senior Secured Bridge Term Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as an Original Senior Secured Bridge Term Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Original Senior Secured Bridge Term Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
 13. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
 14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
 15. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

⁴ Delete as applicable - each Increase Lender is required to confirm which of these categories it falls within.

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facility Agreement by the Agent, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [•].

Agent

By:

Security Agent

By:]

SCHEDULE 9
FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE

PART 1
FORM OF NOTICE ON ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION

To: [•] as Agent

From: [The Lender]

Dated:

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to paragraph (c) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by an Equity Party*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<u>Commitment</u>	<u>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</u>
Commitment	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>

[Lender]

By:

PART 2
FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE
TRANSACTION/NOTIFIABLE DEBT
PURCHASE TRANSACTION CEASING TO BE WITH EQUITY PARTY

To: [•] as Agent

From: [The Lender]

Dated:

Project Eclipse – Bridge Facility Agreement
dated [•] 2018 (the “Facility Agreement”)

1. We refer to paragraph (d) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by an Equity Party*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [•] has [terminated]/[ceased to be with an Equity Party].*
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<u>Commitment</u>	<u>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)</u>
Commitment	<i>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</i>

[Lender]

By:

**SCHEDULE 10
WHITE LIST**

[To be included]

Description of Notes

[Circulated under separate cover.]

**SCHEDULE 11
FORM OF ACCESSION DEED**

To: [●] as Agent and [●] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [Subsidiary] and [Parent]

Dated:

Dear Sirs

**[Parent] - [●] Bridge Facility Agreement
dated [●] (the "Facility Agreement")**

1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Facilities Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional Guarantor pursuant to Clause 27.2 (*Additional Guarantors*) of the Facility Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [●].
3. [Subsidiary's] administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:

Address:

Fax No.:

Attention:
4. [Subsidiary] (for the purposes of this paragraph 4, the "**Acceding Debtor**") intends to give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents:

[Insert details (date, parties and description) of relevant documents]

the "**Relevant Documents**".

It is agreed as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph 4.
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (i) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

- (ii) all proceeds of that Security; and
- (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

- (c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
- (d) [In consideration of the Acceding Debtor being accepted as an Intra-group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

- 5. This Accession Deed and any non-contractual obligations arising out of or in connection with it] are governed by English law.

This Accession Deed has been signed on behalf of the Security Agent (for the purposes of paragraph 3 above only), signed on behalf of the Parent Guarantor and executed as a deed by [Subsidiary] and is delivered on the date stated above.

SCHEDULE 12 GENERAL UNDERTAKINGS

The capitalized words and expressions in this Schedule 12 (this “**Schedule**”), to the extent not defined in this Schedule, shall have the meaning ascribed to them in Schedule Schedule 13 (*Certain New York Law Defined Terms*) save that if a capitalized word or expression is not defined in this Schedule and is not given a meaning in Schedule 13 (*Certain New York Law Defined Terms*), it shall be given the meaning ascribed to it in Clause 1.1 (*Definitions*) or otherwise pursuant to the recitals to this Agreement. The undertakings contained in this Schedule shall be varied in accordance with the other provisions of this Agreement.

Section 1.01 **Limitation on Liens.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens securing the obligations under the Finance Documents;
- (b) Liens existing on, or provided for or required to be granted under written agreements existing on, the Closing Date (other than Liens securing the Facilities);
- (c) Liens for taxes, assessments or governmental charges that (i) are not overdue for a period of more than thirty (30) days, (ii) that are being contested in good faith and by appropriate actions for which adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (iii) that are not required to be paid pursuant to the terms of this Agreement;
- (d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens are not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue (i) are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions for which adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (ii) the failure to pay or discharge the same would not unreasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (e) (i) pledges or deposits in the ordinary course of business in connection with workers’ compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Company or any of its Restricted Subsidiaries;
- (f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or consistent with past practice or industry practice;
- (g) easements, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects

affecting real property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries, taken as a whole, or the use of the property for its intended purpose, and any other exceptions to title existing pursuant to any mortgages entered into in connection with this Agreement;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default;

(i) leases, licenses, cross-licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Company and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 1.05 of this Schedule (other than Section 1.05(e));

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 1.06 of this Schedule to be applied against the purchase price for such Investment or other acquisition, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 1.05 of this Schedule, in each case, solely to the extent such Investment or other acquisition or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens in favor of the Company, the Parent Guarantor or any Restricted Subsidiary;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases, subleases, licenses, cross-licenses or sublicenses entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business permitted by this Agreement;

(p) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 1.02 of this Schedule;

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any of its Restricted

Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Company or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement for an Investment that is then permitted under Section 1.02 of this Schedule;

(t) ground leases in respect of real property on which facilities owned or leased by the Company or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 1.03(e) of this Schedule; *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to capital leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such capital leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of the Company or any Restricted Subsidiary, which Liens secure Indebtedness (and related obligations) permitted under Section 1.03(aa) of this Schedule; *provided* that (i) each Obligor shall have granted guarantees and Security in favor of the Agent or the Security Agent, as applicable, in accordance with Clause 23.6 (*Further Assurance*) (without giving effect to any grace periods set forth therein) and (ii) the Agent, the Security Agent and all applicable representatives of the holders of such Indebtedness shall have executed a intercreditor agreement in form and substance reasonably satisfactory to the Agent;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary after the Closing Date (other than Liens on the equity interests of any Person that becomes a Restricted Subsidiary to the extent such equity interests are owned by the Company or a Restricted Subsidiary); *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 1.03(g) of this Schedule;

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b) , (w) and (u) of this Section 1.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 1.03 of this Schedule (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Company or any of its Restricted Subsidiaries securing obligations in an aggregate amount outstanding at any time not to exceed \$5,000,000;

(cc) [reserved];

(dd) [reserved];

(ee) Liens on specific items of inventory or other goods and the proceeds thereof of any Person securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Company or any of its Restricted Subsidiaries to secure the performance of the Company's or such Restricted Subsidiary's obligations under the terms of the lease for such premises;

(gg) [reserved];

(hh) [reserved];

(ii) [reserved];

(jj) Liens on proceeds held in Escrow securing obligations in respect of Excluded Indebtedness; and

(kk) (i) Liens on equity interests of joint ventures securing capital contributions to, or obligations of, such Persons and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 1.01.

Section 1.02 **Investments.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, make or hold any Investments other than Permitted Investments.

Section 1.03 **Indebtedness.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Company or any Restricted Subsidiary under this Agreement;

(b) Indebtedness outstanding on the Closing Date and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Closing Date and any Permitted Refinancing thereof;

(c) guarantees by the Company and any Restricted Subsidiary in respect of Indebtedness of the Company or any Restricted Subsidiary of the Company otherwise permitted hereunder; *provided* that (A) no guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation shall be permitted unless such guaranteeing party shall have also provided a guarantee of the obligations under this Agreement, (B) if the Indebtedness being guaranteed is subordinated to the obligations under this Agreement, such guarantee shall be subordinated to the guarantee of the obligations under this Agreement on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness, and (C) such guarantees shall be permitted under Section 1.02 of this Schedule;

(d) Indebtedness of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary (or issued or transferred to any direct or indirect parent of the Company or a Restricted Subsidiary which is substantially contemporaneously transferred to the Company or a Restricted Subsidiary) to the extent constituting an Investment permitted under Section 1.02 of this Schedule;

(e) (i) Attributable Indebtedness and other Indebtedness (including capital leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Company or any Restricted Subsidiary prior to or within 270 days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed at any time outstanding \$4,000,000 and (ii) Attributable Indebtedness arising out of Sale Leasebacks and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Company's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and guarantees thereof;

(g) Indebtedness of the Company or any Restricted Subsidiary assumed in connection with any Permitted Acquisition so long as such Indebtedness was existing at the time of such Permitted Acquisition and was not assumed in contemplation or anticipation thereof and any Permitted Refinancing of any such Indebtedness; *provided* that:

(A) no Event of Default shall have occurred and be continuing or would result therefrom, and

(B) such Indebtedness, when aggregated with the principal amount of all other Indebtedness permitted under this clause (g) then outstanding, does not exceed \$5,000,000;

provided that if such Indebtedness is assumed by the Company or any Restricted Subsidiary, such Indebtedness may be only guaranteed by each Person that guaranteed such Indebtedness prior to such assumption;

(h) Indebtedness representing deferred compensation to employees, independent contractors and consultants (and similar individuals) of the Company (and any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption

of equity interests or other equity-based awards of the Company or any direct or indirect parent of the Company permitted by Section 1.06 of this Schedule;

(j) Indebtedness incurred by the Company or any of its Restricted Subsidiaries in Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earn-out obligations) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Company or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any guarantees thereof;

(m) Indebtedness which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (m) then outstanding, does not exceed \$5,000,000;

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(o) Indebtedness incurred by the Company or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Company or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) [reserved];

(u) [reserved];

(v) [reserved];

(w) [reserved];

(x) unsecured Indebtedness in respect of obligations of the Company or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open

accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money;

(y) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (x) above;

(z) unsecured Indebtedness incurred to finance a Permitted Acquisition which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (z) then outstanding, does not exceed \$5,000,000; provided, that such Indebtedness is subordinated in right of payment to the obligations under this Agreement expressly by its terms;

(aa) Indebtedness of the Company consisting of local lines of credit, bilateral facilities, overdraft facilities or local working capital facilities in an aggregate outstanding principal amount which, when taken together with any Permitted Refinancing thereof and the principal amount of all other Indebtedness Incurred pursuant to this paragraph (aa) and then outstanding, will not exceed £50,000,000.

For purposes of determining compliance with any US Dollar-denominated restriction on the incurrence of Indebtedness, the US Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable US Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such US Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 1.03 of this Schedule. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Company dated such date prepared in accordance with the Accounting Principles .

Section 1.04 Fundamental Changes.

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, merge, dissolve, liquidate, consolidate with or into another Person, enter into any division or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Company (including a merger, the purpose of which is to reorganize the Company into a new jurisdiction) (*provided* that the Company shall be the continuing or surviving Person) or (ii) one or more other Restricted Subsidiaries; provided that when any Person that is an Obligor is merging, amalgamating or consolidating with a Restricted Subsidiary, an Obligor shall be the continuing or surviving person;

(b) [reserved];

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to another Restricted Subsidiary; provided that if the transferor in such a transaction is an Obligor, then (i) the transferee must be an Obligor (other than Parent) or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in, or Indebtedness of, a Restricted Subsidiary which is not an Obligor in accordance with Section 1.02 and 1.03 of this Schedule, respectively;

(d) so long as, immediately prior to and after giving effect to any such merger or consolidation no Default has occurred and is continuing, the Company may merge or consolidate with any other Person; *provided* that (i) the Company shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Company (any such Person, the “**Successor Company**”), (A) the Successor Company shall expressly assume all the obligations of the Company under this Agreement to which the Company is a party pursuant to a supplement hereto in form reasonably satisfactory to the Agent, (B) the Successor Company shall be an entity organized under the laws of England, each Guarantor shall have confirmed that its Guarantee and Indemnity in Clause 20 and Liens granted pursuant to the Security Interests shall apply to the Successor Company’s obligations under the Finance Documents and (C) the Company shall have delivered to the Agent (1) an officer’s certificate stating that such merger or consolidation and such supplement to this Agreement comply with this Agreement and (2) at least three (3) Business Days prior to the date of consummation of such merger or consolidation, all documentation and other information about the Successor Company required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act that has been reasonably requested by the Agent or any Lender (acting through the Agent) in writing; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Company under this Agreement;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom (in the case of a merger, amalgamation or consolidation involving a Loan Party), any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted by Section 1.02 of this Schedule; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Company; and

(f) so long as no Event of Default has occurred and is continuing or would result therefrom, a merger, consolidation, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 1.05 of this Schedule (other than to the extent constituting a sale of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole).

Section 1.05 **Dispositions.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, make any Disposition, except:

(a) (x) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business, (y) Dispositions of property no longer useful in the conduct of the business of the Company or any of its Restricted Subsidiaries and (z) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business, goods held for sale in the ordinary course of business and immaterial assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Company or any Restricted Subsidiary; provided that (x) if the transferor is an Obligor, the transferee thereof must be an Obligor and (y) if such transaction constitutes an Investment, such Investment must be permitted by Section 1.02 of this Schedule;

(e) Dispositions that are permitted by Section 1.04 of this Schedule (other than Section 1.04(f) of this Schedule) or otherwise constitute a Restricted Payment permitted by Section 1.06 of this Schedule and Liens permitted by Section 1.01 of this Schedule (other than Section 1.01(l)(ii) of this Schedule);

(f) Dispositions of non-core assets acquired in connection with Permitted Acquisitions taking place following the Closing Date;

(g) Dispositions of cash equivalents;

(h) (i) leases, subleases, licenses, cross-licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Company or any of its Restricted Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Company or any of its Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) such Disposition constitutes less than all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole, (ii) at the time of such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition, (iii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$5,000,000, as determined at the time of such Disposition, the Company or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or cash equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 1.01 of this Schedule, Liens permitted by Sections 1.01(a), clauses (ii) and (iii) of 1.01(k), 1.01(m), 1.01(q), clauses (i) and (ii) of 1.01(r), 1.01(w), 1.01(aa) and 1.01(bb) of this Schedule; *provided* that for the purposes of this clause (j)(iii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Company's most recent balance sheet provided hereunder or in the footnotes thereto) of the Company or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the obligations under this Agreement, that (x) are assumed by the transferee with respect to the applicable Disposition or (y) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Company or its Restricted Subsidiaries) and, in each case, for which the Company and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations or assets received by the Company or the applicable Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) within 180 days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Company or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed \$5,000,000 (net of any non-cash consideration converted into cash and cash equivalents) and (iv) all Net Proceeds received by the Company or a Restricted Subsidiary from Dispositions made pursuant to this Section 1.05(j) shall be subject to Clause 9.3 of this Agreement;

(k) to the extent allowable under applicable tax law, any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Company or any of the Restricted Subsidiaries that is not in contravention of Section 1.07 of this Schedule;

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) [reserved];

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Company and its Restricted Subsidiaries as a whole, as determined in good faith by the management of the Company;

(o) any sale of equity interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the dedication to the public domain, lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any Intellectual Property or related rights that are not material to the business of the Company or any of its Restricted Subsidiaries;

(s) [reserved];

(t) [reserved];

(u) [reserved];

(v) Dispositions of nominal equity interests to qualify directors of Restricted Subsidiaries where required by applicable law or to satisfy other similar requirements of applicable law with respect to the ownership of equity interests; and

(w) any Disposition made in order to comply with an order of any agency of state, authority or other regulatory body or any applicable law or regulation;

provided that any Disposition of any property pursuant to this Section 1.05 (except pursuant to Sections 7.05(a), 7.05(d), 7.05(e), 7.05(h), 7.05(i), 7.05(l), 7.05(m), 7.05(p), 7.05(q), 7.05(r), 7.05(v), and 7.05(w)) of this Schedule and except for Dispositions from an Obligor to any other Obligor shall be for no less than the fair market value of such property at the time of such Disposition. Any property Disposed of as expressly permitted by this Section 1.05 to any Person other than the Company or a Restricted Subsidiary, such property shall be sold free and clear of the Liens securing the obligations under the Finance Documents, and the Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 1.06 **Restricted Payments.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Company and other Restricted Subsidiaries of the Company (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Company and any other Restricted Subsidiary and to each other owner of equity interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of equity interests);

(b) the Company and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the equity interests (other than Disqualified Equity Interests not otherwise permitted by Section 1.03 of this Schedule) of such Person;

(c) the Company and each Restricted Subsidiary may pay, redeem, defease or otherwise satisfy any earn-out obligations so long as no Default or Event of Default has occurred and is continuing or would result therefrom;

(d) to the extent constituting Restricted Payments, the Company (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 1.04 of this Schedule;

(e) repurchases of equity interests in the Company or any Restricted Subsidiary of the Company deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity interests if such equity interests represent all or a portion of the exercise price of, or tax withholdings with respect to, such equity interests;

(f) the Company and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow the Parent Guarantor or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of equity interests or settlement of equity-based awards of such Restricted Subsidiary (or of the Company or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Company or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow the Parent Guarantor or any direct or indirect parent of the Parent Guarantor to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Company or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such equity interests or equity-based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment or services, as applicable, of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription agreement, shareholder agreement or stockholders' agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Company or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to any direct or indirect parent of the Company made pursuant to clause (21) of the definition of "Permitted Investments" in lieu of Restricted Payments permitted by this clause (f) shall not \$2,500,000; provided further that cancellation of Indebtedness owing to the Company or any Restricted Subsidiary from members of management of the Company, any of the Company's direct or indirect parent companies or any of the Restricted Subsidiaries in connection with a repurchase of equity interests of any of the Company's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) [reserved];

(h) the Company may make Restricted Payments to any direct or indirect parent of the Company:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting

and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Company and its Restricted Subsidiaries (to the extent permitted below), expenses incurred in connection with the Offer and any reasonable and indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Company and its Restricted Subsidiaries provided that, the amount of such Restricted Payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions or dividends were made by such Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary to cover such amount or the amount of such payment is treated by the Borrower or a Restricted Subsidiary as an Investment in such Unrestricted Subsidiary and such Investment is permitted under Section 1.02 of this Schedule at such time;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise and similar taxes and other fees and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period in which the Company and/or any of its Subsidiaries is a member of a consolidated, combined or similar income or similar tax group of which a direct or indirect parent of the Company is the common parent (a "**Tax Group**"), to pay federal, foreign, state and local income or similar taxes of such Tax Group that are attributable to the taxable income of the Company and/or its Subsidiaries (and assuming that the Company is treated at all times as a corporation for U.S. federal income tax purposes); *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Company and its Subsidiaries would have been required to pay as a stand-alone Tax Group; *provided further*, that the permitted payment pursuant to this clause (iii) with respect to any Taxes of any Unrestricted Subsidiary for any taxable period, as reasonably estimated by the Company, shall be limited to the amount actually paid by any Unrestricted Subsidiary to the Company or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar Taxes for such taxable period or any previous taxable period ending after the date hereof and not previously taken into account for purposes of calculating the limitation in this proviso;

(iv) to finance any Investment that would be permitted to be made pursuant to Sections 1.02 and 1.08 of this Schedule if such parent were subject to such Sections; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or equity interests) to be contributed to the Company or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 1.04 of this Schedule) of the Person formed or acquired into the Company or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, and (C) such contribution shall constitute an Investment by the Company or the applicable Restricted Subsidiary(ies), as the case may be, at the date of such contribution or merger, as applicable, in an amount equal to the amount of such Restricted Payment;

(v) the proceeds of which (A) shall be used to pay salary, commissions, bonus, amounts in respect of equity-based or phantom awards and other compensation and benefits payable to and indemnities provided on behalf of partners, officers, employees, third party consultants, directors and members of management of the Parent Guarantor or any direct or indirect parent company of the Parent Guarantor and any payroll social security or similar taxes thereof to the extent such salaries, commissions, bonuses, amounts in respect of equity-based or phantom awards and other compensation or benefits are attributable to the ownership or operation of the Company and its Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 1.08(d) and 1.08(h) of this Schedule (but only to the extent such payments have not been and are not expected to be made by the Company or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by the Parent Guarantor to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) (A) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by the Parent Guarantor

(or any direct or indirect parent thereof) that is directly attributable to the operations of the Company and its Restricted Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by the Parent Guarantor (or any direct or indirect parent thereof);

(i) payments made or expected to be made by the Parent Guarantor, the Company or any of the Restricted Subsidiaries in respect of withholding or other payroll and other similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of equity interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or the vesting or settlement of other equity-based awards;

(j) [reserved];

(k) the Company or any of the Restricted Subsidiaries may pay cash in lieu of fractional equity interests in connection with any dividend, split or combination thereof or any Permitted Acquisition;

(l) [reserved]; and

(m) [reserved].

Section 1.07 **Change in Nature of Business.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, engage in any material line of business substantially different from those lines of business conducted by the Company and the Restricted Subsidiaries on the Closing Date or any business or any other activities reasonably related, complementary or ancillary thereto or reasonable extensions thereof.

Section 1.08 **Transactions with Affiliates.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, enter into any transaction of any kind with any Affiliate of the Company involving aggregate payments or consideration in excess of \$500,000 for any individual transaction or series of related transactions, whether or not in the ordinary course of business, other than:

(a) transactions among the Company and its Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(b) on terms substantially as favorable to the Company or such Restricted Subsidiary as would be obtainable by the Company or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(c) the payment of fees and expenses as part of or in connection with the Offering;

(d) the payment of (A) reasonable and documented out-of-pocket costs and expenses of Sponsor related to the Parent Guarantor and its Subsidiaries in an aggregate amount not to exceed \$2,500,000 and (B) indemnification claims, in each case of clause (A) and (B), pursuant to the Management Agreement in connection with the performance of its services thereunder;

(e) Restricted Payments permitted under Section 1.06 of this Schedule;

(f) transactions by the Company and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Schedule (other than by reference to this clause (f));

(g) employment, consulting, severance and other compensatory, service or benefit related arrangements between the Company and its Restricted Subsidiaries and their respective partners, officers, employees, third party consultants, directors and members of management in the ordinary course of business and transactions pursuant to plans or agreements governing equity interests, phantom equity and other employee benefit or compensatory plans and arrangements in the ordinary course of business;

(h) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Parent Guarantor, the Company and its Restricted Subsidiaries (or any direct or indirect parent of the Company) in the ordinary course of business to the extent attributable to the ownership or operation of the Company and its Restricted Subsidiaries;

(i) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(j) payments by the Company or any of its Restricted Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Company to the extent attributable to the ownership or operation of the Company and the Subsidiaries, but only to the extent permitted by Section 1.06(h)(iii) of this Schedule;

(k) [reserved];

(l) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Company and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(m) transactions in which the Company or any of the Restricted Subsidiaries, as the case may be, deliver to the Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) above;

(n) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by the Company and the Restricted Subsidiaries in such joint venture) in the ordinary course of business to the extent otherwise permitted under Section 1.02 of this Schedule; and

(o) licenses or sublicenses of Intellectual Property in the ordinary course of business and which do not materially interfere with the business of the Company or any of its Restricted Subsidiaries.

Section 1.09 **Burdensome Agreements.**

The Company shall not, and shall not permitted any of its Restricted Subsidiaries to, enter into or permit to exist any Contractual Obligation (other than this Agreement or any other document entered into in connection herewith) that limits the ability of any Restricted Subsidiary to (i) create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the obligations under this Agreement or (ii) make Restricted Payments to the Company or any Obligor;

provided that the foregoing shall not apply to Contractual Obligations which:

(i) (x) exist on the Closing Date and (y) to the extent Contractual Obligations permitted by clause (x) above are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Company, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Company;

(iii) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 1.01(k), 1.01(l), 1.01(p), 1.01(q), 1.01(r)(i), 1.01(r)(ii), 1.01(s) and 1.01(ee) of this Schedule and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 1.04 or 1.05 of this Schedule and relate solely to the assets or Person subject to such Disposition,

(iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Investments permitted under Section 1.02 of this Schedule and applicable solely to such joint venture entered into in the ordinary course of business,

(v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 1.03 of this Schedule but solely to the extent any negative pledge relates to the property financed by such Indebtedness and the proceeds and products thereof,

(vi) are customary restrictions on leases, subleases, licenses, cross-licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 1.03(e), 1.03(g) and 1.03(n)(i) of this Schedule to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 1.03(g) of this Schedule, to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any Restricted Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xi) arise in connection with cash or other deposits permitted under Section 1.01 of this Schedule or the definition of "Permitted Investments", and limited to such cash or deposits, and

(xii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 1.03 of this Schedule that are, taken as a whole, in the good faith judgment of the Company, no more restrictive with respect to the Company or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Company shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 1.10 **ERISA Compliance.**

Except as could not reasonably be expected to result in a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable federal and state laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code may rely upon an opinion letter for a prototype plan or may rely on an advisory letter for a volume submitter plan or has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and to the knowledge of any Loan Party, nothing has occurred that would reasonably be expected to prevent, or cause the loss of, such tax-qualified status.

Section 1.11 **Margin Regulations; Investment Company Act.**

(a) The Parent Guarantor and its Subsidiaries are not engaged and will not engage, principally or as one of their important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock and no proceeds of any Loans will be used for any purpose that violates Regulation T, U or X of the Board of Governors of the United States Federal Reserve System.

(b) None of the Parent Guarantor, the Company or any Group Member is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 1.12 **Accounting Changes.**

Make any change in its fiscal year; *provided* that the Company and any Restricted Subsidiary may, upon written notice to the Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Agent, in which case, the Company and the Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 1.13 **Prepayments, Etc. of Junior Financing.**

(a) Prepay, redeem, purchase, defease (a) or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any Indebtedness of a Restricted Subsidiary that (x) is unsecured or (y) is subordinated in right of payment or security to the obligations under this Agreement expressly by its terms with an aggregate principal amount in excess of the Threshold Amount and any Permitted Refinancing of any of the foregoing (each, a “**Junior Financing**”), except (i) the refinancing thereof with any Indebtedness that constitutes a Permitted Refinancing, (ii) the conversion or exchange of any Junior Financing to equity interests (other than Disqualified Equity Interests) of the Parent Guarantor or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Company or any Restricted Subsidiary to the Company or any Restricted Subsidiary, subject to the subordination provisions applicable to such indebtedness, (iv) [reserved], and (v) [reserved].

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any documentation governing any Junior Financing (“**Junior Financing Documentation**”) in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount (other than as a result of any Permitted Refinancing in respect thereof) without the consent of the Agent (which consent may be given or withheld in the sole discretion of the Agent); *provided* that, the foregoing limitation shall not otherwise prohibit any modification permitted by the terms of any applicable intercreditor or subordination agreement with respect to such Junior Financing and in any event, the following shall

not, in and of themselves, be deemed materially adverse to the interests of the Lenders (unless otherwise expressly prohibited by the terms of any applicable intercreditor or subordination agreement): (1) any term or condition of any Junior Financing Documentation in respect of any Permitted Refinancing thereof, (2) any increase in the aggregate principal amount to the extent otherwise permitted by this Agreement, (3) any extension of maturity date or increase to Weighted Average Life to Maturity, (4) any amendment, modification or change to any terms applicable only to periods after the Maturity Date at the time of such amendment, modification or change, (5) amendments, modifications or changes to maintain consistency with, as applicable, those being made substantially concurrently to this Agreement (including, for the avoidance of doubt, the addition of any covenant or other provision added or extended under this Agreement; *provided* that such additional covenant includes a cushion on any dollar baskets, thresholds or covenant levels consistent with the existing cushion (if any) between applicable covenants in this Agreement and such Junior Financing), and (6) reductions to any cushion on levels, baskets or thresholds between covenants under this Agreement and substantially similar covenants under any Junior Financing to the extent such cushion is reduced by no more than 10% from the cushion in effect on the date such Junior Financing is incurred.

Section 1.14 **Permitted Activities.**

With respect to the Parent Guarantor, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the equity interests of the Company and activities incidental thereto, including payment of dividends and other amounts in respect of its equity interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to this Agreement and the transactions contemplated hereby, (iv) any public offering of its common stock or any other issuance or sale of its equity interests, (v) making contributions to the capital of the Company and guaranteeing Indebtedness of the Company and its Restricted Subsidiaries to the extent such Indebtedness is permitted hereunder, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of the Parent Guarantor and the Company, (vii) holding any cash or property (but not operate any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. The Parent Guarantor shall not own any equity interests other than those of the Company nor a Lien on any of its equity interests in the Company.

SCHEDULE 13
CERTAIN NEW YORK LAW DEFINED TERMS

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Attributable Indebtedness**” means, on any date, in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with the Accounting Principles.

“**Board of Directors**” means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Company that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by Company and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with the Accounting Principles, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Company and its Restricted Subsidiaries.

“**Cash Management Obligations**” means obligations owed by the Company or any Restricted Subsidiary to any Lender, any Agent or any Affiliate of a Lender or any Agent and to any Person that was a Lender, an Agent or an Affiliate of a Lender or an Agent at the time of entering into any such services in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“**Casualty Event**” means any event that gives rise to the receipt by the Company or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clause (viii) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Company and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with the Accounting Principles and, to the extent not reflected in such total interest expense, any expense or loss on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of gains on such hedging obligations, and

costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Company and its Restricted Subsidiaries, including, without limitation, federal, state, local, foreign, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including, but not limited to, amortization of intangible assets, unfavorable or favorable lease assets and Capitalized Software Expenditures),

(iv) extraordinary, non-recurring or unusual charges, fees, costs and expenses (including losses and all fees and expenses relating thereto) (including duplicative running costs, relocation costs or expenses, one-time integration costs, acquisition platform investments (including, for the avoidance of doubt, expenditures relating to employee compensation, business-related travel expenses and similar items) (*provided*, that the aggregate amount of such acquisition platform investments added back pursuant to this clause (iv) shall not exceed 6.0% of Consolidated EBITDA in any four quarter period (calculated before giving effect to any such add backs)), transition costs, costs or reserves associated with new market start-up activities and entry into new markets (including strategic initiatives and contracts, consulting fees and expansion expenses), preopening, opening, reconfiguration, closing and consolidation costs for facilities (including unused warehouse space costs and severance, rent termination costs, moving costs and legal costs)), costs related to curtailments, recruiting, relocation, signing, retention and completion bonuses and expenses (including costs for employee integration, searches, travel and housing costs and related legal and accounting fees, costs and expenses), costs associated with, or in anticipation of, or preparation for and implementation of, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design and/or upgrade, retention charges, systems establishment costs (including information technology systems) and implementation costs and software development costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges and including those related to tax restructurings), costs, fees and expenses attributable to, and payments of, legal settlements, fines, judgments or orders (and related expenses), costs, fees and expenses attributable to the undertaking and/or implementation of cost savings initiatives, cost rationalization programs, operating expense reductions and other synergies and similar initiatives, reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, inventory optimization program and/or curtailment and costs, fees and expenses in connection with a single or one-time event, including in connection with acquisitions after the Closing Date) and any costs and expenses not permitted to be capitalized under Accounting Standard Update 2015-05 (to the extent such costs and expenses would have been capitalized prior to the effectiveness thereof); *provided*, that the aggregate amount of all such items added back pursuant to this clause (iv) shall not exceed, together with any amounts added back pursuant to clause (viii) below, 25% of Consolidated EBITDA in any four quarter period (calculated before giving effect to any such add backs under this clause (iv) and clause (viii)),

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary less the amount of dividends or distributions that are paid in cash by such non-wholly owned Restricted Subsidiary to such third party,

(vi) (i) reasonable expenses of the Sponsor (or any other holder (or any Affiliate thereof) of equity interests of the Company (or its direct or indirect parent companies) or any Subsidiary) in connection with the Management Agreement that are permitted hereunder and are reimbursed or accrued and (ii) payments to independent directors of the Company (or its direct or indirect parent companies) or any Restricted Subsidiary,

(vii) fees, costs and expenses incurred as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or other management or employee benefit plan or agreement, any pension plan (including any post-employment benefit scheme which has been agreed to with the relevant pension trustee), any stock subscription or shareholder agreement, any employee benefit trust, any employment benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement) to the extent funded with cash proceeds contributed to the capital of the Company or Equity Interests of any direct or indirect parent of the Company, which cash proceeds have been contributed as common equity to the capital of the Company,

(viii) cost savings, operating expense reductions and synergies resulting from or related to acquisitions (including, for the avoidance of doubt, acquisitions occurring prior to the Closing Date), investments, asset sales, dispositions, operating improvements, restructurings, cost savings initiatives and other similar initiatives and actions (including the renegotiation of contracts and other arrangements) that are reasonably identifiable and factually supportable and projected by the Company in good faith to be realized within 12 months after a merger or other business combination, asset purchase, acquisition, investment, asset sale or disposition is consummated or any other operating improvement, restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided*, that no cost savings, operating expense reductions and synergies shall be added back pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added back to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period; *provided, further*, that the aggregate amount of all such items added back pursuant to this clause (viii) shall not exceed, together with any amounts added back pursuant to clause (iv) above, 25% of Consolidated EBITDA in any four quarter period (calculated before giving effect to any such add backs under this clause (viii) and clause (iv) above),

(ix) any net loss from disposed, abandoned or discontinued operations (excluding, at the option of the Company (which option shall be deemed made to the extent that the Company has made the corresponding election in clause (b)(ii) below with respect to the same held-for-sale discontinued operations), held-for-sale discontinued operations until actually disposed of),

(x) [reserved],

(xi) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with (i) any acquisition, investment, asset sale, disposition, issuance or repayment of debt, issuance of equity securities (including any Listing), refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed), and any charges or non-recurring acquisition costs incurred during such period as a result of any such transaction (including non-compete or similar fees, including to former employees and indemnification expenses), in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and losses associated with FASB Accounting Standards Codification 460) or (ii) this Agreement and the other Finance Documents (including expenses incurred in connection with the Offer and the other transactions contemplated by this Agreement and the Finance Documents), including any actual, proposed or contemplated amendments, waivers or other modifications to any of the foregoing,

(xii) [reserved],

(xiii) earn-out obligations (including to the extent accounted for as bonuses, compensation or otherwise), and

(xiv) items of the types described in clauses (viii) and (iv) above related to Offering and the other transactions contemplated by this Agreement and the Finance Documents occurring within 12 months prior to the Closing Date, *provided*, that the aggregate amount of all such items added back pursuant to this clause (xiv) shall not exceed \$5,000,000 in any four quarter period;

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) any net gain from disposed, abandoned or discontinued operations (excluding, at the option of the Company (which option shall be deemed made to the extent that the Company has made the corresponding election in clause (a)(ix) above with respect to the same held-for-sale discontinued operations), held-for-sale discontinued operations until actually disposed of), (ii) extraordinary, non-recurring or unusual gains or income for such period, (iii) any gains associated with FASB Accounting Standards Codification 460 and (iv) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary less the amount of dividends or distributions that are paid in cash by such non-wholly owned Restricted Subsidiary to such third party;

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) unrealized or realized net foreign currency translation or transaction gains and losses (including, without limitation, currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness)) and (y) unrealized or realized net gains/losses in the fair market value of any Swap Contracts and/or other derivative instrument,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the

application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss or expenses) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments, and

(D) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA any expense (or income) as a result of adjustments recorded in respect of earn-out obligations.

For purposes of calculating any test or compliance with any covenant determined by reference to Consolidated EBITDA, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith that have been made (i) during the applicable Testing Period or (ii) subsequent to such Testing Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Testing Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Company or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this paragraph, then such test shall be calculated to give *pro forma* effect thereto in accordance with this paragraph.

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Company and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with the Accounting Principles; *provided* that, without duplication:

(a) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(b) accruals and reserves that are established or adjusted within two years after the closing of any acquisition that are so required to be established as a result of such acquisition in accordance with the Accounting Principles shall be excluded,

(c) any net after-tax effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(d) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) as a result of, or in connection with, asset dispositions or abandonments or the sale or other disposition of any equity interests of any Person in each case other than in the ordinary course of business (including, without limitation, asset retirement costs), as determined in good faith by the Company, shall be excluded,

(e) the net income (loss) for such period of any Person that is not a Subsidiary of the Company, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or cash equivalents (or to the extent subsequently converted into cash or cash equivalents) to the Company or a Restricted Subsidiary thereof in respect of such period,

(f) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, property, plant and equipment, investments in debt and equity securities or as a result

of a change in law or regulation, in each case, pursuant to the Accounting Principles, and the amortization of intangibles arising pursuant to the Accounting Principles shall be excluded,

(g) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded,

(h) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions, to the extent actually reimbursed, or, so long as the Company has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 day period), shall be excluded,

(i) to the extent covered by insurance and actually reimbursed, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 712 and 715, Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(k) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of the Company or is merged into or consolidated with the Company or any of its Restricted Subsidiaries or such Person's assets are acquired by the Company or any of its Restricted Subsidiaries shall be excluded (except in accordance with clauses (I) and (II) of the definition of "Consolidated EBITDA"), and

(l) (i) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, stock-based awards compensation expense, non-cash rent expense and non-cash lease accretion expense), in each case other than (i) any such non-cash expenses, charges and losses to the extent that it represents an accrual or reserve for a cash expenditure for a future period and (ii) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period, shall be excluded, (ii) non-cash gains and income (excluding any non-cash gain or income to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income in any prior period) shall be excluded and (iii) Consolidated Net Income for such period shall be increased by the amount of any cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated Net Income in any period to the extent non-cash gains or income relating to such income were excluded in the calculation of Consolidated Net Income pursuant to clause (I)(ii) above for any previous period.

There shall be excluded from Consolidated Net Income for any period the acquisition accounting effects of adjustments in component amounts required or permitted by the Accounting

Principles pursuant to FASB Accounting Standards Codification 805 (including in the inventory, property and equipment, fair value of leased property, software, goodwill, intangible assets, in-process research and development, deferred revenue, deferred rent, advanced billings, contingent considerations and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries), as a result of any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control**”, “**Controlled**” and “**Controlling**” have the meaning set forth in the definition of “**Affiliate**”.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of equity interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, whether in a single transaction or a series of related transactions; *provided* that “**Disposition**” and “**Dispose**” shall not include any issuance by the Parent Guarantor of any of its equity interests to another Person.

“**Disqualified Equity Interests**” means any equity interest that, by its terms (or by the terms of any security or other equity interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the obligations under this Agreement (other than contingent indemnification obligations as to which no claim has been asserted) that are accrued and payable), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the obligations under this Agreement (other than contingent indemnification obligations as to which no claim has been asserted) that are accrued and payable) in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other equity interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date at the time of issuance of such equity interests; *provided*, that if such equity interests are issued pursuant to a plan for the benefit of future, current or former employees, directors, officers, members of management or consultants of the Parent Guarantor (or any direct or indirect parent thereof), the Company or its Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such equity interests shall not constitute Disqualified Equity Interests solely because they may be permitted to be repurchased by the Parent Guarantor, the Company or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination of employment or service, as applicable, death or disability.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“**ERISA Affiliate**” means any Person who together with any Finance Party is treated as a single employer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and

(o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 4007 of ERISA).

“**Escrow**” has the meaning set forth in the definition of “Indebtedness”.

“**Excluded Indebtedness**” has the meaning set forth in the definition of “Indebtedness”.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price (including earn-out obligations) of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) earn-out obligations until such earn-out obligations have become due and payable and are not paid or satisfied when due and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with the Accounting Principles; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person’s liability for such Indebtedness is otherwise limited, (B) in the case of the Company and its Restricted Subsidiaries, exclude all intercompany Indebtedness (other than any intercompany Indebtedness owing by the Company or any Restricted Subsidiary to an Unrestricted Subsidiary) so long as such intercompany Indebtedness (i) has a term not exceeding 364 days (inclusive of any roll-over or extensions of terms), (ii) is made in the ordinary course of business and (iii) at any time after the Clean-Up Period, does not exceed \$10,000,000 in aggregate principal amount outstanding at any time (other than Indebtedness

owed by an Obligor, *provided* that all such Indebtedness owed to any Restricted Subsidiary that is not an Obligor shall be (x) unsecured and (y) subordinated to the obligations under the Finance Documents in a manner reasonably satisfactory to the Agent) and (C) exclude Indebtedness incurred in advance of, and the proceeds of which are to be applied in connection with, the consummation of a transaction solely to the extent the proceeds thereof are and continue to be held in an escrow, trust, collateral or similar account or arrangement (collectively, an “**Escrow**”) and are not otherwise made available to such Person (such Indebtedness, “**Excluded Indebtedness**”). From and after the date on which any Escrow is established and prior to the earlier of the date on which the proceeds in which such Escrow have been fully released to the Company or otherwise, for purposes of determining whether any Indebtedness is permitted to be incurred under this Agreement, such determination shall be made on a pro forma basis (i) assuming the release of proceeds under the Escrow, the use of proceeds thereof (and the consummation of the associated transactions) and the inclusion of the Excluded Indebtedness and (ii) assuming the Escrow has not been released and the associated transactions have not been consummated. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby. The amount of any Indebtedness that is issued at a discount to its initial principal amount shall be calculated based on the initial stated principal amount thereof without giving effect to any such discounts. The amount of any earn-out obligations shall be deemed to be the aggregate liability in respect thereof required to be recorded as such on the balance sheet of the Company and its Subsidiaries in accordance with the Accounting Principles. Notwithstanding anything to the contrary herein, all accounting or other financial terms used herein shall be construed, and all financial information pursuant hereto shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged and that is independent of the Company and its Affiliates.

“**Investment**” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, equity interests or other securities issued by any other Person (excluding, in the case of the Company and its Restricted Subsidiaries, intercompany loans, advances or Indebtedness so long as such Indebtedness (i) has a term not exceeding 364 days (inclusive of any roll over or extensions of terms), (ii) is made in the ordinary course of business) and (iii) at any time after the Clean-Up Period, does not exceed \$10,000,000 in aggregate principal amount outstanding at any time other than Indebtedness owed by an Obligor, *provided* that all such Indebtedness owed to any Restricted Subsidiary that is not an Obligor shall be (x) unsecured and (y) subordinated to the obligations under the Finance Documents in a manner reasonably satisfactory to the Agent)). For purposes of the covenant described under Section 1.06 of Schedule 12 (*General Undertakings*):

(1) “Investments” shall include the portion (proportionate to the Company’s direct or indirect equity interests in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary,

the Company shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Company’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Company’s direct or indirect equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment (without adjustment for any increases or decreases in the value of such Investments), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Company or a Restricted Subsidiary in respect of such Investment.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any capital leases having substantially the same economic effect as any of the foregoing); *provided* that in no event shall an operating lease in and of itself be deemed a Lien.

“**Management Agreement**” means any management or advisory agreement entered into after the Closing Date by and among any of the Company and its Restricted Subsidiaries and Sponsor in connection with management and advisory services provided by Sponsor to the Company and its Restricted Subsidiaries, which such management or advisory agreement is in form and substance reasonably acceptable to Agent (including, for the avoidance of doubt, as it relates to the amount of fees payable to Sponsor), as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Master Agreement**” has the meaning set forth in the definition of “Swap Contract”.

“**Multiemployer Plan**” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, that is subject to Title IV of ERISA and to which any Finance Party or any ERISA Affiliate makes or is obligated to make contributions.

“**OID**” means original issue discount.

“**Permitted Acquisition**” means any acquisition made by the Company or any of its Restricted Subsidiaries of all or substantially all the assets of, or any business line, unit or division of, any Person that is engaged in a business permitted pursuant to Section 1.07 of Schedule 12 (*General Undertakings*) (or, in the case of any business line, unit or division, such business line, unit or division comprise a business permitted pursuant to Section 1.07 of Schedule 12 (*General Undertakings*)) or of all or any equity interests of a Person that is engaged in a business permitted pursuant to Section 1.07 of Schedule 12 (*General Undertakings*) and that becomes a Restricted Subsidiary (or any subsequent Investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions (including by way of merger), if immediately after giving effect thereto: (i) no Event of Default then exists or would result after giving pro forma effect to such acquisition; (ii) any acquired or newly formed Restricted Subsidiary shall not

be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 1.03 of Schedule 12 (*General Undertakings*) and (iii) the aggregate amount of acquisitions made pursuant to clause (3) of the definition of “Permitted Investments” in Persons that are not (or which do not become at the time of such acquisition, directly owned by) Obligors, or assets which do not constitute Charged Property, shall not exceed \$2,500,000.

“**Permitted Investments**” means:

- (1) any Investment in cash equivalents;
- (2) Investments by the Company or any Restricted Subsidiary in any Obligor (other than the Parent Guarantor), (ii) by any Restricted Subsidiary that is not an Obligor in any other Restricted Subsidiary that is not an Obligor and (iii) by any Obligor in any Restricted Subsidiary that is not an Obligor; *provided* that the aggregate amount of Investments made in reliance on clause (iii) outstanding at any time (valued at the time of making thereof, and without giving effect to any write downs or write offs thereof) shall not exceed \$5,000,000; *provided, further* that no such Investments made pursuant to this clause (iii) in the form of intercompany loans shall be evidenced by a promissory note unless (x) such promissory note is pledged to the Security Agent in accordance with the terms of the Transaction Security Document and (y) all such indebtedness of any Obligor owed to any Subsidiary that is not an Obligor shall be unsecured and subordinated to the obligations under the Finance Documents pursuant to the terms of an intercompany note in form and substance reasonably satisfactory to the Agent;
- (3) any Permitted Acquisition, *provided* that the aggregate amount of consideration paid for all Permitted Acquisitions shall not exceed \$5,000,000;
- (4) any Investment in securities or other assets received in connection with a Disposition made pursuant to Section 1.05 of Schedule 12 (*General Undertakings*) or any other disposition of assets not constituting a Disposition;
- (5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any such Investment or binding commitment existing on the Closing Date; *provided*, that the amount of any such Investment or binding commitment may be increased (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;
- (6) any Investment acquired by the Company or any of its Restricted Subsidiaries:
 - (i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; or
 - (ii) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or
 - (iii) in satisfaction of judgments against other Persons; or

- (iv) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (7) Swap Contracts permitted under Section 1.03(f) of Schedule 12 (*General Undertakings*);
- (8) [reserved];
- (9) Investments the payment for which consists solely of equity interests (other than Disqualified Equity Interests in the case of the Parent Guarantor) of the Parent Guarantor or any of its direct or indirect parent companies;
- (10) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 1.08 of Schedule 12 (*General Undertakings*) (except transactions described in clauses (a), (e), (f), (j), (l), (m) and (n) of such Section);
- (11) Investments consisting of purchases or other acquisitions of inventory, supplies, services, material or equipment or the licensing, sublicensing or contribution of intellectual property, in each case in the ordinary course of business;
- (12) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (12) that are at that time outstanding, not to exceed \$5,000,000;
- (13) reserved;
- (14) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$2,500,000 outstanding at any one time, in the aggregate (excluding, for the avoidance of doubt, loans and advances described in clause (15) of this definition);
- (15) loans and advances to employees, directors, officers, managers and consultants (i) for business-related travel expenses, entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of equity interests of the Company or any direct or indirect parent company thereof (so long as, in the case of any such purchase of Equity Interests of any direct or indirect parent company, any cash proceeds thereof are substantially concurrently contributed to the common capital of the Company);
- (16) advances, loans or extensions of trade credit in the ordinary course of business by the Company or any of its Restricted Subsidiaries;
- (17) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;
- (18) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(19) Investments consisting of promissory notes issued by the Company or any Restricted Subsidiary to future, present or former officers, directors and employees, members of management, or consultants of the Company or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of equity interests of the Company or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 1.06 of Schedule 12 (*General Undertakings*);

(20) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Company or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(21) loans and advances to any direct or indirect parent of the Company not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Section 1.06(f), 1.06(g) or 1.06(h) of Schedule 12 (*General Undertakings*), such Investment being treated for purposes of the applicable clause of Section 1.06 of Schedule 12 (*General Undertakings*), including any limitations, as a Restricted Payment made pursuant to such clause;

(22) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Investments in any joint venture having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (22) that are at that time outstanding, not to exceed \$2,500,000; and

(23) [reserved].

“**Permitted Refinancing**” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount (the “**Excess Permitted Refinancing Amounts**”) equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness plus fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 1.03(e) of Schedule 12 (*General Undertakings*), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 1.03(e) or 1.03(f) of Schedule 12 (*General Undertakings*), at the time thereof, no Event of Default shall have occurred and be continuing or would result therefrom, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the obligations under this Agreement, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the obligations under this Agreement on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (e) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured by the assets of the Company or its Restricted Subsidiaries and/or subject to intercreditor arrangements for the benefit of the Lenders, such modification, refinancing, refunding, renewal, replacement or extension is either (1)

unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable (including with respect to priority) to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (f) any such modification, refinancing, renewal, replacement or extension has the same primary obligor and the same (or fewer) guarantors as the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modification, refinancing, refunding, renewal, replacement or extension is either unsecured or subject to Liens only to the extent permitted by Section 1.01(v), 1.01(bb) or 1.01(cc) of Schedule 12 (*General Undertakings*). Any reference to a Permitted Refinancing in this Agreement shall be interpreted to mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any “employee benefit plan” (other than a Multiemployer Plan) within the meaning of Section 3(3) of ERISA that is maintained or is contributed to by a Finance Party or any ERISA Affiliate and is subject to Title IV of ERISA or the minimum funding standards under Section 412 of the Code or Section 302 of ERISA.

“**Public Company Costs**” means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’ or managers’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, listing fees and all executive, legal and professional fees related to the foregoing.

“**Restricted Payment**” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interests of the Company or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such equity interest, or on account of any return of capital to the Company’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof); *provided*, that a transaction with an Affiliate shall not be a Restricted Payment pursuant to this clause (i) solely because such transaction involves such Affiliate and (ii) any payment, redemption, defeasance or other satisfaction of earn-out obligations.

“**Sponsor**” means Aquiline Capital Partners LLC and any of its Controlled Affiliates and funds managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

“**Swap**” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any

master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Obligation**” means, with respect to any person, any obligation to pay or perform under any Swap.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) above, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Testing Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Company most recently ended as of such date of determination for which financial statements have been delivered in accordance with the terms of this Agreement.

“**Threshold Amount**” means \$2,500,000.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Charged Property.

“**United States**” and “**U.S.**” mean the United States of America.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

OSG BIDCO LIMITED

By: 

By:

Name: Kent Herring

Name:

Title: Director

Title:

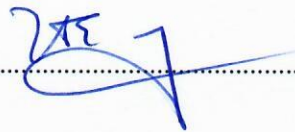
Address:

Fax:

Attention:

Email:

OSG INTERMEDIATE HOLDINGS, INC.

By: 

By:

Name: Kent Herring

Name:

Title: Director

Title:

Address:


Fax:

Attention:

Email:

THE ARRANGER

BARCLAYS BANK PLC

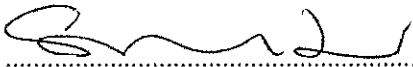
By: 
.....

Name: **Sinead Harris**
 Managing Director

Title:

THE ORIGINAL LENDERS

BARCLAYS BANK PLC

By: 

Name: **Sinead Harris**
 Managing Director

Title:

THE AGENT

BARCLAYS BANK PLC



By:

Name: **Sinead Harris**
Managing Director

Title:

Address: 1 Churchill Place, London E14 5HP


Fax: +44 20 7773 4893

Attention: Head of EME Loans Agency

Email: loans.agency@barclays.com

THE SECURITY AGENT

BARCLAYS BANK PLC

By: 
.....

Name: **Sinead Harris**
.....
Managing Director

Title:

Address: 1 Churchill Place, London E14 5HP

Fax: +44 20 7773 4893

Attention: Head of EME Loans Agency

Email: loans.agency@barclays.com