

DATED 4 October **2021**

Execution Version
LM33/692226.07000/NGB

- (1) MIP HOLDINGS LTD
as Company
- (2) 1903 PARTNERS, LLC and AURELIUS FINANCE COMPANY LIMITED
as Arrangers
- (3) GB EUROPE MANAGEMENT SERVICES LIMITED
as Agent
- (4) GB EUROPE MANAGEMENT SERVICES LIMITED
as Security Agent
- AND OTHERS

FACILITY AGREEMENT

£25,000,000 Term Facility



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THIS AGREEMENT is dated 4 October 2021

BETWEEN:-

- (1) **MIP HOLDINGS LTD** a company incorporated in England and Wales with registered number 12981062 (the "**Company**");
- (2) **THE COMPANY** listed in Part 1 of Schedule 1 as original borrower (the "**Original Borrower**");
- (3) **THE COMPANIES** listed in Part 1 of Schedule 1 as original guarantors (the "**Original Guarantors**");
- (4) **1903 PARTNERS, LLC and AURELIUS FINANCE COMPANY LIMITED** as mandated lead arrangers (the "**Arrangers**");
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part 2 and Part 3 of Schedule 1 as lenders (the "**Original Lenders**");
- (6) **GB EUROPE MANAGEMENT SERVICES LIMITED** as agent of the other Finance Parties (the "**Agent**"); and
- (7) **GB EUROPE MANAGEMENT SERVICES LIMITED** as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:-

SECTION 1

INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:-

"Acceptable Bank"	means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A2 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency
"Accession Letter"	means a document substantially in the form set out in Schedule 6 (<i>Form of Accession Letter</i>)
"Accountants Report"	means the report by FRP Trading Advisory Limited dated on or around the date of this Agreement relating to the Target and its Subsidiaries and addressed to, and/or capable of being relied upon, by the Reliance Parties
"Accounting Period End"	means the last day of each calendar month
"Accounting Principles"	means generally accepted accounting principles in the United Kingdom including IFRS
"Accounting Reference Date"	means 31 January or, from as soon as reasonably practicable after the Effective Date, 30 June
"Acquisition"	means the acquisition by the Company of the entire issued and to be issued share capital of the Target to be implemented by the Scheme
"Acquisition Costs"	means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Company or any other member of the Group in connection with the Acquisition or the Transaction Documents
"Acquisition Purpose"	means the purpose set out in Clause 3.1.1
"Additional Borrower"	means a company which becomes an Additional Borrower in accordance with Clause 25 (<i>Changes to the Obligors</i>)
"Additional Guarantor"	means a company which becomes an Additional Guarantor in accordance with Clause 25 (<i>Changes to the Obligors</i>)
"Additional Obligor"	means an Additional Borrower or an Additional Guarantor

"Advance Rate"	means the Inventory Advance Rate or the Receivables Advance Rate, as the context requires
"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
"Annual Financial Statements"	has the meaning given to that term in Clause 20 (<i>Information Undertakings</i>)
"Assignment Agreement"	means an agreement substantially in the form set out in Schedule 5 (<i>Form of Assignment Agreement</i>) or any other form agreed between the relevant assignor and assignee
"Authorisation"	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration
"Availability Period"	means:- <ul style="list-style-type: none"> (a) in relation to Tranche A, the period from and including the date of this Agreement to and including the last day of the Tranche A Period and (b) in relation to Tranche B and Tranche C, the period from and including the date of this Agreement to and including the date falling one month before the Termination Date
"Available Commitment"	means, in relation to a Tranche, a Lender's Commitment under that Tranche minus:- <ul style="list-style-type: none"> (a) its participation in any outstanding Loans under that Tranche and (b) in relation to any proposed Utilisation, its participation in any Loans that are due to be made under that Tranche on or before the proposed Utilisation Date <p>other than, in relation to any proposed Utilisation, that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date</p>
"Available Facility"	means, in relation to a Tranche, the aggregate for the time being of each Lender's Available Commitment in respect of that Tranche
"Base Case Model"	means the financial model including profit and loss, balance sheet and cashflow projections in agreed form relating to the Group (for these purposes assuming completion of the Acquisition) together with the written business plan in agreed form, each prepared by the Company
"Base Rate"	means the base lending rate of the Bank of England from time to time provided always that for such times as

Base Rate is less than 0.5%, Base Rate shall be deemed to be 0.5%

"Blocked Account"		means each bank account specified as such in the Security (or such other account specified by and subject to such conditions of the Security Agent from time to time), being at the date of this Agreement, the bank accounts specified in Schedule 11 (<i>Blocked Accounts</i>)
"Blocked Availability"	Account	means the maximum amount determined by the Agent to be available for a Withdrawal from a Blocked Account as detailed in the most recent Borrowing Base Certificate delivered pursuant to 20.14 (<i>Collateral Reporting</i>)
"Blocked Account Bank"		means: (a) Barclays Bank PLC; or (b) such other bank agreed between the Agent and the Company from time to time
"Borrower"		means the Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 25 (<i>Changes to the Obligors</i>)
"Borrowing Certificate"	Base	means a certificate substantially in the form set out in Schedule 12 (<i>Form of Borrowing Base Certificate</i>) together with the supporting information detailed in clause 20.14 (<i>Collateral Reporting</i>) or in such other form as the Agent and the Company agree from time to time.
"Borrowing Base Shortfall"		means the amount by which the Obligations exceed the Total Borrowing Base Availability
"Budget"		means:- (a) the Base Case Model (named Post Transaction Forecast. xlsx) in agreed form to be delivered by the Company to the Agent pursuant to Clause 4.1 (<i>Initial conditions precedent</i>) and (b) in relation to any other period, any budget delivered by the Company to the Agent in respect of that period pursuant to Clause 20.4 (<i>Budget</i>)
"Business Day"		means a day (other than a Saturday or Sunday) on which banks are open for general business in London
"Cancellation Date"		has the meaning given in Clause 22.42.8 (<i>Take Private</i>)
"Cash"		means, at any time, cash denominated in sterling, US Dollars and euro in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a

member of the Group is alone beneficially entitled and for so long as:-

- (a) that cash is repayable on demand
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition
- (c) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements and
- (d) the cash is freely and immediately available to be applied in repayment or prepayment of the Facility

"Change of Control"

means:

1. the Shareholders or any funds controlled by Shareholders cease directly or indirectly to:-
 - (a) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:-
 - (i) cast, or control the casting of, more than 70% of the maximum number of votes that might be cast at a general meeting of the Company
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company or
 - (iii) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company are obliged to comply or
 - (b) hold beneficially more than 70% of the issued share capital of the Company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
2. Apinder Singh Ghura and Amarjit Singh Grewal cease to hold beneficially and control the voting rights in respect of 70% together and/or 35% individually 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: <ul style="list-style-type: none"> (a) in respect of any breach of any Clean-Up Representation that relates to any member of the Target Group located in England & Wales, the date falling 30 days after the Effective Date and (b) in all other circumstances, the date falling 90 days after the Effective Date
"Clean-Up Representation"	means any of the representations and warranties specified in Clause 19 (<i>Representations</i>) other than the representations and warranties in Clause 19.12 (<i>No misleading information</i>), Clause 19.17 (<i>Tax</i>), Clauses 19.20 (<i>Ranking</i>) to Clause 19.24 (<i>Accounts</i>), Clause 19.26 (<i>Intellectual Property</i>) to Clause 19.29 (<i>Centre of main interests</i>), Clause 19.31 (<i>Borrowing Base Request and Withdrawal Certificate</i>) and Clause 19.32 (<i>Receivables</i>), Clause 19.35 (<i>Sanctions</i>) and Clause 19.36 (<i>Scheme Documents</i>)
"Code"	means the US Internal Revenue Code of 1986
"Commitment"	means in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Part 2 or Part 3 of Schedule 1 (<i>The Original Parties</i>) and the amount of any other Commitment transferred to it under this Agreement to the extent not cancelled, reduced or transferred by it under this Agreement
"Company's Auditors"	the auditor of the Company and each Obligor, being Mazars LLP at the date of this Agreement, or any other firm approved in advance by the Agent (such approval not to be unreasonably withheld or delayed)
"Compliance Certificate"	means a certificate substantially in the form set out in Schedule 8 (<i>Form of Compliance Certificate</i>)
"Confidential Information"	means all information relating to the Company, the Target, any Obligor, the Group, the Target Group, the Finance Documents, the Scheme Documents, the Acquisition or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:- <ul style="list-style-type: none"> (a) any member of the Group or any of its advisers or (b) another Finance Party, if the information was obtained by that Finance Party directly or

indirectly from any member of the Group or any of its advisers

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:-

information that:-

- (a) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 36 (*Confidential Information*) or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers or
- (c) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality

"Confidentiality Undertaking"

means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Company and the Agent

"Copyrights"

means, as to any Person, all rights in any works of authorship, including the following now owned or hereafter adopted or acquired by such Person:

- (a) all copyrights and moral rights in any original work of authorship fixed in any tangible medium of expression, now known or later developed, all registrations and applications for registration and recordings of any such copyrights in the United States, the United Kingdom or any other country, including registrations, recordings and applications, and supplemental registrations, recordings, and applications in the United States Copyright Office and/or the United Kingdom Intellectual property Office;
- (b) all proceeds of the foregoing and all income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and

	payments for past, present, or future infringements thereof;
	(c) the right to sue for past, present and future infringements thereof; and
	(d) all rights corresponding thereto throughout the world and all renewals and extensions thereof
"Court"	means the High Court of Justice in England and Wales
"Constitutional Documents"	means the constitutional documents of the Company in the agreed form
"Contribution Notice"	means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004
"Credit Rating Report"	means a report in relation to the credit-worthiness of any customer or account debtor of a Borrower issued by any credit rating agency approved in writing by the Agent
"CTA"	means the Corporation Tax Act 2009
"Debenture"	means:-
	(a) the debenture (listed as being a Transaction Security Document in paragraph 3.5 of Part 1 of Schedule 2 (<i>Conditions Precedent</i>)) granted on or around the date of this Agreement by the companies named therein in favour of the Security Agent and
	(b) the debenture to be granted by the Initial Target Group Companies in favour of the Security Agent pursuant to Clause 22.43 (<i>Accession</i>)
"Default"	means an Event of Default or any event or circumstance specified in Clause 23 (<i>Events of Default</i>) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default
"Delegate"	means any delegate, agent, attorney or co-trustee appointed by the Security Agent
"Dilutions"	means (without double counting) all credit notes, debit notes, discounts, write-offs, deductions, retentions, set-off, withholding, customer volume rebates or other adjustments applicable to Receivables which would reduce the face value of a Receivable.
"Disposal"	has the meaning given to that term in Clause 22.19 (<i>Disposal, Insurance and Acquisition Proceeds and Excess Cashflow</i>)

"Disruption Event"	<p>means either or both of:-</p> <p>(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</p> <p>(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:-</p> <p style="padding-left: 40px;">(i) from performing its payment obligations under the Finance Documents or</p> <p style="padding-left: 40px;">(ii) from communicating with other Parties in accordance with the terms of the Finance Documents</p> <p>and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted</p>
"Dormant Subsidiary"	<p>means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £10,000 or more or its equivalent in other currencies</p>
"Early Termination Fee"	<p>means the fee payable in accordance with Clause 12.3 (<i>Early Termination Fee</i>)</p>
"Effective"	<p>means in the context of the Acquisition, the Scheme having become fully effective in accordance with its terms, upon the delivery of the Scheme Court Order to the Registrar of Companies and, if the Court so orders, registration by the Registry of Companies</p>
"Effective Date"	<p>means the date upon which the Scheme becomes Effective</p>
"EBITDA"	<p>has the meaning given to that term in Clause 21 (<i>Financial Covenants</i>)</p>
"Eligible Inventory"	<p>means as of the date of determination thereof, without duplication, items of Inventory of the Obligors that are located at an Eligible Inventory Location and are merchantable and readily saleable to the public in the ordinary course of the Group's business, in each case (except as otherwise agreed by the Agent) that (A) complies with each of the representations and</p>

warranties in respect of Inventory of the relevant Obligor in the Finance Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set out below. Except as otherwise agreed by the Agent in its discretion (acting on the instruction of the Original Lenders), the following items of Inventory shall not constitute Eligible Inventory:-

- (a) Inventory the relevant Obligor does not have good and valid title thereto or is not the property of the relevant Obligor by virtue of retention of title or Romalpa provisions in favour of any third party;
- (b) Inventory that is leased by or is on consignment to a Obligor;
- (c) Inventory that is not located at an Eligible Inventory Location;
- (d) Inventory that is comprised of goods which: (i) are damaged, defective or otherwise unmerchantable, (ii) are work in progress, (iii) are raw materials, or that constitutes samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials, (iv) are not in compliance with all standards imposed by any governmental authority having regulatory authority over such Inventory, its use or sale, (v) are bill and hold goods or (vi) not in current marketable condition;
- (e) Inventory that is not accessible to the relevant Obligor;
- (f) Inventory that is consumable;
- (g) Inventory that is subject to any conditional delivery arrangement;
- (h) Inventory that is not subject to first ranking Security in favour of the Security Agent;
- (i) Inventory that is not insured for its cost value;
- (j) Inventory that has been sold but not yet delivered or as to which an Obligor has accepted a deposit, or otherwise subject to any conditional delivery;
- (k) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which the Company or any of its Subsidiaries has received notice of a dispute in respect of any such agreement;

- (l) Inventory that is subject to Security or Quasi-Security in favour of any third party other than any lien arising in the ordinary course of business, including any lien in favour of a third party landlord or warehouseman for which an appropriate Reserve is held or waiver has been obtained;
- (m) Inventory that is deemed ineligible or not readily saleable by the Agent due to test count variance, cost test variance or reduced sales margin or for any other reason identified during the most recent Valuation, Field Examination or as otherwise determined by the Agent as a result of any audit or delivery of information required to be provided pursuant to this Agreement;
- (n) Inventory that is deemed ineligible by the Agent as a result of any deduction or non-reconciliation between inventory listing and balance sheet amount provided in connection with this Agreement; or
- (o) such other items of Inventory which are subject to facts or circumstances which may adversely affect the saleable condition of such Inventory

“Eligible Location”

Inventory means:-

- (a) the UK Warehouse(s);
- (b) the following retail stores and outlet locations:-
 - (i) Ashford Outlet - Unit 29, Designer Outlet, Ashford, TN24 0SD
 - (ii) King's Road - 144 Kings Road, London, SW3 4UU
 - (iii) Newcastle - 155-7 Grainger Street, Newcastle, NE1 5AE
 - (iv) Meadowhall - Unit 123, Sheffield, S9 1EH
 - (v) YMC Truman Brewery - 23 Hanbury Street, London, E1 6QR
 - (vi) Brighton - 55 East Street, Brighton, BN1 1HN
 - (vii) FC Portsmouth Outlet - Unit 56a Gunwharf Quay, Portsmouth, PO1 3TA

- (viii) Manchester - 8-9 Exchange Street, Manchester, M2 7EE
- (ix) FC Duke Street Studios - 55 Duke Street, London, W1K 5NR
- (x) Chester - 25-27 Bridge Street, Chester, CH1 1NG
- (xi) YMC Poland Street - 11 Poland Street, London, W1F 8QA
- (xii) Bath - 3 Green Street, Bath, BA1 2JY
- (xiii) St Albans - 15/17 St Christopher's Place, St Albans, AL3 5DQ
- (xiv) Tunbridge Wells - 41-42 Royal Victoria Place, Tunbridge Wells, TN1 2SS
- (xv) Swindon Outlet - Unit 6, Designer outlet, Swindon, SN2 2DY
- (xvi) FC Braintree Outlet - Unit F3, Braintree, CM77 8YH and
- (xvii) 3/4 Mardol Head - Shrewsbury, SY1 1HD and

- (c) such other location as the Agent and the Company may agree in advance in writing to designate as an Eligible Inventory Location

“Eligible Jurisdiction”

means a member of the European Union, United Kingdom, United States of America, and any other jurisdiction which the Agent may agree in writing from time to time

“Eligible Receivable”

means, at any time, any Receivable which is evidenced by an invoice, save for any Receivable which in the opinion of the Agent:

- (a) does not arise from the actual and bona fide sale and delivery of goods or rendering of services in the ordinary course of the business of the relevant Obligor;
- (b) is not subject to a valid, first ranking, fixed charge in favour of the Security Agent under the Transaction Security or which are not governed by English law;
- (c) remains fully or partly unpaid after its Maturity Date or such longer period as may be agreed by the Agent;

- (d) is owing by a single account debtor if at any time Receivables representing 50% or more of the aggregate balance owing by such account debtor are not Eligible Receivables by reason of the operation of paragraph (c) above;
- (e) is owed by a director, officer, employee, shareholder or Affiliate of any Obligor;
- (f) is the subject of an (alleged) counterclaim or set off to the extent of such (alleged) counterclaim or set off;
- (g) is the subject of any Tax Deduction (to the extent of such Tax Deduction);
- (h) arises from or relates to a contract in respect of which (i) performance has not been completed by the relevant Obligor and/or, (ii) in relation to which no invoice has been rendered and/or (iii) contains a prohibition on creating security (or similar provision in any relevant jurisdiction);
- (i) involves an account debtor which is the subject of any winding up, administration or similar procedure indicative of insolvency;
- (j) involves an account debtor whose obligation to pay the Receivable is in any respect conditional or subject to any right of return, rejection or similar right;
- (k) is owed by an account debtor which is not a company;
- (l) is owed by an account debtor incorporated or resident outside an Eligible Jurisdiction;
- (m) is owed by an account debtor which is not credit insured under arrangements as requested by the Agent from time to time;
- (n) is owed by an account debtor whose total indebtedness exceeds any credit limit set by the Agent from time to time;
- (o) is owed by an account debtor which is not supported by a Credit Rating Report as requested by the Agent from time to time;
- (p) is owed by an account debtor where the aggregate outstanding value of Receivables of such account debtor exceeds 30% of Receivables Availability;
- (q) is affected by proceedings or actions which are threatened or pending against the relevant account debtors and which may

result in any material adverse change in any such account debtor's financial condition;

- (r) is subject to facts, events or circumstances which would impair the validity, enforceability, collectability or full recoverability of that Receivable;
- (s) is owed by concession account debtors identified by the Field Examination or Agent; or
- (t) the amount owed by an account debtor that is subject to settlement discount or any other deduction

"Environment"

means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:-

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground)
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers) and
- (c) land (including, without limitation, land under water)

"Environmental Claim"

means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law

"Environmental Law"

means any applicable law or regulation which relates to:-

- (a) the pollution or protection of the Environment
- (b) the conditions of the workplace or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste

"Environmental Permits"

means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group

"Event of Default"

means any event or circumstance specified as such in Clause 23 (*Events of Default*)

"Existing Target Finance Documents" means:-

- (a) the working capital facility agreement between, among others, Target and HUK 101 Limited dated 23 July 2020;
- (b) the debenture between, among others, Target and HUK 101 Limited;
- (c) the trade deed of indemnity and novation between Target and Barclays Bank PLC dated 16 November 2020;
- (d) the fixed charge between Target and Barclays Bank PLC dated 22 July 2020;
- (e) the New York law loan and security agreement between French Connection Group, Inc. and Flushing Bank dated 30 November 2020;
- (f) the guarantee dated 30 November 2020 granted by each of French Connection Holdings, Inc., Louisiana Connection, Ltd., Soho Connection, Ltd., Westwood Connection, Ltd. and Roosevelt Connection Ltd in favour of Flushing Bank; and
- (g) the security Agreement dated 30 November 2020 and granted by French Connection Holdings, Inc., Louisiana Connection, Ltd., Soho Connection, Ltd., Westwood Connection, Ltd. and Roosevelt Connection Ltd. in favour of Flushing Bank

"Facility" means the term loan facility made available under this Agreement as described in Clause 2.1.1 (*The Facility*)

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement

"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 paragraphs (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:- <ul style="list-style-type: none">(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 or(b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA
"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 any letter or letters dated on or about the date of this Agreement between the Arranger 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 12 (<i>Fees</i>)
"Field Examination"	means an audit or examination by the Agent or any person appointed to act on its behalf, either on the premises of an Obligor or otherwise, of the Borrowing Base Certificate or any asset forming part of the Transaction Security
"Finance Document"	means this Agreement, any Fee Letter, the Subordination Agreement, any Borrowing Base Certificate, any Withdrawal Request, any Compliance Certificate, any Accession Letter, any Resignation Letter, any Transaction Security Document, any Utilisation Request and any other document designated as such by the Agent and the Company
"Finance Party"	means the Agent, the Security Agent, the Arranger or a Lender
"Financial Indebtedness"	means any indebtedness for or in respect of:- <ul style="list-style-type: none">(a) moneys borrowed and debit balances at banks or other financial institutions(b) any amount raised by acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent)(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes,

debentures, loan stock or any similar instrument

- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease
- (e) receivables sold or discounted
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account)
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition or (ii) any liabilities of any member of the Group relating to any post-retirement benefit scheme
- (i) any amount payable under any arrangement (including the issue of redeemable shares) whereby a third party is able to compel a member of the Group to redeem or purchase its share capital or other securities, provided that any redemption or purchase can be compelled to take place prior to the Termination Date
- (j) the sale price of any asset to the extent paid to a member of the Group by the person liable before the time of sale or delivery where such advance payment is arranged primarily as a method of raising finance unless such arrangements are entered into customarily by customers of the Group
- (k) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles and
- (l) any non-contingent deferred consideration or earn-out which is contractually certain as to amount and due and payable by a member of

the Group in respect of a Permitted Acquisition made by a member of the Group

- (m) any amount of any liability under an advance or deferred purchase agreement or if the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply
- (n) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (m) above

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

"Financial Support Direction" means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004

“Financial Year” means:-

- (a) the annual accounting period of the Group ending on or about 31 January in each year or
- (b) from as soon as reasonably practicable following the Effective Date, the annual accounting period of the Group ending on or about 30 June in each year

“Funds Flow Statement” means a funds flow statement in agreed form

"General Intangibles" means, as to any Person, all general intangibles (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), including all right, title and interest that such Person may now or hereafter have under any contract, all payment intangibles (as that term is defined in the Uniform Commercial Code), customer lists, licenses, Intellectual Property, interests in partnerships, joint ventures and other business associations, permits, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, databases, data, skill, expertise, experience, processes, models, drawings, materials, books and records, Goodwill (including Goodwill associated with any Intellectual Property), all rights and claims in or under insurance policies (including insurance for fire, damage, loss, and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key-person, and business interruption insurance, and all unearned premiums), uncertificated securities, choses-in-action, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, instruments and other property in respect of or in

	exchange for equity interests and other investment property, and rights of indemnification
"Goodwill"	means, as to any Person, all goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs, operating and training manuals, customer lists, and distribution agreements now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a Secured Party)
"Group"	means the Company and its Subsidiaries for the time being
"Group Structure Chart"	means the group structure chart in the agreed form
"Guarantor"	means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 25 (<i>Changes to the Obligors</i>)
"Holding Company"	means, in relation to any person, any other person in respect of which it is a Subsidiary
"IFRS"	means UK-adopted international accounting standards within the meaning of section 474(1) of the Companies Act 2006 to the extent applicable to the relevant financial statements
"Impaired Agent"	<p>means the Agent at any time when:-</p> <ul style="list-style-type: none"> (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 or (c) an Insolvency Event has occurred and is continuing with respect to the Agent <p>unless, in the case of paragraph (a) above:-</p> <ul style="list-style-type: none"> (i) its failure to pay is caused by:- <ul style="list-style-type: none"> (A) administrative or technical error or (B) a Disruption Event and <p>payment is made within 3 Business Days of its due date or</p> (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question
"Information Package"	means the Reports and the Base Case Model

"Insolvency Event"

in relation to an entity means that the entity:-

- (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, 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 30 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, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above)
- (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 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, as to any Person, all Copyrights, Intellectual Property Licences, Patents, Trademarks, trade secrets, inventions, designs, know how, brands, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs, domain names, social media platform accounts, specifications, documentations, reports, catalogs, literature and any other forms of technology or proprietary information of any kind, including all rights therein and applications for registration or recordation thereof now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located

"Intellectual Availability"

Property

means £20,981,118 which can be adjusted by the Agent by reference to the most recent Valuation

"Intellectual Licences"

Property

means, with respect to any Person (the "**Specified Party**"):

- (a) all copyright licenses, Patent Licenses, Trademark Licenses or other licenses, co-existence agreements or other similar

agreements with respect to Intellectual Property rights or interests now held or hereafter acquired by the Specified Party; and

- (b) any licences or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including:
 - a. the licence agreements listed in the Intellectual Property Report; and
 - b. the right to use any of the licences or other similar rights described in this definition in connection with the enforcement of the Finance Parties' rights under the Finance Documents

"Intellectual Property Report"	Property	means the intellectual property report in the form agreed with the Original Lenders prior to the date of this Agreement and delivered as a condition precedent to the Agent pursuant to Clause 4.1 (<i>Initial conditions precedent</i>)
"IP Power of Attorney"		means the power of attorney with respect to future Intellectual Property assignments and recordation in a form agreed between the Agent and the relevant Group company
"Interest Period"		means, in relation to a Loan, each period of one calendar month and, in relation to an Unpaid Sum, each period determined in accordance with Clause 11.3 (<i>Default interest</i>)
"Inventory"		means each Obligor's stock and inventory from time to time
"Inventory Advance Rate"		means 80%, save that the Agent reserves the right to reduce such advance rate during any period in which a Valuation or a Field Examination has not been obtained in form and substance satisfactory to the Agent
"Inventory Availability"		means the value of the Eligible Inventory multiplied by the Inventory Advance Rate multiplied by the Inventory Net Orderly Liquidation Percentage
"Inventory Sale"	Liquidation	means a closing down sale or inventory liquidation sale carried out by any Obligor in connection with the (i) closing of any retail store; and/or (ii) liquidation of any inventory
"Inventory Net Orderly Liquidation Percentage"		means the net orderly liquidation value as a percentage of the cost of Eligible Inventory as detailed in the most recent Valuation of inventory
"Investor Documents"	Finance	means each loan agreement made between the Company and the relevant Investor dated on or around the date of this Agreement and provided as a condition precedent to signing of this Agreement

"Investors"	means Amarjit Singh Grewal, Apinder Singh Ghura and KJR Brothers Limited and any subsequent successors or assigns or transferees
"ITA"	means the Income Tax Act 2007
"Joint Venture"	means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity
"Key Licensee"	has the meaning given to it in Clause 21.1 (<i>Financial definitions</i>)
"Lease"	means the leases identified, reported upon and annexed to the Legal Due Diligence Report
"Legal Due Diligence Report"	means the legal due diligence report dated on or around the date of this Agreement prepared by Shoosmiths LLP relating to the Acquisition and addressed to, and/or capable of being relied upon by, the Reliance Parties
"Legal Opinion"	means any legal opinion delivered to the Agent under Clause 4.1 (<i>Initial conditions precedent</i>) or Clause 25 (<i>Changes to the Obligors</i>)
"Legal Reservations"	means:- <ul style="list-style-type: none"> (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 insolvency, reorganisation and other laws generally affecting the rights of creditors (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK 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 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:- <ul style="list-style-type: none"> (a) any Original Lender and (b) any bank, financial institution, trust, fund or other entity which has become a "Lender" as a Lender in accordance with Clause 24 (<i>Changes to the Lenders</i>)

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement

"Limitation Acts"	means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984
"LMA"	means the Loan Market Association
"Loan"	means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan
"Majority Lenders"	means a Lender or Lenders whose Commitments aggregate more than 70.1% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 70.1% of the Total Commitments immediately prior to the reduction)
"Major Default"	means with respect to the Company, any circumstances constituting a Default under any of: <ul style="list-style-type: none">(a) Clause 23.1 (<i>Non-Payment</i>) in relation to any payment of principal, interest or fees payable pursuant to a Fee Letter on the date of this Agreement(b) Clause 23.3 (<i>Other obligations</i>) insofar as it relates to a breach of Clause 22.9 (<i>Merger</i>), Clause 22.11 (<i>Acquisitions</i>), Clause 22.17 (<i>Negative pledge</i>), Clause 22.18 (<i>Disposals</i>), Clause 22.21 (<i>Loans or credit</i>), Clause 22.25 (<i>Financial Indebtedness</i>), Clause 22.42 (<i>Scheme Undertakings</i>) (other than 22.42.3, 22.42.4 and 22.42.8) provided that it shall not be a Major Default if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (A) the Agent giving notice to the Company or the relevant Obligor and (B) the Company or an Obligor becoming aware of the failure to comply(c) Clause 23.4 (<i>Misrepresentation</i>) insofar as it relates to a breach of any Major Representation provided that it will not be a Major Default if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (A) the Agent giving notice to the Company and (B) the Company becoming aware of the failure to comply(d) Clause 23.6 (<i>Insolvency</i>) (other than Clause 23.6.2)(e) Clause 23.7 (<i>Insolvency proceedings</i>) save that for the purposes of this definition Clause 23.7 (<i>Insolvency proceedings</i>) shall only relate to a formal step, the reference to "other procedures" shall be deleted and Clause 23.7.1(b) applies to "the creditors of

any member of the Group generally (or any class of them)" rather than "any creditor of any member of the Group"

- (f) Clause 23.9 (*Unlawfulness and invalidity*) or
- (g) Clause 23.17 (*Repudiation and rescission*) (other than in relation to the Scheme Documents, the Finance Parties and the Original Obligor)

"Major Representation" means a representation or warranty with respect to the Company under any of Clause 19.2 (*Status*) to Clause 19.6 (*Validity and admissibility in evidence*) inclusive

"Make Whole Amount" means the total amount that the Lenders would have earned, received and/or accrued in interest and all other fees payable under this Agreement during the Make Whole Period if the Facility had been drawn in full on the date of this Agreement

"Make Whole Period" means the period from and including the date of this Agreement to and including the Termination Date

"Margin" means in relation to any Loan or other Unpaid Sum, 10.75 per cent. per annum

"Maturity Date" means, in relation to a Receivable, the Business Day which is, or immediately succeeds, the date which is the earlier of (i) 60 days after the contractual due date for payment in respect of such Receivable and (ii) 120 days after the date of the invoice in respect of such Receivable

"Material Adverse Effect" means in the reasonable opinion of the Lenders a material adverse effect on:-

- (a) the business or financial condition of the Obligors taken as a whole or
- (b) the ability of the Obligors to perform its payment obligations under the Finance Documents or to comply with the provisions of Clause 21 (*Financial Covenants*)
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents

"Material Intellectual Property" means the Intellectual Property which is:-

- (a) listed in any Transaction Security Document;
- (b) listed in any Material Intellectual Property Report; or

- (c) material to the Target Group as agreed by the Lenders and the Company

“Material Intellectual Property Licence” means, with respect to any person (the "**Specified Party**"), (i) any licences or other similar rights provided to the Specified Party in or with respect to Material Intellectual Property owned or controlled by any other person, and (ii) any licences or other similar rights provided to any other person in or with respect to Material Intellectual Property owned or controlled by the Specified Party, in each case, including, (A) the licence agreements listed in the Material Intellectual Property Report, and (B) the right to use any of the licences or other similar rights described in this definition in connection with the enforcement of the Finance Parties' rights under the Finance Documents

“Material Intellectual Property Report” means the Intellectual Property Report as is updated on a quarterly basis pursuant to Clause 20.5.2 (*Intellectual Property*)

"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 (b) 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

The above rules will only apply to the last Month of any period

"New Lender" has the meaning given to that term in Clause 24 (*Changes to the Lenders*)

“Obligations” means all outstanding, accrued or contingent liabilities or obligations at any time, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, of the Obligors to the Agent under the Finance Documents, whether incurred solely or jointly or as principal or surety or in any other capacity including, without prejudice to the generality of the foregoing, the amounts of principal and accrued interest in respect of the Facility and any fees payable to the Agent

"Obligor" means a Borrower or a 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 (<i>Obligors' Agent</i>)
"Operating Account"		means the bank accounts of any member of the Group other than any Blocked Account
"Original Financial Statements"		means in relation to Target, its consolidated audited financial statements for its financial year ended 31 January 2021
"Original Monthly Financial Statements"		means, in relation to the Company and the Target, its monthly financial accounts for each Accounting Period End from 1 August 2020 to 31 July 2021
"Original Jurisdiction"		means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Obligor, as at the date on which that Additional Obligor becomes Party as a Borrower or a Guarantor (as the case may be)
"Original Obligor"		means the Original Borrower
"Panel"		means the Panel on Takeovers and Mergers
"Participating State"	Member	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
"Patent License"		means, as to any Person, all rights under any written agreement now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party) granting any right with respect to any invention on which a Patent is in existence
"Patents"		means, as to any Person, all of the following in which such Person now holds or hereafter acquires any interest: all patents and patent applications, including: <ul style="list-style-type: none"> (a) all provisionals, continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon; (b) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof; (c) the right to sue for past, present and future infringements thereof;

- (d) all of the such Person's rights corresponding thereto throughout the world; and
 - (e) including, as to each member of the Group, the patents and patent applications listed in the Intellectual Property Report
- "Pensions Regulator"** means the body corporate called the Pensions Regulator established under Part 1 of the Pensions Act 2004
- "Perfection Requirements"** means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any acknowledgments and/or acceptances of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document
- "Permitted Acquisition"** means:-
- (a) the Acquisition
 - (b) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal
 - (c) an acquisition of shares or securities pursuant to a Permitted Share Issue
 - (d) the incorporation of a company which on incorporation becomes a member of the Group, but only if:-
 - (i) that company is incorporated in the United Kingdom with limited liability and
 - (ii) if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent, is created in favour of the Security Agent within 30 days of the date of its incorporation
 - (e) an acquisition made with the prior written consent of the Majority Lenders
- "Permitted Amortisation"** means the amortisation of the Loans as set out in Clause 7.1.1
- "Permitted Disposal"** means any sale, lease, licence, transfer or other disposal which, except in the case of paragraph (b), is on arm's length terms:-

- (a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity
- (b) of any asset by a member of the Group (the "Disposing Company") to another member of the Group (the "Acquiring Company"), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and
 - (iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
- (c) of assets (other than shares, businesses, Real Property or Intellectual Property) in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash)
- (d) of Real Property by way of a lease surrender, assignment or termination provided there is no premium or other liability for the account of the relevant member of the Group
- (e) of obsolete or redundant vehicles, plant and equipment for cash, the proceeds of which are paid into the Blocked Account
- (f) constituted by a licence of intellectual property rights permitted by Clause 22.32 (*Intellectual Property Licences and Licensing Agency Agreements*)
- (g) arising as a result of any Permitted Security and
- (h) any disposal with the prior written consent of the Majority Lenders

“Permitted Distribution”

means:

- (a) any distribution within the meaning of “Permitted Distribution” given to that term in the Shareholders Agreement
- (b) the payment of a dividend, distribution or redemption to the Company or any of its

wholly-owned Subsidiaries (other than by an Obligor to a member of the Group which is not an Obligor)

- (c) the payment of a dividend, distribution or redemption to an Obligor and any third party shareholder by a Permitted Joint Venture in accordance with the terms of any joint venture agreement
- (d) any payment or distribution made with the prior written consent of the Majority Lenders

"Permitted Financial Indebtedness"

means Financial Indebtedness:-

- (a) arising under this Agreement or any other Finance Document
- (b) arising under or in connection with the Existing Target Finance Documents (other than under those referred to in paragraphs (a) and (b) of that definition when discharged pursuant to Clause 4.2 (*Further conditions precedent*)) or any document providing for the refinancing (in whole or in part) of such Financial Indebtedness with the Lenders, in each case until the date of Utilisation of Tranche B
- (c) arising under credit card facilities to members of the Group provided that the maximum aggregate amount of such Financial Indebtedness does not exceed £100,000
- (d) arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause 22.36 (*Treasury Transactions*)
- (e) under finance or capital leases of vehicles, plant, equipment or computers, **provided that** the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £200,000 (or its equivalent in other currencies) at any time
- (f) arising under the Investor Finance Documents
- (g) not permitted by the preceding paragraphs and the outstanding amount of which does not exceed £100,000 (or its equivalent) in aggregate for the Group at any time and
- (h) any arrangements with the prior written consent of the Majority Lenders

"Permitted Guarantee"

means:-

- (a) the endorsement of negotiable instruments in the ordinary course of trade
- (b) any performance or similar bond guaranteeing performance by an Obligor under any contract entered into in the ordinary course of trade
- (c) any guarantee permitted under Clause 22.25 (*Financial Indebtedness*)
- (d) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of "Permitted Security
- (e) any indemnity given in the ordinary course of the documentation of an acquisition or disposal transaction which is a Permitted Acquisition or Permitted Disposal which indemnity is in a customary form and subject to customary limitations
- (f) any guarantee not permitted by the preceding paragraphs and the outstanding amount of which does not exceed £100,000 or
- (g) any guarantee or indemnity entered into with the prior written consent of the Majority Lenders

"Permitted Joint Venture"

means each of:-

- (a) YMC Limited (company registration number 03118702)
- (b) FCUK IT
- (c) FC IT China Limited
- (d) Glory Premium Limited
- (e) FCIT Macau Limited
- (f) Kenchart Apparel (Shanghai) Limited

"Permitted Loan"

means:-

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition)
- (c) a loan made by an Obligor to another Obligor or made by a member of the Group which is

not an Obligor to another member of the Group

- (d) the outstanding balance of rent due from Sam Corporation Limited (company number 01892786), provided that (i) the maximum liability under such loan does not exceed £700,000 and (ii) such loan shall only be a "Permitted Loan" until 31 December 2021 or
- (e) any loan made with the prior written consent of the Majority Lenders

"Permitted Security"

means:-

- (a) any Security arising under the Transaction Security Documents
- (b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group
- (c) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors, (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors and (iii) such arrangement does not relate to any Blocked Account
- (d) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement
- (e) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group
- (f) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal

- (g) any Security or Quasi-Security arising under Existing Target Finance Documents (other than under the document referred to in paragraph (b) of that definition when discharged pursuant to Clause 4.2 (*Further conditions precedent*))
- (h) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to sub-clause (j) of the definition of "Permitted Financial Indebtedness"
- (i) any Security or Quasi-Security entered into with the prior written consent of the Majority Lenders

"Permitted Share Issue" means an issue of shares by a member of the Group (other than the Company) which is a Subsidiary to its immediate Holding Company for non-cash consideration where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms

"Permitted Transaction" means:-

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents or
- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group who are Obligors

"Person" means an individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership

"Personal Indemnities" means each personal indemnity from each Shareholder in favour of the Agent dated on or about the date of this Agreement

"Preferential Creditor Reserve" means a Reserve in respect of Preferential Creditors

"Preferential Creditors" means all those persons specified in the Insolvency Act 1986 and the Finance Act 2020 (as amended, supplemented, replaced or raised from time to time) as having preferential debts and any other person which are reasonably likely to be entitled to receive payment out of floating charge realisations in priority to or equally with the Lender and references in any Finance Document to the provision of details of Preferential Creditors shall include the provision of an estimate of

the "prescribed part" for the purposes of section 176A of the Insolvency Act 1986, the Insolvency Act 1986 (Prescribed Part)(Amendment) Order 2003 and the Insolvency Act (Prescribed Part) Order 2020, together with such other persons having preferential debts and/or being entitled to receive payment out of realisations in priority or equally with the Lender in connection with any Finance Document under applicable law in any relevant jurisdiction

"Qualifying Lender"	has the meaning given to it in Clause 13 (<i>Tax gross-up and indemnities</i>)
"Quarter Date"	means each of 30 April, 31 July, 31 October and 31 January (or 31 March, 30 June, 30 September and 31 December if agreed by the Agent following change of Accounting Reference Date together with any corresponding changed to the the testing and calculation of the financial covenants set out in Clause 21 (<i>Financial covenants</i>))
"Quasi-Security"	has the meaning given to that term in Clause 22.17 (<i>Negative Pledge</i>)
"Real Property"	means:- (a) any freehold, leasehold or immovable property and (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property
"Receivable"	means any monetary claim on or obligation of a customer (including any applicable tax of duty) present, future or contingent, together with any and all related rights, owed to an Obligor
"Receivables Advance Rate"	means 80%, save that the Agent reserves the right to reduce such advance rate during any period in which a Field Examination has not been obtained in form and substance satisfactory to the Agent
"Receivables Availability"	means the aggregate of Eligible Receivables due from account debtors multiplied by the Receivables Advance Rate
"Receiver"	means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property
"Related Fund"	in relation to a fund (the " first fund "), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund

"Relevant Jurisdiction"	means, in relation to an Obligor:- <ul style="list-style-type: none"> (a) its Original Jurisdiction (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 its business and (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it
"Relevant Period"	has the meaning given to that term in Clause 21.1 (<i>Financial definitions</i>)
"Reliance Parties"	means the Agent, the Arrangers, the Security Agent, each Original Lender
"Repayment Date"	means each date set out in Clause 7.1.1
"Repayment Instalment"	means each repayment instalment for the Facility set out in Clause 7.1.1
"Repeating Representations"	means each of the representations set out in Clause 19.2 (<i>Status</i>), Clause 19.3 (<i>Binding Obligations</i>), Clause 19.4 (<i>Non-conflict with other obligations</i>), Clause 19.5 (<i>Power and authority</i>), Clause 19.6 (<i>Validity and admissibility in evidence</i>), Clause 19.7 (<i>Governing law and enforcement</i>), Clause 19.11 (<i>No default</i>), Clause 19.12.7, Clause 19.13 (<i>Financial Statements</i>), Clause 19.18 (<i>Anti-corruption law</i>), Clause 19.20 (<i>Ranking</i>), Clause 19.21 (<i>Good title to assets</i>), Clause 19.22 (<i>Legal and beneficial ownership</i>), Clause 19.24 (<i>Accounts</i>), Clause 19.25 (<i>Real Property</i>), Clause 19.26 (<i>Intellectual Property</i>), Clause 19.29 (<i>Centre of main interests and establishments</i>), Clause 19.31 (<i>Borrowing Base Certificate and Withdrawals Requests</i>), Clause 19.32 (<i>Receivables</i>) and Clause 19.35 (<i>Sanctions</i>)
"Reports"	means the Accountant's Report, the Legal Due Diligence Report and the initial Gordon Brothers Valuation
"Representative"	means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian
"Resignation Letter"	means a letter substantially in the form set out in Schedule 7 (<i>Form of Resignation Letter</i>)
"Reserves"	means reserves established by the Agent (acting reasonably and in accordance with current UK asset based lending market practice at the relevant time):- <ul style="list-style-type: none"> (a) to reflect any amounts due and unpaid under the Finance Documents;

- (b) to reflect amounts vulnerable to any deficiency in the Transaction Security or such amounts that the Agent determines are not likely to be available to the Security Agent upon enforcement of the Transaction Security;
- (c) to reflect the full amount of any Preferential Creditor Reserves;
- (d) to reflect the amounts believed by the Agent to be necessary to provide for material inaccuracies in any report or in any information provided to the Agent in connection with this Agreement;
- (e) to reflect outstanding amounts due to or which may become due to any third parties which are necessary for operation of the business (such as software licences, logistic, systems and hire purchase providers) and which are critical to delivering value to the assets which contribute to Total Borrowing Base Availability;
- (f) to reflect the full amount of any rental arrears provided that such reserve shall only be deducted from Inventory Availability (if any);
- (g) if and to the extent that a warehouseman to landlord has not entered into a waiver satisfactory to the Agent in form and substance, to reflect up to six months warehouse costs or rent payments, provided that such reserve shall only be deducted from Inventory Availability (if any);
- (h) to reflect the amount of all Dilutions;
- (i) in an amount equal to all and any due but unpaid premiums relating to the insurance required to be effected under clause 22.27 (*Insurance*) and other unpaid costs, if any, connected with such insurance if and to the extent that payment of such sums is not made by the relevant Obligor on the due date;
- (j) in respect of outstanding rent arrears (or such other amount deemed necessary to offset potential claims of any landlord of premises where Inventory is located or kept from time to time);
- (k) to cover any fees, costs, expenses or potential liabilities, whether actual or contingent, arising from or in connection with any insolvency in respect of the Obligors; and

	(l) to cover any other deductions or potential liabilities as may be deemed necessary by the Agent
“Royalties”	as set out in the Borrowing Base Certificate means royalties, fees or other payments payable by licensees (or other parties having a similar status) to members of the Group under any licence (including Intellectual Property Licences) or other similar agreement relating to the use of the Group’s Intellectual Property
“Sanctions”	means the sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any of the Sanctions Authorities
“Sanctions Authorities”	means collectively: <ul style="list-style-type: none"> (a) the United States Department of Treasury’s Office of Foreign Assets Control (b) the United States Department of State (c) the United Nations Security Council (d) the European Union (e) Her Majesty’s Treasury or (f) the Hong Kong Monetary Authority
“Scheme”	means the scheme of arrangement proposed to be made under Part 26 of the Companies Act 2006 between the Target and the holders of the Target Shares
“Scheme Circular”	means the circular to be issued by the Target to the shareholders of Target containing the terms and conditions of the Acquisition and the particulars required by section 897 of the Companies Act 2006
“Scheme Court Order”	means the order of the Court confirming the sanction of the Scheme as required by section 899 of the Companies Act 2006
“Scheme Documents”	means together the Scheme Press Release, the Scheme Circular and the Scheme Resolutions
“Scheme Press Release”	means a press announcement released by the Company and/or the Target to announce the terms of the Scheme
“Scheme Resolutions”	means the resolutions to be proposed by the Target in connection with the Scheme as referred to and in the form set out in the notice contained in the Scheme Circular, as may be amended to the extent not prohibited by this Agreement

"Secured Parties"	means each Finance Party from time to time party to this Agreement, any Receiver or Delegate
"Security"	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
"Share Charge"	means the share charge granted by the Shareholders and KJR Brothers Limited in favour of the Security Agent and delivered pursuant to 3.5 of Part 1 of Schedule 2 (<i>Conditions precedent</i>)
"Shareholders"	means Amarjit Singh Grewal and Apinder Singh Ghura
"Shareholders Agreement"	means the agreement dated on or around the date of this Agreement and made between the Company, the Investors and the Lenders
"Specified Time"	means a day or time determined in accordance with Schedule 9 (<i>Timetables</i>)
"Subordination Agreement"	means a subordination deed dated the same date as this Agreement and made between, among others, the Company, the Obligors, the Security Agent and the Investors
"Subsidiary"	means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006
"Target"	means French Connection Group PLC incorporated in England and Wales with registration number 01410568
"Target Group"	means the Target and its Subsidiaries
"Target Shares"	means all of the issued and to be issued shares in Target and, if applicable, all warrants and options in respect of the share capital of Target
"Tax"	means any tax, levy, impost, 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)
"Termination Date"	means the date falling 48 months after the date of the first Utilisation
"Total Borrowing Base Availability"	<p>means the amount equal to the product of the formula set out in the Borrowing Base Certificate, which shall equal the sum of:</p> <ul style="list-style-type: none"> (a) the Inventory Availability; plus (b) the Receivables Availability; (c) the Intellectual Property Availability; plus

- (d) the aggregate of the cleared amount standing to the credit of the Blocked Accounts; less
 - (e) the Reserves.
- "Total Commitments"** means the aggregate of the Commitments being £25,000,000 at the date of this Agreement
- "Trademark License"** means, as to any Person, all rights under any written document now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party) granting any right to use any Trademark or Trademark registration
- "Trademarks"** means, as to any Person, all of the following now owned or hereafter adopted or acquired by such Person: any and all trademarks, trade names, corporate names, business names, trade styles, logos, other source or business identifiers, service marks, trade dress, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications including:
- (a) all renewals thereof;
 - (b) all rights and consents to register any trademarks, service marks, or trade dress comprising or containing the "French Connection", "FCUK", "FC", "FC: Baby", "YMC", "You Must Create" or "Great Plains" names and any derivations thereof;
 - (c) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof;
 - (d) the right to sue for past, present and future infringements and dilutions thereof;
 - (e) each member of the Group's respective rights corresponding thereto throughout the world;
 - (f) all Goodwill associated with any of the foregoing; and
 - (g) including, as to each member of the Group, all registrations or applications to register any of the foregoing listed in the Intellectual Property Report

"Tranche"	means a portion of the Facility, being equal to any of Tranche A, Tranche B or Tranche C as the context permits
"Tranche A"	means £18,000,000
"Tranche B"	means £6,000,000
"Tranche C"	means £1,000,000
"Tranche A Period"	<p>means the period commencing on the date of this Agreement and ending on the earliest of:</p> <p>(a) the date falling six months after the date of this Agreement</p> <p>(b) subject to the terms of the Scheme, the date on which the Scheme lapses, terminates or (with the consent of the Panel) is withdrawn and</p> <p>(c) the date which falls on the earlier of:-</p> <p style="padding-left: 40px;">(i) the latest date for payment of the cash consideration to the holders of the Target Shares as set out in the Scheme Circular and</p> <p style="padding-left: 40px;">(ii) 14 days after the Effective Date or, if extended by the Panel, such longer period up to a maximum of 30 days after the Effective Date,</p> <p>unless the Lenders otherwise agree in writing with the other parties hereto</p>
"Tranche A Utilisation"	means a Loan made or to be made under the Facility during the Tranche A Period where such Loan is to be made solely for an Acquisition Purpose
"Transaction Documents"	means the Finance Documents, the Scheme Documents, the Constitutional Documents, the Investor Finance Documents, the Shareholders Agreement and the Personal Indemnities
"Transaction Security"	means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents
"Transaction Security Documents"	means each of the documents listed as being a Transaction Security Document in paragraph 3.5 of Part 1 of Schedule 2 (<i>Conditions Precedent</i>) and any document required to be delivered to the Agent under paragraph 13 of Part 4 of Schedule 2 (<i>Conditions Precedent</i>), and 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 any of the Obligors under any of the Finance Documents

"Transfer Certificate"	means a certificate substantially in the form set out in Schedule 4 (<i>Form of Transfer Certificate</i>) or any other form agreed between the Agent and the Company
"Transfer Date"	means, in relation to an assignment or a transfer, the later of:- <ul style="list-style-type: none"> (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate and (b) 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
"UK Warehouse(s)"	means Unit 8, Dolphin Way, Purfleet, RM19 1NZ
"Unpaid Sum"	means any sum due and payable but unpaid by an Obligor under the Finance Documents
"US"	means the United States of America
"Utilisation"	means a utilisation of the Facility
"Utilisation Date"	means the date of a Utilisation, being the date on which the relevant Loan is to be made
"Utilisation Request"	means a notice substantially in the form set out in Schedule 3 (<i>Requests and Notices</i>)
"Valuation"	means a valuation of the Intellectual Property, Inventory and receivables of the Obligors which are subject to the Transaction Security, which is addressed to the Lenders and satisfactory to them carried out by a Valuer
"Valuer"	means Gordon Brothers or such other independent surveyor or valuer selected and approved by the Agent and the Borrower and engaged on terms determined by the Agent and approved by the Borrower at the cost of the Borrowers (such cost to be £17,000 plus VAT per quarter or as otherwise agreed)
"VAT"	means:- <ul style="list-style-type: none"> (a) any value added tax imposed by the Value Added Tax Act 1994 (b) 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) and (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such

tax referred to in paragraphs (a) or (b) above, or imposed elsewhere

“Withdrawal”		means the whole or part of the credit balance of a Blocked Account which an Obligor has requested to be transferred from a Blocked Account to an Operating Account in accordance with clause 6 (<i>Withdrawals from the Blocked Account</i>)
“Withdrawal Period”	Availability	means the period from and including the date of this Agreement to and including the Termination Date
“Withdrawal Date”		means the date on which the relevant Withdrawal is to be made
“Withdrawal Request”		means a notification to the Agent in a form satisfactory to the Agent

1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:-

- (a) 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, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents 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;
- (b) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Company and the Agent or, if not so agreed, is in the form specified by the Agent;
- (c) **"assets"** includes present and future properties, revenues and rights of every description;
- (d) a **"Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (e) a **"group of Lenders"** includes all the Lenders;
- (f) **"guarantee"** means (other than in Clause 18 (*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;
- (g) **"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;

- (h) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (i) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (j) a "**Base Rate**" shall include any successor rate to, or replacement rate for, that rate;
- (k) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
- (l) a time of day is a reference to London time.

1.2.2 The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

1.2.3 Section, Clause and Schedule headings are for ease of reference only.

1.2.4 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.

1.2.5 A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 **Currency symbols and definitions**

"£", "GBP" and "sterling" denote the lawful currency of the United Kingdom.

1.4 **Third Party Rights**

1.4.1 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.

1.4.2 Subject to clause 35.2.1 but otherwise 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.

SECTION 2

THE FACILITY

2. THE FACILITY

2.1 The Facility

2.1.1 Subject to the terms of this Agreement, the Lenders make available to the Borrowers a sterling term loan facility in 3 Tranches in an aggregate amount equal to the Total Commitments.

2.1.2 Tranche A and Tranche B will only be available to the Original Borrower and Tranche C will be available to all Borrowers.

2.2 Finance Parties' rights and obligations

2.2.1 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.

2.2.2 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 Clause 2.2.3 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.

2.2.3 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

2.3.1 Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:-

- (a) 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, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Letter, 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 the Obligor, without further reference to or the consent of that Obligor; and
- (b) 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 the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

2.3.2 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.

3. **PURPOSE**

3.1 **Purpose**

3.1.1 The Original Borrower shall apply all amounts borrowed by it under Tranche A towards:-

(a) financing the cash consideration payable by or on behalf of the Company to holders of the Target Shares pursuant to the Acquisition; and

(b) payment of the Acquisition Costs (other than periodic fees),

as described in the Funds Flow Statement.

3.1.2 The Original Borrower shall apply all amounts borrowed by it under Tranche B towards the repayment or discharge of indebtedness under the arrangements referred to in paragraphs (a) and (b) of the definition of Existing Target Finance Documents together with any broken funding costs, redemption premia and other fees, costs and/or expenses payable in connection with that repayment or discharge as described in the Funds Flow Statement.

3.1.3 Each Borrower shall apply all amounts borrowed by it under Tranche C towards providing working capital for the Group.

3.1.4 To the extent any Commitment of a Lender under Tranche A remains outstanding following the Tranche A Utilisation made for the purpose set out in Clause 3.1.1 above, such outstanding Commitment shall be reallocated to that Lender's Tranche C Commitment.

3.1.5 To the extent any Commitment of a Lender under Tranche B remains outstanding following the Tranche B Utilisation made for the purpose of Clause 3.1.2 above, such outstanding Commitment shall be reallocated to that Lender's Tranche C Commitment.

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**

- 4.1.1 No Borrower may deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part 1 and Part 2 of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- 4.1.2 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 Clause 4.1.1 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*) and Clause 4.4 (*Utilisation during the Tranche A Period*), the Lenders will only be obliged to comply with Clause 5.4 (*Lender's Participation*) in respect of a Tranche if on the date of the Utilisation Request and on the proposed Utilisation Date:-

- 4.2.1 no Default is continuing or would result from the proposed Loan;
- 4.2.2 the Repeating Representations to be made by each Obligor are true in all material respects; and
- 4.2.3 if the proposed Utilisation relates to Tranche B and/or Tranche C, the Agent has received all of the documents and other evidence listed in Part 3 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lenders.

4.3 **Maximum number of Loans**

- 4.3.1 A Borrower (or the Company) may not deliver a Utilisation Request if as a result of the proposed Utilisation more than three Loans would be outstanding, (i.e. one Loan for each Tranche).
- 4.3.2 A Borrower (or the Company) may not request that a Tranche be divided.

4.4 **Utilisations during the Tranche A Period**

4.4.1 Subject to Clause 4.1 (*Initial conditions precedent*), during the Tranche A Period, the Lenders will only be obliged to comply with Clause 5.4 (*Availability of Utilisations*) in relation to a Tranche A Utilisation, if on the date of the relevant Utilisation Request and on the proposed Utilisation Date:-

- (a) no Major Default is continuing or would result from the proposed Utilisation; and
- (b) all the Major Representations are true in all material respects.

4.4.2 During the Tranche A Period (save in circumstances where, pursuant to Clause 4.4.1 above, the Lenders are not obliged to comply with Clause 5.4 (*Availability of Utilisations*)) and, in respect of paragraph (c) below, subject as provided in Clause 8.1 (*Illegality*), no Lender shall be entitled to:-

- (a) cancel any of its Commitments to the extent to do so would prevent or limit the making of a Tranche A Utilisation;

- (b) rescind, terminate or cancel this Agreement or the Facility or exercise any similar right or remedy under the Finance Documents or make or enforce any Transaction Security or claim under the Finance Documents it may have to the extent to do so would prevent or limit the making of a Tranche A Utilisation;
- (c) refuse to participate in the making of a Tranche A Utilisation;
- (d) 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 Tranche A Utilisation; or
- (e) 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 Tranche A Utilisation,

provided that immediately upon the expiry of the Tranche A Period, all such rights, remedies and entitlements shall be available to the Lenders in accordance with this Agreement and the Finance Documents notwithstanding that they may not have been used or been available for use during the Tranche A Period.

- 4.4.3 A Utilisation Request in respect of Tranche A may not be served less than 5 Business Days after the Effective Date unless the Agent otherwise agrees or the Initial Target Group Companies have acceded pursuant to Clause 22.43 (*Accession*) prior to the date of service of such Utilisation Request.

SECTION 3
UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

5.1.1 Subject to Clause 5.1.2 below, a Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.1.2 On and from the Effective Date, a Borrower may request in writing to the Agent that the Lenders drawdown a specified amount of funds in preparation to meet a prospective Utilisation (a "**Pre-Utilisation Request**"). Provided such Pre-Utilisation Request is made not less than 3 Business Days prior to delivery of a Utilisation Request (and is in an amount no less than the amount of the Utilisation Request), then on delivery of such Utilisation Request (subject to the other terms of this Agreement), the Lenders will make the Utilisation no later than the Business Day following the Utilisation Request. From the date of a Pre-Utilisation Request, interest will accrue on the amount of such Pre-Utilisation Request as if such amount was a Loan.

5.2 Completion of a Utilisation Request

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:-

- (a) it identifies the Tranche to be utilised;
- (b) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Tranche;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).

5.2.2 Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

5.3.1 The currency specified in a Utilisation Request must be sterling.

5.3.2 The amount of the proposed Loan must be the whole Available Facility for each Tranche.

5.4 Lenders' participation

5.4.1 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.

5.4.2 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.

5.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 **Cancellation of Commitment**

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for each applicable Tranche.

6. **WITHDRAWALS FROM A BLOCKED ACCOUNT**

6.1 **Withdrawal conditions**

6.1.1 An Obligor may request Withdrawals from a Blocked Account provided that each such request is made by an Obligor initiating a payment request in the amount of the proposed Withdrawal on the banking platform of the relevant Blocked Account Bank (or prior to establishment of the banking platform of the relevant Blocked Account Bank by request to the Agent). Subject to each such request conforming to the requirements of this Clause 6.1 and Clause 6.2 below the Agent shall transfer the Withdrawal to the Operating Account as soon as reasonably practicable.

6.1.2 The Agent may in its absolute discretion refuse to transfer a Withdrawal under clause 6.1.1 if:

- (a) on the proposed Withdrawal Date a Default is continuing or would be reasonably likely to result from the proposed Withdrawal; and/or
- (b) on the date of the Withdrawal Request or on the proposed Withdrawal Date the Repeating Representations are not true and accurate in all respects and will not remain true and accurate in all respects immediately after the Withdrawal.

6.2 **Completion of a Withdrawal Request**

6.2.1 Each Withdrawal Request is irrevocable and will not be regarded as having been duly completed unless:

- (a) the currency specified in the relevant Withdrawal Request is GBP;
- (b) the proposed Withdrawal Date is a Business Day within the Withdrawal Availability Period;
- (c) an up to date Borrowing Base Certificate (satisfactory to the Agent) is attached;
- (d) the amount of the Withdrawal specified in the Withdrawal Request (when aggregated with the amount of all Withdrawals that are due to be made) does not exceed the Blocked Account Availability; and
- (e) it is signed by one director of the Company and one director of the relevant Obligor (which shall be either Lee Williams or Neil Williams to the extent they are appointed as directors or such other director being either the managing director or finance director or equivalent).

6.2.2 Only one Withdrawal may be requested in each Withdrawal Request.

6.2.3 Only one Withdrawal may be requested in each week (unless otherwise agreed in writing with the Agent from time to time).

6.3 **Other Withdrawals**

The Agent may debit the amount of any payments (including principal, interest, fees and expenses) due and payable under a Finance Document to the Agent from the Blocked

Account. The Lenders shall apply any amount so debited towards payment of principal, interest, fees and expenses in its discretion.

6.4 **Borrowing Base Shortfall and Adjustments**

6.4.1 If at any time there is a Borrowing Base Shortfall, the Obligors shall immediately (but in any event no later than 4pm (UK time) on the Business Day immediately following the day that the Borrowing Base Shortfall is identified and notified to the relevant Obligor) pay into the Blocked Account such amount as may be required to extinguish such Borrowing Base Shortfall.

6.4.2 For the purpose of Clause 6.4.1 above, whether there is a Borrowing Base Shortfall shall be reviewed and confirmed by the Agent:

- (a) on review of a Borrowing Base Certificate; or
- (b) following an adjustment of the Advance Rate in a Borrowing Base Certificate in accordance with Clause 6.4.3 below at the relevant time.

6.4.3 The Agent may from time to time adjust the Advance Rate proportionally and commensurately to the perceived risk of any deterioration in value of the Receivables, Inventory or Intellectual Property (such risk to be material and perceived on reasonable grounds and with appropriate third party evidence) and shall promptly notify the Company in writing of any amendment to an Advance Rate (having first consulted with the Company). Such perceived risk requiring an adjustment may include by way of example (without limitation and without binding or limiting the Agent in any way):

- (a) in the event there is a fire or flood in the warehouse and all the stock is written off, such that the value of the stock in that location is going to be nil until replaced; or
- (b) in the event that a material wholesale customer becomes insolvent and cannot settle the outstanding debtors in full.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

7. REPAYMENT

7.1 Repayment of Loans

7.1.1 The Borrowers under the Facility shall repay the aggregate Loans in instalments by repaying on each Repayment Date an amount which reduces the aggregate Loans by the amount set out opposite that Repayment Date below and in any event so that the aggregate loans are repaid in full on the Termination Date:-

Repayment Date	Repayment Instalment
30 July 2023	£1,250,000
31 October 2023	£1,250,000
31 January 2024	£625,000
30 April 2024	£625,000
31 July 2024	£625,000
31 October 2024	£625,000
30 January 2025	£625,000
30 April 2025	£625,000
31 July 2025	£625,000
31 October 2025	£625,000

7.1.2 No Borrower may reborrow any part of the Facility which is repaid.

7.2 Effect of cancellation and prepayment on scheduled repayments

7.2.1 If the Company cancels the whole or any part of any Available Commitments in accordance with Clause 8.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 8.1 (*Illegality*) the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce in inverse chronological order by the amount cancelled.

7.2.2 If the Company cancels the whole or any part of any Available Commitments in accordance with Clause 8.2 (*Voluntary cancellation*) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.5 (*Cancellation of Commitment*) then the amount of the Repayment Instalment for each Repayment Date falling after that cancellation will reduce in inverse chronological order by the amount cancelled.

7.2.3 If any Loan is repaid or prepaid in accordance with Clause 8.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*) or Clause 8.1 (*Illegality*) then the amount of the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will reduce in inverse chronological order by the amount of the Loan repaid or prepaid.

7.2.4 If any Loan is prepaid in accordance with Clause 8.3 (*Voluntary prepayment of Loans*) or Clause 22.19 (*Disposal and Insurance Proceeds*) then the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in inverse chronological order by the amount of the Loan prepaid.

8. **ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION**

8.1 **Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:-

8.1.1 that Lender shall promptly notify the Agent upon becoming aware of that event;

8.1.2 upon the Agent notifying the Company, each Available Commitment of that Lender will be immediately cancelled; and

8.1.3 each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan 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) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

8.2 **Voluntary cancellation**

8.2.1 The Company may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole of an Available Facility. Any cancellation under this Clause 8.2 shall reduce the Commitments of the Lenders rateably under that Tranche.

8.2.2 Any notice of cancellation of the Available Commitments with respect to the Tranche C delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncanceled must be accompanied by evidence, in form and substance satisfactory to the Majority Lenders, that the Group will have sufficient working capital facilities available to it following such cancellation.

8.3 **Voluntary prepayment of Loans**

A Borrower to which a Loan has been made may, if it or the Company gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay all or any part of the Loans (but if in part, being a minimum amount of £5,000,000).

8.4 **Right of replacement or repayment and cancellation in relation to a single Lender**

8.4.1 If:-

(a) any sum payable to any Lender by an Obligor is required to be increased under Clause 13.2.3; or

(b) any Lender claims indemnification from the Company or any Obligor under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased Costs*),

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with Clause 8.4.4 below.

- 8.4.2 On receipt of a notice of cancellation referred to in Clause 8.4.1 above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- 8.4.3 On the last day of each Interest Period which ends after the Company has given notice of cancellation under Clause 8.4.1 above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan is outstanding shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- 8.4.4 The Company may, in the circumstances set out in Clause 8.4.1 above, on 10 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 24 (*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 selected by the Company which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 24 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 24.10 (*Pro rata interest settlement*)), and other amounts payable in relation thereto under the Finance Documents.
- 8.4.5 The replacement of a Lender pursuant to Clause 8.4.4 above shall be subject to the following conditions:-
- (a) the Company shall have no right to replace the Agent or the Security Agent;
 - (b) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (c) in no event shall the Lender replaced under Clause 8.4.4 above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (d) the Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 8.4.4 above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- 8.4.6 A Lender shall perform the checks described in Clause 8.4.5(d) above as soon as reasonably practicable following delivery of a notice referred to in Clause 8.4.4 above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

9. **MANDATORY PREPAYMENT AND CANCELLATION**

9.1 **Exit**

9.1.1 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,

the Facility will be immediately cancelled and shall immediately cease to be available for further utilisation and all Loans, accrued interest and other amounts under the Finance Documents, shall become immediately due and payable.

9.2 **Mandatory Cancellation**

If the Scheme lapses or is withdrawn then the Facility shall be cancelled immediately on the same date.

10. **RESTRICTIONS**

10.1 **Notices of cancellation or prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 8 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, 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.

10.2 **Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid (including but not limited to the Early Termination Fee and Make Whole Amount (if any)).

10.3 **No reborrowing of the Facility**

No Borrower may reborrow any part of the Facility which is prepaid.

10.4 **Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

10.5 **No reinstatement of Commitments**

No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.

10.6 **Agent's receipt of notices**

If the Agent receives a notice under Clause 8 (*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.

10.7 **Effect of repayment and prepayment on Commitments**

If all or part of any Lender's participation in a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Tranche will be deemed to be cancelled on the date of repayment or prepayment.

10.8 **Application of prepayments**

Any prepayment of a Loan (other than a prepayment pursuant to Clause 8.1 (*Illegality*) or Clause 8.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

SECTION 5

COSTS OF UTILISATION

11. INTEREST

11.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:-

11.1.1 Margin; and

11.1.2 Base Rate.

11.2 Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan monthly in arrear on the last day of each Interest Period.

11.3 Default interest

11.3.1 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 Clause 11.3.2 below, is 4 per cent. per annum 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 11.3 shall be immediately payable by the Obligor on demand by the Agent.

11.3.2 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:-

(a) 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

(b) the rate of interest applying to the overdue amount during that first Interest Period shall be 6 per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

11.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

11.4 Notification of rates of interest

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

11.5 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 precedeing Business Day (if there is not).

11.6 **Unavailability of Base Rate**

If no Base Rate is available at any time there shall be no Base Rate for the Loan and Clause 11.8 (*Cost of funds*) shall apply to the Loan for that period.

11.7 **Market disruption**

If on any Business Day the Lender determines that the cost to it of funding its participation in the Loan from whatever source it may select would be in excess of Base Rate then Clause 11.8 (*Cost of funds*) shall apply to the Loan for the relevant Interest Period.

11.8 **Cost of funds**

If this Clause 11.8 applies, the rate of interest on the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

- (a) the Margin; and
- (b) the rate expressed as a percentage rate per annum the cost to the Lender of funding the Loan from whatever source it may reasonably select.

11.9 **Notification to Company**

If Clause 11.8 (*Cost of funds*) applies, the Lender shall, as soon as is reasonably practicable, any event on the date falling 1 Business Day before the date on which interest is due to be paid, notify the Company of the applicable rate.

12. **FEES**

12.1 **Arrangement fee**

The Company shall pay to the Arrangers an arrangement fee in the amount and at the times agreed in the relevant Fee Letter.

12.2 **Monitoring fee**

The Company shall pay to the Agent (for the account of each Lender) a monitoring fee of £10,000 per month which shall be paid on the last day of each month (other than in relation to the first monitoring fee payment which shall be made on the date of Utilisation of Tranche A).

12.3 **Early Termination Fee**

If (prior to the Termination Date) all or part of a Loan is prepaid or a notice of prepayment is given pursuant to Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*) or Clause 9.1 (*Exit*) or accelerated pursuant to Clause 23.21 (*Acceleration*), the Borrowers shall pay to the Lenders an Early Termination Fee to protect the Lenders' legitimate interest (including financial interests) arising as a result of such event in an amount equal to 5% of the amount prepaid on the effective date of such prepayment or declaration.

12.4 **Make Whole**

If all or part of a Loan is cancelled or prepaid or a notice of cancellation or prepayment is given pursuant to Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*) or

Clause 9.1 (*Exit*) or accelerated pursuant to Clause 23.21 (*Acceleration*) during the Make Whole Period, the Borrowers shall pay to the Lender the Make Whole Amount on the effective date of such prepayment, cancellation, declaration or acceleration to protect each Lender's legitimate interest (including its financial interests) arising as a result of such event.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

13. TAX GROSS UP AND INDEMNITIES

13.1 Definitions

In this Agreement:-

"Borrower DTTP Filing" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Borrower, 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 Part 2 and Part 3 of Schedule 1 (The Original Parties); and

(i) where the Borrower is the Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or

(ii) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; 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

(i) where the Borrower is a Borrower as at the date that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of that date or

(ii) where the Borrower is not a Borrower as at the date that Treaty Lender becomes a Party as a Lender, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower

"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 a 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:-

(1) 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

(2) 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:-

(1) a company resident in the United Kingdom for United Kingdom tax purposes

(2) a partnership each member of which is:-

(A) a company so resident in the United Kingdom or

(B) 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

(3) 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 purpose 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 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*)

"Treaty Lender" means a Lender which:-

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty and
- (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

"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) an Original Lender listed in Part 3 of Schedule 1 (*The Original Parties*) and
- (b) a Lender which is not an Original Lender and which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party as a Lender

Unless a contrary indication appears, in this Clause 13 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

13.2 **Tax gross-up**

13.2.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

- 13.2.2 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 Company and that Obligor.
- 13.2.3 If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that 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.
- 13.2.4 A payment shall not be increased under Clause 13.2.3 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:-
- (a) 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; or
 - (b) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:-
 - (i) an officer of HM 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
 - (ii) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (c) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:-
 - (i) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (ii) 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
 - (d) 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 Clauses 13.2.8 or 13.2.9 (as applicable) below.
- 13.2.5 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.

- 13.2.6 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 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 13.2.7 Subject to Clause 13.2.8 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.
- 13.2.8 A:
- (a) Treaty Lender which is an Original Lender and 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 Part 2 of Schedule 1 (*The Original Parties*); and
 - (b) a Treaty Lender which is not an Original Lender and 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 Clause 13.2.7 above.
- 13.2.9 If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with Clause 13.2.8 above and:
- (a) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
 - (b) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
 - (i) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
 - (ii) HM Revenue & Customs has not given that Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of that Borrower DTTP Filing; or
 - (iii) HM Revenue & Customs has given that Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired,
- and in each case, that Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.
- 13.2.10 If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with Clause 13.2.8 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 Commitments or its participation in any Loan unless the Lender otherwise agrees.

- 13.2.11 A Borrower 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.
- 13.2.12 A UK Non-Bank Lender which is an Original Lender gives a Tax Confirmation to the Company by entering into this Agreement.
- 13.2.13 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.

13.3 Tax indemnity

13.3.1 The Company shall (within three 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.

13.3.2 Clause 13.3.1 above shall not apply:-

(a) with respect to any Tax assessed on a Finance Party:-

- (i) 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
- (ii) 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

(b) to the extent a loss, liability or cost:-

- (i) is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*); or
- (ii) would have been compensated for by an increased payment under Clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 13.2.4 applied; or
- (iii) relates to a FATCA Deduction required to be made by a Party.

13.3.3 A Protected Party making, or intending to make a claim under Clause 13.3.1 above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.

13.3.4 A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Agent.

13.4 Tax Credit

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

13.4.1 a Tax Credit is attributable 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

13.4.2 that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the 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.

13.5 **Lender status confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the documentation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:-

13.5.1 not a Qualifying Lender;

13.5.2 a Qualifying Lender (other than a Treaty Lender); or

13.5.3 a Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 13.5 then that 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 which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this Clause 13.5.

13.6 **Stamp taxes**

The Company shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.7 **VAT**

13.7.1 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 Clause 13.7.3 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).

13.7.2 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):

- (a) (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 Clause 13.7.2(a) 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
- (b) (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.

13.7.3 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.

13.7.4 Any reference in this Clause 13.7 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).

13.7.5 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.

13.8 **FATCA information**

13.8.1 Subject to Clause 13.8.3 below, each Party shall, within ten Business Days of a reasonable request by another Party:

- (a) confirm to that other Party whether it is:
 - (i) a FATCA Exempt Party; or
 - (ii) not a FATCA Exempt Party;
- (b) 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
- (c) 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.

13.8.2 If a Party confirms to another Party pursuant to Clause 13.8.1(a) 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.

13.8.3 Clause 13.8.1 above shall not oblige any Finance Party to do anything, and Clause 13.8.1(c) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

- (a) any law or regulation;
- (b) any fiduciary duty; or
- (c) any duty of confidentiality.

13.8.4 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 Clause 13.8.1(a) or Clause 13.8.1(b) above (including, for the avoidance of doubt, where Clause 13.8.3 above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments 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.

13.9 **FATCA Deduction**

13.9.1 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.

13.9.2 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.

14. **INCREASED COSTS**

14.1 **Increased costs**

14.1.1 Subject to Clause 14.3 (*Exceptions*) the Company shall, within three 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 (ii) compliance with any law or regulation made after the date of this Agreement or (iii) the implementation or application of, or compliance with Basel III or any other law or regulation which implements Basel III including, for the avoidance of doubt and without prejudice to the foregoing generality, CRD IV (whether such implementation, application or compliance is by a government, regulator, a Finance Party or any of its Affiliates) .

14.1.2 In this Agreement:-

"Basel III" 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; or

- (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".

"CRD IV" means EU CRD IV and UK CRD IV

"EU 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 amending Regulation (EU) No 648/2012; 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 amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

"Increased Costs" means:-

- (a) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (b) an additional or increased cost; or
- (c) 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.

"UK 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 amending Regulation (EU) No 648/2012 as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and
- (d) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and its implementing measures; and

- (e) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and

“**Withdrawal Act**” means the European Union (Withdrawal) Act 2018.

14.2 Increased cost claims

14.2.1 A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.

14.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

14.3 Exceptions

14.3.1 Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:-

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 13.3.2 applied); or
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14.3.2 In this Clause 14.3 (*Exceptions*), a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 13.1 (*Definitions*).

15. OTHER INDEMNITIES

15.1 Currency indemnity

15.1.1 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:-

- (a) making or filing a claim or proof against that Obligor; or
- (b) 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 Business Days of demand, indemnify each 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 (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- 15.1.2 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.

15.2 Other indemnities

- 15.2.1 The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Arranger and each other Secured Party, against any cost, loss or liability incurred as a result of:-
- (a) the occurrence of any Event of Default;
 - (b) investigating any event which it reasonably believes is an Event of Default;
 - (c) 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 28 (*Sharing among the Finance Parties*);
 - (d) funding, or making arrangements to fund, its participation in a Loan requested by the Company or a Borrower 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
 - (e) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
- 15.2.2 The Company shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, 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 the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or its Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 15.2.2 subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.

15.3 Indemnity to the Agent

- 15.3.1 The Company shall promptly indemnify the Agent against
- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:-
 - (i) investigating any event which it reasonably believes is a Default; or
 - (ii) acting or relying on any notice, request or instruction 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; and

- (b) 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 29.11 (*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.

15.4 Indemnity to the Security Agent

15.4.1 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:-

- (a) any failure by the Company to comply with its obligations under Clause 17 (*Costs and expenses*);
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (c) the taking, holding, protection or enforcement of the Transaction Security;
- (d) 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;
- (e) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
- (f) 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).

15.4.2 The Security Agent and every Receiver and Delegate 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 15.4 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.

16. MITIGATION BY THE LENDERS

16.1 Mitigation

16.1.1 Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*), or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

16.1.2 Clause 16.1.1 above does not in any way limit the obligations of any Obligor under the Finance Documents.

16.2 **Limitation of liability**

16.2.1 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 16.1 (*Mitigation*).

16.2.2 A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

17. **COSTS AND EXPENSES**

17.1 **Transaction expenses**

The Company shall promptly (and in any event within three Business Days) on demand pay the Agent, the Security Agent and each Arranger the amount of all costs and expenses (including legal, audit, costs and expenses incurred under or in connection with the Singer engagement letter engagement letter between Singer Capital Markets Advisory LLP and the Original Lenders dated 3 October 2021, the initial Gordon Brothers Valuation, "know your customer" costs, travel or out of pocket expenses) reasonably 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 and perfection of:-

17.1.1 this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

17.1.2 any other Finance Documents executed after the date of this Agreement.

17.2 **Amendment costs**

If:

17.2.1 an Obligor requests an amendment, waiver or consent; or

17.2.2 an amendment is required pursuant to Clause 29.10 (*Change of currency*),

the Company shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees and any travel or out of pocket expenses) reasonably 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.

17.3 **Monitoring costs**

The Obligors shall, within three Business Days of written demand from the Agent, pay to the Agent (for the account of the Agent and Lenders where relevant) all fees, costs, disbursements and out-of-pocket expenses of the Agent and Lenders, third party auditors, valuers, advisors or agents in connection with any additional Security monitoring and/or analysis of the assets and/or Receivables and/or the Real Property additional to that contemplated by the Lenders at the date of this Agreement, if the Lenders determine that such additional Security monitoring and/or analysis is required.

17.4 **Security Agent's ongoing costs**

17.4.1 Any amount payable to the Security Agent under Clause 15.4 (*Indemnity to the Security Agent*) and this Clause 17 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent

may notify to the Company and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.

17.4.2 Without prejudice to Clause 17.4.1 above, in the event of:

- (a) a Default;
- (b) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
- (c) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to Clause 17.4.3 below.

17.4.3 If the Security Agent and the Company fail to agree upon the nature of the duties or upon the additional remuneration referred to in Clause 17.4.2 above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

17.5 **Enforcement and preservation costs**

The Company shall, within three Business Days of demand, pay to each Secured Party the amount of all fees, 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.

17.6 **Appraisal and Field Examination costs**

The Company shall, within three Business Days of written demand, pay the amount of all reasonably and properly incurred costs and expenses in connection with any audit, Field Examination or Valuation. In the event of non-payment by the Company, or payment becoming overdue, the Agent may apply any amount standing to the credit of the relevant Blocked Account in payment of any audit, Field Examination or Valuation reasonably and properly incurred.

SECTION 7

GUARANTEE

18. GUARANTEE AND INDEMNITY

18.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:-

- 18.1.1 guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- 18.1.2 undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- 18.1.3 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 a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 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.

18.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 Waiver of defences

The obligations of each Guarantor under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:-

- 18.4.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 18.4.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 18.4.3 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;

18.4.4 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;

18.4.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;

18.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

18.4.7 any insolvency or similar proceedings.

18.5 **Guarantor intent**

Without prejudice to the generality of Clause 18.4 (*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: business 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.

18.6 **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 that Guarantor under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 **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:-

18.7.1 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 no Guarantor shall be entitled to the benefit of the same; and

18.7.2 hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 18.

18.8 **Deferral of Guarantors' rights**

18.8.1 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, no Guarantor will 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 18:-

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) 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;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

18.8.2 If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 29 (*Payment mechanics*).

18.9 **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.

18.10 **Guarantee limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Letter applicable to such Additional Guarantor.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19. REPRESENTATIONS

19.1 General

19.1.1 Each Obligor makes the representations and warranties set out in this Clause 19 to each Finance Party at the times specified in Clause 19.37 (*Repetition*).

19.1.2 The Company acknowledges that the Finance Parties have entered into this Agreement in reliance on these representations and warranties.

19.2 Status

19.2.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

19.2.2 Each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

19.2.3 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

19.3 Binding obligations

Subject to the Legal Reservations and Perfection Requirements:-

19.3.1 the material obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and

19.3.2 without limiting the generality of Clause 19.3.1 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.

19.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of any Transaction Security do not and will not conflict in any material respect with:-

19.4.1 any law or regulation applicable to it;

19.4.2 the constitutional documents of any member of the Group; or

19.4.3 any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

19.5 Power and authority

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

19.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

19.6 **Validity and admissibility in evidence**

19.6.1 All Authorisations required:-

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) subject to the Perfection Requirements, to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been (or will, by the required date, be) obtained or effected and are in full force.

19.6.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

19.7 **Governing law and enforcement**

19.7.1 The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

19.7.2 Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

19.8 **Insolvency**

No:-

19.8.1 corporate action, legal proceeding or other procedure or step described in Clause 23.7.1; or

19.8.2 creditors' process described in Clause 23.7.2 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a member of the Group; and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to a member of the Group.

19.9 **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is:-

19.9.1 a Qualifying Lender:-

- (a) falling within paragraph (a)(i) of the definition of Qualifying Lender;
- (b) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of Qualifying Lender;
- (c) falling within paragraph (b) of the definition of Qualifying Lender; or

- 19.9.2 a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

19.10 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions 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, registration, notarial or similar Taxes or fees or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:-

- 19.10.1 in relation to an Additional Obligor, registration of particulars or other formalities required under the laws of its Relevant Jurisdiction or the governing law of the relevant Finance Document;
- 19.10.2 registration of particulars of the Transaction Security at Companies House in England and Wales under section 859A of the Companies Act 2006; and
- 19.10.3 registration of particulars of the Transaction Security at the Trade Marks Registry at the Patent Office in England and Wales,

and payment of associated fees, which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Finance Document.

19.11 No default

- 19.11.1 No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- 19.11.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

19.12 No misleading information

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

- 19.12.1 Any material factual information contained in the Base Case Model and Legal Due Diligence Report was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- 19.12.2 The Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Company.
- 19.12.3 The financial projections or forecasts contained in the Base Case Model have been prepared on the basis of recent historical information and on the basis of reasonable assumptions and were fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.

- 19.12.4 The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Base Case Model, the Gordon Brothers Valuation and Accountants Report 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.
- 19.12.5 No event or circumstance has occurred or arisen and no information has been omitted from 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 Package being untrue or misleading in any material respect.
- 19.12.6 All material information provided to a Finance Party by or on behalf of the Investors, or the Obligors in connection with the Acquisition and/or 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.
- 19.12.7 All other written information provided by any member of the Group (including its advisers) to a Finance Party and its advisers or the provider of any Report (including in connection with any Valuations or Field Examinations) was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.

19.13 **Financial statements**

- 19.13.1 The Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- 19.13.2 The audited Original Financial Statements fairly present its financial condition and its results of operations (consolidated in the case of the Target) during the relevant financial year.
- 19.13.3 Save as disclosed in the Information Package, there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of Target) since the date of the Original Financial Statements.
- 19.13.4 The Original Financial Statements do not consolidate the results, assets or liabilities of any person or business which does not form part of the Target Group.
- 19.13.5 Its most recent financial statements delivered pursuant to Clause 20.1 (*Financial Statements*):-
- (a) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Base Case Model; and
 - (b) give a true and fair view of (if audited) or fairly represent its consolidated financial condition as at the end of, and its consolidated results of operations for, the period to which they relate.
- 19.13.6 The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

19.13.7 Since the date of the most recent financial statements delivered pursuant to Clause 20.1 (*Financial Statements*) there has been no material adverse change in the assets, business or financial condition of the Group.

19.14 No proceedings

19.14.1 No litigation, arbitration or administrative proceedings or investigations of, or before any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries save as expressly set out in the Legal Due Diligence Report in section 4 (*Employment and Pensions*) and section 5 (*Data Protection*).

19.14.2 No judgment or order of a court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any of its Subsidiaries.

19.15 No breach of laws

19.15.1 It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect save as expressly set out in the Legal Due Diligence Report in section 4 (*Employment and Pensions*) and section 5 (*Data Protection*).

19.15.2 No labour disputes are current or, to the best of its knowledge and belief, threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

19.16 Environmental laws

19.16.1 Each member of the Group is in compliance with Clause 22.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

19.16.2 No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, to have a Material Adverse Effect.

19.16.3 The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Base Case Model.

19.17 Taxation

19.17.1 Save as expressly set out in the Accountants Report, it is not overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax.

19.17.2 Save as expressly set out in the Accountants Report, no claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes.

19.17.3 Save as expressly set out in the Accountants Report, it is resident for Tax purposes only in its Original Jurisdiction.

19.18 **Anti-corruption law**

Each member of the Group has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

19.19 **Security and Financial Indebtedness**

19.19.1 No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

19.19.2 No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

19.20 **Ranking**

The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security other than Permitted Security.

19.21 **Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

19.22 **Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the assets over which it purports to grant Security.

19.23 **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group or member of the Target Group (including any option or right of pre-emption or conversion).

19.24 **Accounts**

The Company and each of its Subsidiaries has provided the Lenders with details of all bank accounts of the Group and such bank accounts are subject to the Transaction Security.

19.25 **Real Property**

Save as expressly set out in the Legal Due Diligence Report, the Group (including the Target Group) does not own any Real Property and its only interest in real estate is the Leases save for any Real Property or interests in Leases acquired by the Group following the Effective Date in accordance with this Agreement.

19.26 **Intellectual Property**

19.26.1 The Company and each of its Subsidiaries:-

- (a) is the sole legal and beneficial owner of or has licensed to it on is the sole legal and beneficial owner of or has licensed to it on normal commercial terms (including that such license is not terminable on insolvency) 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 conducted and as contemplated in the Base Case Model;
 - (b) does not (nor does any of its Subsidiaries), in the operation of, or carrying on, its businesses and use of Intellectual Property in connection therewith, infringe, misappropriate or otherwise violate or impair any material Intellectual Property of any third party in any material respect;
 - (c) does not (nor does any of its Subsidiaries), in the operation of such member of the Group's business and use of any other Intellectual Property in connection therewith, infringe, misappropriate or otherwise violate or impair the intellectual property rights of any other Person in a material respect; and
 - (d) has taken all formal or procedural actions (including payment of fees) required to maintain any Intellectual Property owned by it.
- 19.26.2 No holding, decision or judgment has been rendered by any court, administrative agency or governmental authority that cancels, invalidates or otherwise limits in any material respect, any Intellectual Property of any member of the Group.
- 19.26.3 None of the transactions contemplated by the Finance Documents will result in the invalidity, unenforceability or impairment of any Intellectual Property, or in default or termination of any Intellectual Property Licence save as expressly set out in the Legal Due Diligence Report in section 3 (*Commercial, Brand Licensing and Technology*).
- 19.26.4 No action or proceeding is pending or, to the knowledge of the Company, threatened on the date of this Agreement (i) seeking to cancel, limit or challenge the validity or enforceability of any Intellectual Property or any member of the Group's rights therein or use thereof, or (ii) which, if adversely determined, would materially and adversely affect the value of any Intellectual Property.
- 19.26.5 The Intellectual Property Report (as such Intellectual Property Report may be updated on a quarterly basis in accordance with Clause 22.31 (*Intellectual Property*)) sets forth a complete and correct list of:-
- (a) all registered trademarks, registered service marks and registered trade dress (and in respect of any member of the Group incorporated in England, any unregistered trademarks and any registered and unregistered design rights for which a member of the Group claims common law protection (any intellectual property rights for which a member of the Group claims common law protection, collectively "**Unregistered Rights**")) owned by any member of the Group (including the jurisdictions in which such trademarks, service marks or trade dress are registered), all applications for registration of trademarks, service marks and trade dress owned by any member of the Group, and all other trademarks, trade names, service marks and trade dress owned by any member of the Group or used in the conduct of the business of any member of the Group and the name of the owner of each such trademark, trade name, service mark or trade dress;

- (b)
 - (i) all registered copyrights (and in the case of any member of the Group incorporated in England, any Unregistered Rights) owned by any member of the Group (including the jurisdictions in which such copyrights are registered);
 - (ii) all applications for registration of copyrights (and in the case of any member of the Group, any Unregistered Rights) owned by any member of the Group; and
 - (iii) to the extent material to the conduct of the business of any member of the Group, all other copyrights owned by any member of the Group and the name of the owner of each such copyright or application;
- (c) all patents and industrial designs owned by any member of the Group (including the jurisdictions in which such patents and industrial designs are registered) and all applications for patents and industrial designs owned by any member of the Group and used in the conduct of the business of any member of the Group and the name of the owner of each such patent and industrial design;
- (d) all social media platform accounts used by any member of the Group;
- (e) all social media platform accounts, URLs and domain names owned by any member of the Group; and
- (f) all Intellectual Property licenses, assignment agreements, contribution agreements, or other arrangements entered into by any member of the Group, including those pursuant to which (i) any member of the Group has provided any license or other rights in Intellectual Property owned or controlled by any member of the Group to any other Person or (ii) any Person has granted to any member of the Group any license or other rights in Intellectual Property owned or controlled by such Person that is material to the business of any member of the Group, including any intellectual property that is incorporated in any inventory, software, or other product marketed, sold, licensed, or distributed by any member of the Group.

19.27 **Group Structure Chart**

Assuming the Effective Date has occurred, the Group Structure Chart delivered to the Agent pursuant to Clause 22.43 (*Accession*) is true, complete and accurate in all material respects and shows the following information:-

- 19.27.1 each member of the Group, including current name and company registration number, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a member of the Group which is not an Obligor) and/or its jurisdiction of establishment, a list of shareholders and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and
- 19.27.2 all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

19.28 **Accounting Reference Date**

The Accounting Reference Date of each member of the Group is 31 January or as soon as reasonably practicable following the Effective Date, 30 June.

19.29 **Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

19.30 **Pensions**

19.30.1 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) save as expressly set out in the Legal Due Diligence Report in section 4 (*Employment and Pensions*).

19.30.2 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.

19.31 **Borrowing Base Certificate and Withdrawal Requests**

The latest Borrowing Base Certificate delivered by the relevant Obligor in accordance with Clause 20.14 (*Collateral Reporting*) and or in connection with a Withdrawal Request is true and correct in all respects.

19.32 **Receivables**

In respect of each Eligible Receivable:

19.32.1 no other person has any right to the Eligible Receivable;

19.32.2 no Security affects the Eligible Receivable save for Permitted Security;

19.32.3 the relevant Obligor has unencumbered title to the Eligible Receivable;

19.32.4 no right of set-off, deduction, debit or counterclaim (including a ban on assignments) exists that will reduce or extinguish the face value of the Eligible Receivable save for Permitted Security;

19.32.5 it is an existing, enforceable and undisputed obligation;

19.32.6 it arises out of the sale of goods or performance of services by the relevant Obligor to its customers in the ordinary course of the relevant Obligor's business;

19.32.7 it is not due from an Affiliate of an Obligor;

19.32.8 it is domiciled in an Eligible Jurisdiction;

19.32.9 the relevant Obligor is not in breach of its material obligations to its customer; and

19.32.10 the relevant Obligor is not aware of any facts, events or circumstances which would impair the validity, enforceability, collectability or full recoverability of that Eligible Receivable.

19.33 No adverse consequences

19.33.1 It is not necessary under the laws of its Relevant Jurisdictions:-

- (a) in order to enable any Finance Party to enforce its rights under any Finance Document; or
- (b) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

19.33.2 No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

19.34 Holding and Dormant Companies

Except as may arise under the Transaction Documents and for Acquisition Costs, before the date of this Agreement the Company has not traded or incurred any liabilities or commitments (actual or contingent, present or future).

19.35 Sanctions

No Obligor, any of its Subsidiaries, any director or officer or any employee, agent, or Affiliate of an Obligor or any of its Subsidiaries is a Person that is, or is owned or controlled by Persons that are:-

19.35.1 the target of any Sanctions; or

19.35.2 is located, organised or resident in a country or territory that is the target of Sanctions, including the Crimea region, Cuba, Iran, North Korea and Syria, other than to the extent that such representation/warranty would result in a violation of Council Regulation (EC) No 2271/96, as amended (or any implementing law or regulation in any member state of the European Union), or any similar applicable blocking or anti-boycott law or regulation in the United Kingdom.

For the purposes of this Clause 19.35 "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

19.36 Scheme Documents

19.36.1 The Scheme Documents (as amended from time to time to the extent such amendments are not prohibited by this Agreement) contain all the material terms of the Scheme.

19.36.2 As at the date the Scheme Press Release is sent to the holders of the Target Shares, it is not (in the case of any information relating to or supplied by the Target Group (or any of its professional advisers), to the best of the Company's knowledge and belief) untrue, inaccurate or misleading and contains all of the information required and otherwise complies with the requirements of applicable law, the UKLA Listing Rules and the City Code (subject to any derogation or waiver agreed by the Panel or the Court).

19.36.3 As at the date the Scheme Circular is sent to the holders of the Target Shares, it is not (in the case of any information relating to or supplied by the Target Group (or any of its professional advisers), to the best of the Company's knowledge and belief) untrue, inaccurate or misleading and contains all of the information required and otherwise complies with the requirements of applicable law, the UKLA Listing Rules for Companies and the City Code (subject to any derogation or waiver agreed by the Panel or the Court).

19.37 Repetition

19.37.1 All the representations and warranties in this Clause 19 are made by each Original Obligor on the date of this Agreement except for the representations and warranties set out in Clause 19.12 (*No misleading information*) which are deemed to be made by each Original Obligor (i) with respect to the Information Memorandum, on the date the Information Memorandum is approved by the Company, (ii) with respect to the Base Case Model, on the date of this Agreement and on the Effective Date and (iii) with respect to the Information Package (other than the Base Case Model) on the date of this Agreement.

19.37.2 All the representations and warranties in this Clause 19 are deemed to be made by each Obligor on the Effective Date.

19.37.3 Subject to Clause 19.37.5 the Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:-

- (a) the date of each Utilisation Request;
- (b) each Utilisation Date; and
- (c) the first day of each Interest Period.

19.37.4 All the representations and warranties in this Clause 19 (*Representations*) except Clause 19.12 (*No misleading information*) and Clause 19.26.1 (*Group Structure Chart*) and Clause 19.34 (*Holding and Dormant Companies*), are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

19.37.5 The Repeating Representations contained in Clauses 19.13.1 to 19.13.4 will cease to be deemed to be made by each Obligor once subsequent financial statements have been delivered under this Agreement.

19.37.6 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 as at the date the representation or warranty is deemed to be made.

19.37.7 The representations and warranties in Clause 19.13 (*Financial Statements*) shall only be made by each Obligor on 1 February 2022 (and from then on be repeated in accordance with Clause 19.37.3 and Clause 19.37.5) provided that:-

- (a) promptly from the Effective Date steps are taken by the Obligors to the satisfaction of the Agent to produce an interim report reporting on whether each of the representations and warranties in Clause 19.13 (*Financial Statements*) are true and highlighting any discrepancies;
- (b) such interim report is provided to the Agent no later than 31 December 2021 to the satisfaction of the Agent (acting reasonably);

- (c) the final report is provided to the Agent no later than 31 January 2022 to the satisfaction of the Agent (acting reasonably); and
- (d) any breach of the warranties highlighted in the interim or final report is remedied to the satisfaction of the Agent or waived by the Agent (in its sole discretion) prior to 1 February 2022.

20. INFORMATION UNDERTAKINGS

The undertakings in this Clause 20 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 20:-

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to Clause 20.1.1

"Monthly Financial Statements" means the financial statements delivered pursuant to Clause 20.1.2

20.1 Financial statements

The Company shall supply to the Agent in sufficient copies for all the Lenders:-

20.1.1 as soon as the same become available, but in any event within 150 days after the end of each of its Financial Years (together with the Compliance Certificate required to be delivered in accordance with Clause 20.2 (*Provision and contents of Compliance Certificate*) below):-

- (a) its audited consolidated financial statements for that Financial Year;
- (b) the audited financial statements of each Borrower; and
- (c) the audited financial statements of each Obligor (consolidated if appropriate) for that Financial Year, if requested by the Agent; and

20.1.2 as soon as they are available, but in any event no later than the 25th day of each calendar month (and if such day is not a Business Day, on the last Business Day immediately preceding such day) (together with the Compliance Certificate required to be delivered in accordance with Clause 20.2 (*Provision and contents of Compliance Certificate*) below), its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

20.2 Provision and contents of Compliance Certificate

20.2.1 The Company shall supply a Compliance Certificate to the Agent, with each set of its:

- (a) Annual Financial Statements pursuant to Clause 20.1 (*Financial statements*) above; and
- (b) Monthly Financial Statements pursuant to Clause 20.1 (*Financial statements*) above.

20.2.2 The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 21 (*Financial covenants*)

and detail any proposed payment under the Investor Finance Documents for the following month.

- 20.2.3 Each Compliance Certificate shall be signed by one director of the Company and one director of the Target (being either Lee Williams or Neil Williams to the extent they are appointed as directors or such other director being either the managing director or finance director or equivalent) and, if the Agent so requires, shall be reported on by a firm of accountants selected by the Agent.

20.3 Requirements as to financial statements

- 20.3.1 The Company shall procure that each set of Annual Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Company shall procure that:-

- (a) each set of its Annual Financial Statements shall be audited by the Company's Auditors;
- (b) each set of Monthly Financial Statements is accompanied by a statement by the directors of the Company commenting on the performance of the Group for the month to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business.

- 20.3.2 Each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*):-

- (a) shall be certified by a director of the relevant company as fairly presenting its financial condition and operations 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 any letter addressed to the management of the relevant Borrower by the auditors of those Annual Financial Statements;
- (b) shall be accompanied by a statement by the directors on any material developments or proposals affecting the Group including individual office (or business unit) comparison of actual performance for the year to date period and the month to which the financial statements relate to:-
 - (i) the projected performance for that period set out in the Base Case Model or Budget; and
 - (ii) the actual performance for the corresponding period in the preceding Financial Year of the Group; and
- (c) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:-
 - (i) in the case of the Company, in the preparation of the Base Case Model; and
 - (ii) in the case of any Obligor, in the preparation of the Original Financial Statements and the Original Monthly Financial Statements for that Obligor.

- 20.3.3 If the Agent wishes to discuss the financial position of the Company or any member of the Group with the auditors of the Company or that member of the Group, the Agent may notify the Company, stating the questions or issues

which the Agent wishes to discuss with those auditors. In this event, the Company must ensure that those auditors are authorised (at the expense of the Company):-

- (a) to discuss the financial position of the relevant member of the Group with the Agent on request from the Agent; and
- (b) to disclose to the Agent for the Finance Parties any information which the Agent may request.

20.4 **Budget**

20.4.1 The Company shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within 20 Business Days before the start of each of its Financial Years, an annual Budget for that financial year.

20.4.2 The Company shall ensure that each Budget for a Financial Year:-

- (a) is in a form acceptable to the Agent and includes:-
 - (i) a projected consolidated and consolidating profit and loss, balance sheet and cashflow statement for the Group; and
 - (ii) projected financial covenant calculations;for that Financial Year;
- (b) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 20.1 (*Financial statements*); and
- (c) has been approved by the board of directors of the Company.

20.4.3 If the Company updates or changes the Budget it shall promptly and, in any event, within not more than 10 Business Days of the update or change being made deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

20.4.4 As soon as available, any further forecasts prepared by the Company after the annual budget supplied to the Lender under Clause 20.4.1 above, together with an explanation of any material differences to budget.

20.5 **Financial Model**

20.5.1 The Company shall supply to the Agent in sufficient copies for all the Lenders:-

- (a) as soon as it becomes available but in any event no later than 31 December 2021, a draft financial model relating to the Group; and
- (b) as soon as it becomes available but in any event no later than 31 January 2022, the final financial model relating to the Group.

20.5.2 The Company shall ensure that the financial model is comprised of constituent forecasts (in a form acceptable to the Lenders) which enable a compliant set of financial statements and is prepared by a reputable institution agreed between the Agent and the Company.

20.5.3 The financial model shall include:-

- (a) an integrated profit and loss statement a balance sheet and Cash flow itemising the relevant asset and liability lines split per month; and
- (b) worksheets and background calculation together with the underlying data source, which will collectively demonstrate the source of the figures and the method of calculation; and
- (c) and other items to be agreed between the Company and the Lenders.

20.5.4 The Lenders shall, at the cost of the Company (such cost to be up to £50,000 (plus VAT) or otherwise agreed prior to any appointment), be entitled to appoint an independent financial adviser (such advisor to be mutually agreed between the Agent and the Company) to review the financial model referred to in this Clause 20.5.

20.6 **Intellectual Property – periodic reporting**

20.6.1 The Company shall supply to the Agent in sufficient copies for all the Lenders:-

- (a) within 10 Business Days after the end of each Financial Quarter or, if requested by the Agent (acting on the instructions of the Majority Lenders), within 10 Business Days after the end of each Month, an updated Intellectual Property Report;
- (b) within 10 Business Days after the end of each Financial Quarter, a copy of any financial information relating to royalties provided by the licensees under any Intellectual Property Licences during that Financial Quarter;
- (c) within 10 Business Days after the end of each Financial Quarter information on level of sales from licensees for that Financial Quarter to the extent such information has been received by the Company by that date (provided that the Company shall use reasonable commercial endeavours to procure such information is received by the Company by that date);
- (d) within 30 days after the end of each of its Financial Years, upon request by the Agent (acting on the instructions of the Majority Lenders), a copy of the business plan from licensees under Intellectual Property Licences, to the extent submitted to a member of the Group;
- (e) promptly and, in any event, within 10 Business Days:
 - (i) upon execution, a copy of any Intellectual Property Licence or Licensing Agency Agreement and all amendments, modifications and supplements thereto from time to time; and
 - (ii) upon request by the Agent (acting on the instructions of the Majority Lenders), all reporting information provided by licensees thereunder from time to time.

20.7 **Intellectual Property - events**

20.7.1 Each Obligor shall promptly notify the Agent upon becoming aware of the occurrence of:-

- (a) any default, acceleration or demand under any Intellectual Property Licence to which it is party by any party thereto, together with copies of each notice of default, acceleration or demand thereunder;
- (b) notification or formal notice of the termination or cancellation of any Intellectual Property Licence or Licensing Agency Agreement to which it is party by any party thereto, together with copies of each notice of termination or cancellation thereunder;
- (c) any material dispute with any counterparty with respect to Intellectual Property; and
- (d) any intent by any member of the Group to abandon any Intellectual Property or terminate any line of business.

20.8 Intellectual Property Licences

The Company shall as soon as practicable provide to the Agent on behalf of the Lenders:-

20.8.1 copies of any amendment, waiver or notification that any Obligor executes or receives in connection with any Intellectual Property Licence that could reasonably be expected to have a Material Adverse Effect (including, without limitation, any notices of material defaults and notices of cancellation of such Intellectual Property Licence); and

20.8.2 notice of the termination or expiration of any Intellectual Property Licence.

20.9 Group companies

The Company shall, at the request of the Agent, supply to the Agent a report confirming that following Utilisation of Tranche B (i) all members of the Group incorporated in the UK are Guarantors, and (ii) the EBITDA of the Guarantors (calculated on an unconsolidated basis and excluding (i) all intra-Group items (ii) investments in Subsidiaries, and (iii) any member of the Group incorporated in the United States of America prior to the accession of such Subsidiaries as Guarantors and repayment of Existing Target Finance Documents of those Subsidiaries) exceeds 85% of the consolidated EBITDA of the Group.

20.10 Presentations

Once in every Financial Year, or more frequently if requested to do so by the Agent (acting reasonably), at least two directors of the Company (one of whom shall be the chief financial officer) must give a presentation either virtually or via a face-to-face meeting in England to the Finance Parties about the on-going business and financial performance of Company and the Group.

20.11 Year-end

No Obligor shall change its Accounting Reference Date.

20.12 Information: miscellaneous

Each Obligor shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):-

20.12.1 at the same time as they are dispatched, copies of all documents dispatched by the Company to its shareholders generally (or any class of them) or by any Obligor to its creditors generally (or any class of them);

- 20.12.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are likely to have a Material Adverse Effect;
- 20.12.3 promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against the Company or any member of the Group and which is likely to have a Material Adverse Effect;
- 20.12.4 promptly, copies of any new (or amendments to) material customer contracts and/or any new (or amendments to) material supplier contracts (or purchase orders detailing supplier terms and conditions);
- 20.12.5 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;
- 20.12.6 promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against any persons in respect of the Scheme Documents and details of any disposal or insurance claim which will require a prepayment under Clause 22.19 (*Disposal and Insurance Proceeds*); and
- 20.12.7 promptly on request, such further information regarding the financial condition, assets, business and operations of the Company and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to management of the Company or the Group and an up to date copy of the shareholder's register (or equivalent in its Original Jurisdiction) as any Finance Party (through the Agent) may request.

20.13 **Notification of default**

- 20.13.1 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 that Obligor is aware that a notification has already been provided by another Obligor).
- 20.13.2 Promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by two of its directors (one which must be a non-Shareholder director) 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).

20.14 **Collateral Reporting**

- 20.14.1 *Borrowing Base Certificate*: the Borrowers shall provide the Agent by 17:00 on the first Business Day of each week (or such other times as the Agent may agree or require), in a form satisfactory to the Agent (and in default of which the Agent may apply any Reserves as it shall in its absolute discretion determine appropriate), a Borrowing Base Certificate supported by the following details:
 - (a) Inventory perpetual listing, Inventory by location, Inventory by category, Inventory by brand and Inventory by supplier (to the extent reported by the Target Group in such manner);

- (b) reconciliation of inventory perpetual to trial balance and balance sheet (to be provided monthly)
- (c) a consolidated aged debtor list as at the prior Accounting Period End detailing Borrower entity, debtor entity, debtor resident country, payment terms, type of invoice and amount due by age;
- (d) a list of credit notes issued in the prior month including reason for the credit;
- (e) the amount of any bad debt written off, increase in bad debt provisions, notification of any Receivables disputed by customers and notification of any customers experiencing credit, liquidity or solvency difficulties or entered an insolvency process;
- (f) a reconciliation of Receivables to the Blocked Accounts;
- (g) aged account payables;
- (h) screen shot of the Blocked Account available balance;
- (i) screen shot of the available balance of bank accounts owned and operated by the Borrowers; and
- (j) an updated rolling 13 week cash flow forecast, including confirmation of positive cash balance and sufficient liquidity for such period; and

20.14.2 *Insurance, bank statements and other information*: the Borrowers shall deliver within 2 Business Days of a request by the Agent:

- (a) evidence that adequate insurance cover is being maintained on terms satisfactory to the Agent and that all premiums are paid;
- (b) copies of all bank statements for all of the Borrowers' active bank accounts; and
- (c) all other information as may be requested by the Agent from time to time in connection with the assets or any books and records of the Obligors relating to the same.

20.15 **"Know your customer" checks**

20.15.1 If:-

- (a) 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;
- (b) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or
- (c) 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 Clause 20.15.1(c) 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 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 Clause 20.15.1(c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in Clause 20.15.1(c) above, 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 transactions contemplated in the Finance Documents.

20.15.2 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 it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

20.15.3 The Company 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 Obligor pursuant to Clause 25 (*Changes to the Obligors*).

20.15.4 Following the giving of any notice pursuant to Clause 20.15.3 above, if the accession of such Additional Obligor 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 Company 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 Obligor.

21. FINANCIAL COVENANTS

21.1 Definitions

In this Agreement:-

"EBITDA" means the profit before tax reported in the Monthly Financial Statements delivered pursuant to clause 20.1 (*Financial statements*) and the Annual Financial Statements delivered pursuant to clause 20.1 (*Financial statements*) after the following adjustments:

- (a) adding back depreciation (for the avoidance of doubt adding back any right of use asset impairments and deducting any impairment releases);
- (b) adding back amortisation;
- (c) adding back interest;

- (d) deducting tax paid (for the avoidance of doubt, without offsetting any tax refunds or rebates);
- (e) deducting any exceptional one off, non-recurring or extraordinary gains, including but not limited to a revaluation of any assets or gains from foreign exchange movements or trading;
- (f) for the avoidance of doubt, after deducting any exceptional, one off, non-recurring or extraordinary items;
- (g) for the avoidance of doubt, deducting all rental expenses accrued or paid; and

provided always that the Agent is satisfied with the manner in which such adjustments are made

“Key Licensees”

means each of:-

- (a) DFS
- (b) Boots Plc and
- (c) Creative Home ideas

“Minimum Liquidity”

means:-

- (a) the aggregate amount of free cash standing to the credit of the Minimum Liquidity Bank Accounts; less
- (b) the amount required to cure a Borrowing Base Shortfall if there is an outstanding Borrowing Base Shortfall at such time

“Minimum Liquidity Bank Accounts”

means the bank accounts of the Obligors situated in the United Kingdom, other than any Blocked Account, any account secured in relation to an Existing Target Finance Document or otherwise encumbered

“New Shareholder Injection”

means the aggregate additional amount lent by a Shareholder pursuant to the Investor Finance Documents and subordinated pursuant to the Subordination Agreement

“Relevant Period”

means:-

- (a) until 31 January 2022, the period of three consecutive months ending on 31 January 2022
- (b) until 30 April 2022, the period of six consecutive months ending on 30 April 2022

- (c) until 31 July 2022, the period of nine consecutive months ending on 31 July 2022 and
- (d) thereafter, the period of twelve consecutive months ending on the last day of a Financial Quarter

21.2 **Financial covenants**

21.2.1 **Minimum EBITDA**

EBITDA for each period specified in Column 1 of the table below is not less than the amount set out opposite such account period in Column 2 of the table below:-

Column 1 Period	Column 2 EBITDA (£)
Period beginning on 1 November 2021 and ending on 31 January 2022	1,301,551.03
Period beginning on 1 November 2021 and ending on 28 February 2022	1,380,192.80
Period beginning on 1 November 2021 and ending on 31 March 2022	1,494,024.92
Period beginning on 1 November 2021 and ending on 30 April 2022	1,952,437.70
Period beginning on 1 November 2021 and ending on 31 May 2022	2,224,080.72
Period beginning on 1 November 2021 and ending on 30 June 2022	2,219,896.03
Period beginning on 1 November 2021 and ending on 31 July 2022	2,899,335.54
Period beginning on 1 November 2021 and ending on 31 August 2022	3,844,112.50
Period beginning on 1 November 2021 and ending on 30 September 2022	5,526,453.88
Period beginning on 1 November 2021 and ending on 31 October 2022	7,072,698.44
Period beginning on 1 December 2021 and ending on 30 November 2022	7,309,419.63
Period beginning on 1 January 2022 and ending on 31 December 2022	7,516,974.11
Period beginning on 1 February 2022 and ending on 31 January 2023	7,758,464.43
Period beginning on 1 March 2022 and ending on 28 February 2023	7,761,726.29
Period beginning on 1 April 2022 and ending on 31 March 2023	7,824,043.01
Period beginning on 1 May 2022 and ending on 30 April 2023	8,095,855.37
Period beginning on 1 June 2022 and ending on 31 May 2023	7,974,312.11
Period beginning on 1 July 2022 and ending on 30 June 2023	8,197,268.33

Period beginning on 1 August 2022 and ending on 31 July 2023	9,724,761.79
Period beginning on 1 September 2022 and ending on 31 August 2023	10,111,185.93
Period beginning on 1 October 2022 and ending on 30 September 2023	9,869,539.57
Period beginning on 1 November 2022 and ending on 31 October 2023	9,805,523.84
Period beginning on 1 December 2022 and ending on 30 November 2023	9,759,108.04
Period beginning on 1 January 2023 ending on 31 December 2023	9,770,675.41
Period beginning on 1 February 2023 and ending on 31 January 2024	10,292,379.09
Period beginning on 1 March 2023 and ending on 28 February 2024	10,911,354.37
Period beginning on 1 April 2023 and ending on 31 March 2024	11,242,635.98
Period beginning on 1 May 2023 and ending on 30 April 2024	11,550,844.34
Period beginning on 1 June 2023 and ending on 31 May 2024	11,765,522.11
Period beginning on 1 July 2023 and ending on 30 June 2024	11,995,812.30
Period beginning on 1 August 2023 and ending on 31 July 2024	12,172,396.66
Period beginning on 1 September 2023 and ending on 31 August 2024	12,723,543.93
Period beginning on 1 October 2023 and ending on 30 September 2024	13,147,644.86
Period beginning on 1 November 2023 and ending on 31 October 2024	13,510,783.89
Period beginning on 1 December 2023 and ending on 30 November 2024	14,057,518.99
Period beginning on 1 January 2024 and ending on 31 December 2024	14,467,639.07
Period beginning on 1 February 2024 and ending on 31 January 2025	14,601,933.79

Period beginning on 1 March 2024 and ending on 28 February 2025	14,601,933.79
Period beginning on 1 April 2024 and ending on 31 March 2025	14,601,933.79
Period beginning on 1 May 2024 and ending on 30 April 2025	14,601,933.79
Period beginning on 1 June 2024 and ending on 31 May 2025	14,601,933.79
Period beginning on 1 July 2024 and ending on 30 June 2025	14,601,933.79
Period beginning on 1 August 2024 and ending on 31 July 2025	14,601,933.79
Period beginning on 1 September 2024 and ending on 31 August 2025	14,601,933.79
Period beginning on 1 October 2024 and ending on 30 September 2025	14,601,933.79
Period beginning on 1 November 2024 and ending on 31 October 2025	14,601,933.79

21.2.2 **Minimum Liquidity**

The Company shall ensure that Minimum Liquidity at all times shall not be less than £1,000,000.

21.2.3 **Minimum Royalties**

The Company shall ensure that the Group (on a consolidated basis) has received royalties from Intellectual Property Licences provided to any Person that is not an Affiliate of any member of the Group, for each Relevant Period specified in Column 1 of the table below is not less than the amount set out opposite such account period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Minimum Royalties	Column 3 10% Variance
Relevant Period ending 31 January 2022	£1,278,000	£1,108,000
Relevant Period ending 30 April 2022	£2,222,000	£1,925,000
Relevant Period ending 31 July 2022	£3,472,000	£3,009,000
Relevant Period ending 31 October 2022	£4,768,000	£4,133,000
Relevant Period ending 31 January 2023	£4,891,000	£4,239,000
Relevant Period ending 30 April 2023	£5,066,000	£4,391,000
Relevant Period ending 31 July 2023	£5,124,000	£4,441,000
Relevant Period ending 31 October 2023	£5,310,000	£4,602,000
Relevant Period ending 31 January 2024	£5,135,000	£4,451,000
Relevant Period ending 30 April 2024	£5,191,000	£4,499,000
Relevant Period ending 31 July 2024	£5,257,000	£4,556,000
Relevant Period ending 31 October 2024	£5,331,000	£4,620,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£5,392,000	£4,673,000

21.2.4 **Minimum Royalties – Key Licensees**

The Company shall ensure that the Group (on a consolidated basis) has received royalties from Intellectual Property Licences provided to the Key Licensees for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Minimum Royalties – Key Licensees	Column 3 10% Variance
Relevant Period ending 31 January 2022	£847,000	£734,000
Relevant Period ending 30 April 2022	£1,473,000	£1,277,000
Relevant Period ending 31 July 2022	£2,302,000	£1,995,000
Relevant Period ending 31 October 2022	£3,161,000	£2,740,000
Relevant Period ending 31 January 2023	£3,243,000	£2,810,000
Relevant Period ending 30 April 2023	£3,359,000	£2,911,000
Relevant Period ending 31 July 2023	£3,397,000	£2,944,000
Relevant Period ending 31 October 2023	£3,521,000	£3,051,000
Relevant Period ending 31 January 2024	£3,405,000	£2,951,000
Relevant Period ending 30 April 2024	£3,442,000	£2,983,000
Relevant Period ending 31 July 2024	£3,485,000	£3,021,000
Relevant Period ending 31 October 2024	£3,534,000	£3,063,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£3,575,000	£3,098,000

21.2.5 **Minimum Gross Wholesale Revenue – M&M Direct and Asos**

The Company shall ensure that the Group (on a consolidated basis) has gross wholesale revenue from M&M Direct and Asos in aggregate for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Gross Wholesale Revenue – M&M Direct and Asos
Relevant Period ending 31 January 2022	£3,221,000
Relevant Period ending 30 April 2022	£6,660,000
Relevant Period ending 31 July 2022	£9,966,000
Relevant Period ending 31 October 2022	£15,144,000
Relevant Period ending 31 January 2023	£15,497,000
Relevant Period ending 30 April 2023	£16,017,000
Relevant Period ending 31 July 2023	£16,296,000
Relevant Period ending 31 October 2023	£16,912,000
Relevant Period ending 31 January 2024	£17,454,000
Relevant Period ending 30 April 2024	£18,351,000
Relevant Period ending 31 July 2024	£18,833,000
Relevant Period ending 31 October 2024	£19,896,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£20,830,000

21.2.6 **Minimum Gross Wholesale Revenue – TJ and TK Maxx**

The Company shall ensure that the Group (on a consolidated basis) has gross wholesale revenue from TJ and TK Maxx in aggregate for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Gross Wholesale Revenue – TJ and TK Maxx
Relevant Period ending 31 January 2022	£1,969,000
Relevant Period ending 30 April 2022	£4,226,000
Relevant Period ending 31 July 2022	£6,510,000
Relevant Period ending 31 October 2022	£12,129,000
Relevant Period ending 31 January 2023	£12,237,000
Relevant Period ending 30 April 2023	£12,938,000
Relevant Period ending 31 July 2023	£13,315,000
Relevant Period ending 31 October 2023	£14,147,000
Relevant Period ending 31 January 2024	£14,877,000
Relevant Period ending 30 April 2024	£15,416,000
Relevant Period ending 31 July 2024	£15,705,000
Relevant Period ending 31 October 2024	£16,343,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£16,904,000

21.2.7 **Mimumum Wholesale Revenue – United Kingdom**

The Company shall ensure that the Group (on a consolidated basis) has gross wholesale revenue accrued in the United Kingdom for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Gross Wholesale Revenue – United Kingdom
Relevant Period ending 31 January 2022	£7,736,000
Relevant Period ending 30 April 2022	£15,620,000
Relevant Period ending 31 July 2022	£23,104,000
Relevant Period ending 31 October 2022	£34,675,000
Relevant Period ending 31 January 2023	£35,712,000
Relevant Period ending 30 April 2023	£37,431,000
Relevant Period ending 31 July 2023	£38,356,000
Relevant Period ending 31 October 2023	£40,391,000
Relevant Period ending 31 January 2024	£42,181,000
Relevant Period ending 30 April 2024	£45,146,000
Relevant Period ending 31 July 2024	£46,740,000
Relevant Period ending 31 October 2024	£50,250,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£53,337,000

21.2.8 Minimum Wholesale Revenue – United States of America

The Company shall ensure that the Group (on a consolidated basis) has gross wholesale revenue accrued in the United States of America for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Gross Wholesale Revenue – United Kingdom
Relevant Period ending 31 January 2022	£2,709,000
Relevant Period ending 30 April 2022	£7,524,000
Relevant Period ending 31 July 2022	£11,834,000
Relevant Period ending 31 October 2022	£24,719,000
Relevant Period ending 31 January 2023	£26,276,000
Relevant Period ending 30 April 2023	£27,003,000
Relevant Period ending 31 July 2023	£27,394,000
Relevant Period ending 31 October 2023	£28,256,000
Relevant Period ending 31 January 2024	£29,013,000
Relevant Period ending 30 April 2024	£30,259,000
Relevant Period ending 31 July 2024	£30,929,000
Relevant Period ending 31 October 2024	£32,404,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£33,701,000

21.2.9 **Minimum Gross Wholesale and Ecommerce Revenue**

The Company shall ensure that the Group (on a consolidated basis) has gross wholesale and ecommerce revenue for each Relevant Period set out in Column 1 not less than the amount set out opposite such Relevant Period in Column 2 of the table below:-

Column 1 Relevant Period	Column 2 Total Wholesale and Ecommerce Revenue
Relevant Period ending 31 January 2022	£14,257,000
Relevant Period ending 30 April 2022	£29,452,000
Relevant Period ending 31 July 2022	£44,276,000
Relevant Period ending 31 October 2022	£72,674,000
Relevant Period ending 31 January 2023	£75,433,000
Relevant Period ending 30 April 2023	£77,733,000
Relevant Period ending 31 July 2023	£79,526,000
Relevant Period ending 31 October 2023	£82,471,000
Relevant Period ending 31 January 2024	£85,145,000
Relevant Period ending 30 April 2024	£89,459,000
Relevant Period ending 31 July 2024	£91,865,000
Relevant Period ending 31 October 2024	£96,956,000
Relevant Period ending 31 January 2025 and each Relevant Period thereafter	£101,520,000

21.3 Financial testing

The financial covenants set out in Clause 21.2 (*Financial covenants*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to Clause 20.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 20.2 (*Provision and contents of Compliance Certificate*).

21.4 EBITDA Waiver

21.4.1 If the Company is in breach of the financial covenant in Clause 21.2.1 (*Minimum EBITDA*) by an amount less than 5% in respect of a Relevant Period, provided the Company has delivered a forecast (in form and substance satisfactory to the Lenders) with the Compliance Certificate in respect of that Relevant Period that demonstrates that the Company will comply with the financial covenant in Clause 21.2.1 (*Minimum EBITDA*) when tested in respect of the following Relevant Period there shall be no Default in

respect of such breach of Clause 21.2.1 (*Minimum EBITDA*) (the “**EBITDA Waiver**”) provided no other Default is continuing.

21.4.2 The Company is only entitled to the EBITDA Waiver once a year.

21.5 Cure rights

21.5.1 EBITDA Cure Right

- (a) If there is a breach of Clause 21.2.1 (*Minimum EBITDA*), no Event of Default has occurred if:-
- (i) within 3 Business Days of the earlier of (i) the Company becoming aware of such breach of Clause 21.2.1 (*Minimum EBITDA*) and (ii) the relevant financial statements and/or relevant Compliance Certificate are actually delivered or due to be delivered under Clause 20.1 (*Financial statements*) and/or Clause 20.2 (*Provision and contents of Compliance Certificate*) (the “**Delivery Date**”), the Company has delivered to the Lenders (A) an updated Base Case Model and (B) a 13 week cashflow forecast (the “**13 Week Cashflow Forecast**”), each in a form satisfactory to the Lenders; and
 - (ii) within 3 Business Days of the Delivery Date the Company has received net cash proceeds by way of a New Shareholder Injection in the amount required by the Lenders as determined by the 13 Week Cashflow Forecast (and notified by the Lenders to the Company) to remedy the breach of Clause 21.2.1 (*Minimum EBITDA*) (such net proceeds being the “**Cure Amount**”) and it has been applied in accordance with paragraph (b) below,

(the “**EBITDA Cure Right**”).
- (b) Once the Cure Amount has been received by the Company, the Cure Amount shall be deposited in a Blocked Account.
- (c) The minimum Cure Amount shall be £250,000.
- (d) The Company is entitled to exercise its EBITDA Cure Right no more than once per year, provided that the EBITDA Cure Right can only be exercised on two occasions during the life of the Facility.

21.5.2 Revenue Cure Right

- (a) If there is a breach of either Clause 21.2.3 (*Minimum Royalties*) or Clause 21.2.4 (*Minimum Royalties – Key Licences*) where the amount of royalties received for a Relevant Period is not less than the amount set out in Column 3 of the table in Clause 21.2.3 (*Minimum Royalties*) or, as applicable, Clause 21.2.4 (*Minimum Royalties – Key Licences*) for that Relevant Period, there shall be no Default in respect of that Relevant Period provided the requirements of the relevant clause are met for each subsequent Relevant Period.
- (b) Subject to paragraph (a) above, if there is a breach of any of Clauses 21.2.2 - 21.2.9 (inclusive), the Company may remedy such breach within 3 Business Days of becoming aware of such breach of any of

Clauses 21.2.2 - 21.2.9 by way of a New Shareholder Injection (the “Revenue Cure Right”).

- (c) The Company is entitled to exercise the Revenue Cure Right no more than once per year, provided that the Revenue Cure Right can only be exercised on two occasions during the life of the Facility.

22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 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

22.1 Authorisations

Each Obligor shall promptly:-

22.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

22.1.2 supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:-

- (a) enable it to perform its obligations under the Finance Documents and the Scheme Documents;
- (b) ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document or Scheme Document; and
- (c) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.2 Compliance with laws

Each Obligor shall (and the Company shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

22.3 Environmental compliance

Each Obligor shall (and the Company shall ensure that each member of the Group will):-

22.3.1 comply with all Environmental Law;

22.3.2 obtain, maintain and ensure compliance with all requisite Environmental Permits; and

22.3.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.4 **Environmental Claims**

Each Obligor shall (through the Company), promptly upon becoming aware of the same, inform the Agent in writing of:-

- 22.4.1 any Environmental Claim against any Obligor which is current, pending or threatened; and
- 22.4.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that Obligor, has or is reasonably likely to have a Material Adverse Effect.

22.5 **Anti-corruption law**

22.5.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

22.5.2 Each Obligor shall (and the Company shall ensure that each other member of the Group will):

- (a) conduct its businesses in compliance with applicable anti-corruption laws; and
- (b) maintain policies and procedures designed to promote and achieve compliance with such laws.

22.6 **Sanctions**

No Obligor will directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, the target of Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in a Loan, whether as administrative agent, arranger, issuing bank, lender, underwriter, advisor, investor or otherwise), other than to the extent that such covenant would result in a violation of Council Regulation (EC) No 2271/96, as amended (or any implementing law or regulation in any member state of the European Union), or any similar applicable blocking or anti-boycott law or regulation in the United Kingdom.

22.7 **Taxation**

22.7.1 Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring 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 which have been disclosed in its latest financial statements delivered to the Agent under Clause 20.1 (*Financial statements*); and

- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

22.7.2 No Obligor may change its residence for Tax purposes where such change has or is reasonably likely to have a Material Adverse Effect.

22.8 **Inspection and Appraisal**

22.8.1 Each Obligor will permit the Agent and the Security Agent and each of their duly authorized representatives or agents on the giving of reasonable advance notice:-

- (a) within 15 days following issuance of a Rule 2.7 announcement in respect of the Target by the Company; and
- (b) thereafter, once in every Financial Quarter, or more frequently if requested to do so by the Agent if an Event of Default is continuing or may have occurred,

in each case to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as the Agent or Security Agent may designate to the Company and, so long as no Event of Default has occurred and is continuing, in a manner so as not to unreasonably interfere with the business of any member of the Group, with reasonable prior notice to Company and during regular business hours.

Restrictions on business focus

22.9 **Merger**

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction or take any formal steps whatsoever in preparation of the same (including marketing the business for sale or initiating an accelerated mergers and acquisition process) other than a Permitted Transaction.

22.10 **Change of business**

The Company shall procure that no substantial change is made to the general nature of the business of the Company, the Obligors or the Group taken as a whole from that carried on by the Group and the Target Group at the date of this Agreement.

22.11 **Acquisitions**

22.11.1 Except as permitted under Clause 22.11.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will):-

- (a) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (b) incorporate a company.

22.11.2 Clause 22.11.1 above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:-

- (a) a Permitted Acquisition; or

- (b) a Permitted Transaction.

22.12 Joint ventures

22.12.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) :-

- (a) other than in relation to a Permitted Joint Venture, enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

22.13 Holding Companies

The Company shall not trade, carry on any business, own any assets or incur any liabilities except for:-

- 22.13.1 the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
- 22.13.2 ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts and cash but only if those shares, credit balances and cash are subject to the Transaction Security;
- 22.13.3 any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company.

22.14 Dormant subsidiaries

No Obligor shall (and the Company shall ensure that no member of the Group will) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with Clause 25.4 (*Additional Guarantors*).

Restrictions on dealing with assets and Security

22.15 Preservation of assets

Each Obligor shall maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

22.16 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.

22.17 Negative pledge

In this Clause 22.17 (*Negative pledge*), "**Quasi-Security**" means an arrangement or transaction described in Clause 22.17.2 below.

22.17.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

22.17.2 No Obligor shall (and the Company shall ensure that no other member of the Group will):-

(a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(b) sell, transfer or otherwise dispose of any of its receivables;

(c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(d) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

22.17.3 Clauses 22.17.1 and 22.17.2 above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

22.18 Disposals

22.18.1 Except as permitted under Clause 22.18.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

22.18.2 Clause 22.18.1 above does not apply to any sale, lease, transfer or other disposal which is:-

(a) a Permitted Disposal; or

(b) a Permitted Transaction.

22.19 Disposal and Insurance Proceeds

22.19.1 For the purposes of this Clause 22.19 (*Disposal and Insurance Proceeds*):-

"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)

"Disposal Proceeds" means the consideration receivable by any Obligor (including any amount receivable in repayment of intercompany debt) for any Disposal made by any Obligor and after deducting:-

(a) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal

to persons who are not members of the Group and

- (b) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance)

"Excluded Proceeds"

Insurance

means, provided that no Default has occurred which is continuing, any proceeds of an insurance claim which the Company notifies the Agent are, or are to be, applied:-

- (a) to meet a third party claim
- (b) to cover operating losses in respect of which the relevant insurance claim was made or
- (c) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in any event within 90 days, or such longer period as the Lenders may agree) after receipt

"Insurance Proceeds"

means the proceeds of any insurance claim under any insurance maintained by any Obligor except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group

22.19.2 The Company shall ensure that the Obligors pay the amount of any Disposal Proceeds and the amount of any Insurance Proceeds into a Blocked Account.

22.19.3 Excluded proceeds

Where Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of and Excluded Insurance Proceeds), the Company shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

22.20 Arm's length basis

22.20.1 Except as permitted by Clause 22.20.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

22.20.2 The following transactions shall not be a breach of this Clause 22.20:-

- (a) intra-Group loans permitted under Clause 22.21 (*Loans or credit*);
- (b) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent; and
- (c) any Permitted Transaction.

Restrictions on movement of cash - cash out

22.21 Loans or credit

22.21.1 Except as permitted under Clause 22.21.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.

22.21.2 Clause 22.21.1 above does not apply to:-

- (a) a Permitted Loan; or
- (b) a Permitted Transaction.

22.22 No guarantees or indemnities

22.22.1 Except as permitted under Clause 22.22.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

22.22.2 Clause 22.22.1 does not apply to a guarantee which is:-

- (a) a Permitted Guarantee; or
- (b) a Permitted Transaction.

22.23 Dividends and share redemption

22.23.1 Except as permitted under Clause 22.23.2 below, the Company shall not (and the Company shall ensure that no other member of the Group will):-

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay any other moneys, whether by way of interest, management fees, overhead re-charges or otherwise howsoever to any Affiliate, Subsidiary or any shareholder, common shareholder, director, employee; or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

22.23.2 Clause 22.23.1 above does not apply to:-

- (a) a Permitted Distribution; or
- (b) a Permitted Transaction.

22.24 **Share capital**

No Obligor shall (and the Company shall ensure that no other member of the Group will) issue any shares other than pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

Restrictions on movement of cash - cash in

22.25 **Financial Indebtedness**

22.25.1 Except as permitted under Clause 22.25.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

22.25.2 Clause 22.25.1 above does not apply to Financial Indebtedness which is:-

- (a) Permitted Financial Indebtedness; or
- (b) a Permitted Transaction.

22.26 **Investor Finance Documents**

The Company shall not (and the Company shall ensure that no other member of the Group will) make any repayment under the Investor Finance Documents unless permitted pursuant to the terms of the Subordination Agreement.

Miscellaneous

22.27 **Insurance**

22.27.1 Each Obligor shall (and the Company shall ensure that no other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

22.27.2 All insurances must be with reputable independent insurance companies or underwriters.

22.28 **Pensions**

22.28.1 The Company shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of their employees are fully funded based on the statutory funding objective under Sections 221 and 222 of the Pensions Act 2004 and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including, without limitation, the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any member of such a pension scheme).

- 22.28.2 The Company shall ensure that no member of the Group is or has been at any time 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 Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such an employer.
- 22.28.3 Each Obligor shall promptly notify the Agent of any investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to it/any member of the Group.
- 22.28.4 Each Obligor shall promptly notify the Agent if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.

22.29 **People with Significant Control Regime**

Each Obligor shall:

- 22.29.1 within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Transaction Security; and
- 22.29.2 promptly provide the Security Agent with a copy of that notice.

22.30 **Access**

The Agent may from time to time if it perceives risk of any material deterioration in value of the Receivables, Inventory or Intellectual Property (such risk to be perceived on reasonable grounds and with appropriate evidence) and each Obligor shall, and the Company shall ensure that each member of the Group will, permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with management of the Group.

22.31 **Intellectual Property**

Each Obligor shall (and the Company shall ensure that no other member of the Group will):-

- 22.31.1 at its own expense, preserve, renew, maintain and keep in full force and effect any Intellectual Property registrations owned by it as of the date of this Agreement and applications that are pending anywhere in the world as of the date of this Agreement, including but not limited to preparing, filing or submitting any additional documents, consents, declarations, affidavits, exhibits, specimens, arguments, fees, expenses or other documents or information reasonably necessary to maintain any registrations and pending applications anywhere in the world;
- 22.31.2 not abandon any Trademark application currently pending anywhere in the world as of the date of this Agreement, whether as a result of an office action, a third party opposition or cancellation proceeding or for any other reason or forfeit any Intellectual Property or dedicate to the public any Intellectual Property, unless the Majority Lenders consent to such abandonment;
- 22.31.3 preserve, renew, maintain and keep in full force and effect the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;

- 22.31.4 use commercially reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- 22.31.5 at its own expense, take commercially reasonable actions necessary to defend any Intellectual Property against claims or challenges, whether threatened or filed in any court or any authority with competent jurisdiction, to the validity, enforceability, use, maintenance, ownership or assignment of, or which may limit the scope of any member of the Group's rights in, any Intellectual Property which has a Material Adverse Effect;
- 22.31.6 each relevant member of the Group will execute and deliver to the Agent the IP Power of Attorney and any other security agreements (including any security agreements or other filings required in connection with filings in the United States, Canada, the United Kingdom, Asia or the European Union or any other jurisdiction), in form and substance reasonably satisfactory to the Agent, to further evidence the Security on such member of the Group's Intellectual Property and the General Intangibles of such member of the Group relating thereto or represented thereby;
- 22.31.7 at its own expense, make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- 22.31.8 at its own expense, take all commercially reasonable actions necessary to ensure it owns and/or controls all right, title and interest in and to all Intellectual Property rights created or developed by such member of the Group's employees and independent contractors, or otherwise under the direction or supervision of such member of the Group's employees or independent contractors, relating to such member of the Group's respective business or to the actual or demonstratively anticipated design or development of any new products or services to be marketed and sold by a member of the Group;
- 22.31.9 not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
- 22.31.10 not discontinue the use of the Intellectual Property other than as permitted by this Agreement or where doing so would have a Material Adverse Effect.

22.32 Intellectual Property Licences and Licensing Agency Agreements

- 22.32.1 No Obligor will enter into any licence agreement with respect to (or otherwise transfer or dispose of) Intellectual Property without the consent of the Lenders (not to be unreasonably withheld), where such licence shall create forecasted revenues in excess of £200,000 per annum or where any such licencing arrangement is subject to a written agreement with a term in excess of five years.
- 22.32.2 When requesting Lender consent in accordance with Clause 22.32.1 above, the relevant Obligor will provide a report to the Lenders detailing the terms of the proposed licence, the licensee and which demonstrates the accretive value of the proposed licence.
- 22.32.3 No Obligor will:-
 - (a) be permitted to enter into any license agreement with respect to Intellectual Property with any of its Affiliates; or

- (b) enter into any license agreement with respect to Intellectual Property unless such agreement contains a provision permitting the rights thereunder to be freely assigned, without any further consent, to the Security Agent.
- 22.32.4 No Obligor will agree to any amendment, modification or other change to or waiver of any of its rights under any Intellectual Property Licence if such amendment, modification, change or waiver would be adverse in any material respect to the Agent and the Lenders.
- 22.32.5 Each agreement under which any member of the Group retains an agent or representative in connection with the licensing any of its Intellectual Property (each, a "**Licensing Agency Agreement**") shall be:-
- (a) on reasonable and customary market terms and
 - (b) on terms consistent in all material respects with previous Licensing Agency Agreements, or otherwise on terms and conditions acceptable to the Agent.
- 22.32.6 No member of the Group shall enter into any Licensing Agency Agreement with any Affiliate.
- 22.32.7 In each Intellectual Property Report delivered by the Company pursuant to Clause 20.5.2, the Company will provide the Agent with copies of:-
- (a) Licensing Agency Agreement entered into since the delivery of the previous Intellectual Property Report; and
 - (b) each material amendment or modification of Licensing Agency Agreement entered into since the delivery of the previous Intellectual Property Report.

22.33 **Amendments**

- 22.33.1 No Obligor shall (and the Company shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document or any other document delivered to the Agent pursuant to Clause 4.1 (Initial conditions precedent) or Clause 25 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Company or any of their Affiliates which is not a member of the Group except in writing:-
- (a) in accordance with Clause 35 (*Amendments and Waivers*);
 - (b) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Subordination Agreement or this Agreement;
 - (c) prior to or on the first Utilisation Date, with the prior written consent of the Lenders; or
 - (d) after the first Utilisation Date, in a way which would not or would not reasonably be expected to have a Material Adverse Effect.
- 22.33.2 The Company shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) to (d) above.

22.34 **Financial assistance**

Each Obligor shall comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

22.35 **Group bank accounts**

The Company shall ensure that all bank accounts of each Obligor are subject to valid Security under the Transaction Security Documents (unless otherwise agreed by the Company and the Agent).

22.36 **Treasury Transactions**

No Obligor shall (and the Company shall ensure that no member of the Group will) enter into any Treasury Transaction, other than:-

22.36.1 spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

22.36.2 any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than 12 months and not for speculative purposes.

22.37 **Blocked Accounts**

22.37.1 The Obligors shall ensure that each Receivable is paid into a Blocked Account immediately upon receipt, provided that in the event any such amounts are misdirected and/or paid into an account other than a Blocked Account, the relevant Obligor shall hold such amounts on trust for the Agent and (as soon as becoming aware of such event) notify the Agent of such event and procure that such amounts are immediately paid into a Blocked Account.

22.37.2 Without prejudice to the provisions of Clause 6.1 (*Withdrawal Conditions*), no Obligor shall be entitled to withdraw the whole or any part of any amount standing to the credit of any Blocked Account and shall not take any action, claim or proceedings against the Agent or any other party for the return or payment to any person of the whole or part of any amount standing to the credit of any Blocked Account unless such amount was credited to a Blocked Account in error.

22.37.3 The Obligors shall maintain the Blocked Accounts and execute all deeds and documents and do all other acts and things required by the Agent in connection with them and shall maintain such accounts until the Transaction Security has been discharged.

22.38 **Receivables**

Each Obligor shall promptly:-

22.38.1 subject to all applicable data protection requirements, upon the Agent's request supply the full and correct name and address of each customer and such other information relating to customers in the possession of such Obligor as the Agent may require;

22.38.2 upon the Agent's request supply satisfactory evidence of the customers performance of each contract of sale and all other material obligations to that Obligor; and

22.38.3 inform the Agent as soon as reasonably practicable upon becoming aware of the material breach of any representations set out at Clause 19.32 (*Receivables*).

22.39 Collateral undertakings

22.39.1 Access and Field Examinations

The Obligors will:-

- (a) at their own cost, on reasonable notice (but in any event for a period of no longer than 2 days other than where there is, or the Agent has reasonable grounds to suspect, a Default is continuing) afford to the Agent and its employees and representatives or agents or its nominee access to its premises during normal business hours for the purpose of inspecting, verifying and auditing its books, records, contracts and assets and carrying out Field Examination of the assets and operations; and
- (b) on request, provide to the Agent or its nominee copies or extracts from such books or records as it may reasonably require.

22.39.2 Inventory

The Obligors will:-

- (a) use, securely store (with authorised access systems in place) and maintain the Inventory with all reasonable care and in accordance with all insurance and regulatory requirements;
- (b) keep the Inventory in good and marketable condition.

22.39.3 The Obligors will ensure that all proceeds arising from the sale of Inventory are paid into a Blocked Account, in accordance with Clause 22.37 (*Blocked Accounts*) as soon as practicable after receipt.

22.39.4 Valuations and Field Examinations

- (a) The Obligors shall (and the Company shall ensure that the Obligors will) on not less than two days notice, provide all necessary access, provision of information and assistance to the Agent, or any person designated by them for this purpose in order that Valuations, Field Examinations and appraisals of the Obligors' assets and operations can be undertaken.
- (b) Subject to paragraph (c) and (d) below, the Agent may request that Valuations are undertaken at any time.
- (c) Without prejudice to paragraph (b) above, the Company will procure that:
 - (i) a Valuation promptly following each consecutive period of three months after the date of the prior Valuation;
 - (ii) a review and Field Examination in respect of Receivables, is undertaken in a form and substance satisfactory to the Agent promptly following each consecutive period of three months or as reasonably requested by the Agent (including, where there is reasonable concern, on expiry or termination of a material

Intellectual Property Licence) after the date of the prior Receivables review and Field Examination.

- (d) The Obligors jointly and severally shall be liable to indemnify the Agent on demand for the costs of:-
 - (i) any Valuation obtained pursuant to paragraph (c) above; and
 - (ii) any Valuation obtained by the Agent at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation, but if no Default is continuing as a result of such Valuation the Obligors shall not be obliged to pay the costs of such Valuation.

22.40 Moratorium and Restructuring Plan

22.40.1 Without prejudice to Clause 23.6 (*Insolvency*) and Clause 23.7 (*Insolvency Proceedings*) and subject to Clause 22.40.2 below, in respect of a moratorium under Part 1A of the Insolvency Act 1986 (a "**Relevant Moratorium**") and/or an arrangement or reconstruction under Part 26A of the Companies Act 2006 (a "**Restructuring Plan**"):-

- (a) no Obligor shall take any corporate action, legal proceedings or other procedure or step:-
 - (i) to obtain a Relevant Moratorium and/or appoint a monitor in respect of such Relevant Moratorium without giving the Agent at least 10 Business Days' notice (or such shorter period as the Agent may agree);
 - (ii) to propose a Restructuring Plan without (1) giving the Agent at least 10 Business Days' notice (or such shorter period as the Agent may agree) and (2) providing the Agent with copies of any draft proposed Restructuring Plan with such notice;
 - (iii) to extend or seek to extend any such Relevant Moratorium; and/or
 - (iv) to obtain permission of the court or otherwise howsoever to dispose of any of its property which is subject to Security under the Transaction Security Documents as if it were not subject to such Security; and
 - (v) any Obligor which is considering obtaining a Relevant Moratorium and/or proposing a Restructuring Plan shall:-
 - (1) consult with the Agent as to the identity of the proposed monitor of a Relevant Moratorium and only appoint a monitor who is a partner at Duff & Phelps, FRP, Deloitte, KPMG, Grant Thornton, BDO, Teneo or Interpath; and
 - (2) promptly on request, provide such further information regarding any such Relevant Moratorium and/or Restructuring Plan as the Agent may from time to time request.

22.40.2 If and to the extent that the Agent consents in writing to:-

- (a) an Obligor obtaining a Relevant Moratorium;
- (b) an Obligor proposing a Restructuring Plan; and/or
- (c) an Obligor disposing of an asset which is subject to a fixed charge or equivalent Security Interest under the Security Documents as if it were not subject to such Security,

and approves the terms on which the Obligor intends to operate during such Relevant Moratorium and, if applicable, Restructuring Plan, no Event of Default shall be deemed to have occurred under Clause 23.6 (*Insolvency*) and Clause 23.7 (*Insolvency Proceedings*) and the applicable Event of Default shall be deemed waived for all purposes under this Agreement, provided that such waiver shall be limited solely to the specifics of the Relevant Moratorium, Restructuring Plan or disposal as consented to by the Agent and shall not extend or otherwise be deemed to be a waiver of any other Default or Event of Default which may arise as a result of such Relevant Moratorium, Restructuring Plan or disposal.

22.41 Guarantors

- 22.41.1 Subject to Clause 22.41.3, the Company shall procure that on or before the date falling two Business Days from the Cancellation Date, the Target and any Subsidiaries of the Target in England & Wales become Guarantors in accordance with Clause 25.4 (*Additional Guarantors*).
- 22.41.2 The Company shall ensure that promptly and in any event no later than 5 Business Days following the discharge of the Permitted Financial Indebtedness referred to in paragraph of that definition, each Subsidiary of the Target incorporated in the United States of America will become Guarantors in accordance with Clause 25.4 (*Additional Guarantors*), grant Security as the Agent may require and shall accede to the Subordination Agreement.
- 22.41.3 The Company need only perform its obligations under Clause 22.41.1 and 22.41.2 above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

22.42 Scheme Undertakings

22.42.1 Scheme Press Release

- (a) The Company shall procure that the Scheme Press Release is issued substantially in the form agreed with the Lenders for the purposes of Schedule 2, Part 1, paragraph 2 (and with no increase as to price unless agreed by the Lender in writing) but with such amendments as are required by law or regulation (including the City Code) or, by the Panel or an order of the Court.
- (b) The Company will procure that the Scheme Press Release is issued within 10 Business Days of the date of this Agreement and that a copy of the Scheme Press Release is promptly delivered to the Lender after its issuance.

22.42.2 Scheme Circular

The Company will procure that the Scheme Circular is dispatched as soon as commercially practicable and in any event within 28 days of the date of issue of the Scheme Press Release (unless any extension has been agreed with the Panel).

22.42.3 Progress of Scheme

The Company will keep the Lenders informed as to any material developments in relation to the Scheme and, promptly on reasonable request by a Lender (and subject to any duty of confidentiality), provide the Lenders with material information as to the progress of the Scheme and with any material information or advice received in relation to the Scheme and will notify the Lenders promptly following it becoming aware that the Scheme Court Order has been issued.

22.42.4 Announcements

The Company will:-

- (a) promptly deliver to the Agent (in sufficient copies for all the Lenders) copies of all press and other public announcements made by itself or, to the extent that it receives copies thereof, by the Target in connection with or in relation to the Scheme and any material documents or statements issued by the Panel or any other regulatory authority (including the courts) received by it in relation to the Scheme; and
- (b) where any announcement, press release or publicity material issued by it refers to a Finance Parties or the Facility, not release or permit such announcement, press release or publicity material to be released by any member of the Group until the Lenders have given their consent to such release (such consent not to be unreasonably withheld or delayed) provided that no such consent or approval will be required to make an announcement, press release or publicity material which is required to be made in order to comply with the City Code or any other relevant laws, regulation or court order or which is consistent with and contain substantially no greater information than is contained in the Scheme Press Release or any previously issued announcement, press release or publicity material (but the Company shall use all reasonable endeavours to consult with the Lenders prior to making any such announcement).

22.42.5 Conduct of Scheme

The Company shall ensure that all documents issued by it or on its behalf in connection with the Scheme and its conduct of the Scheme comply in all material respects with all applicable laws and regulations relevant in the context of the Scheme (including the City Code but subject to any derogation or waiver granted by the Panel or any court).

22.42.6 Scheme Terms

The Company shall:-

- (a) not take any action (and shall procure that no person, acting in concert with it, takes any action) which will result in it or any member of the Group becoming obliged to make an offer to holders of Target Shares under Rule 9 of the City Code;

- (b) not take or permit to be taken any steps or actions as a result of which the price for the Target Shares under the Scheme is, or may be required to be, increased beyond the amount stated in the Scheme Press Release except with the prior written consent of the Lenders;
- (c) not waive or amend or declare or treat as satisfied any condition of the Scheme where such waiver or consent would be materially prejudicial to the interests of the Lenders unless either:-
 - (i) the Lenders have given their consent; or
 - (ii) it is required by law or regulation (including the City Code), the Panel or an order of the Court;
- (d) ensure that the Scheme Document contains all the terms and conditions of the Scheme; and
- (e) ensure that the terms and conditions detailed in the Scheme Circular sent to the holders of the Target Shares correspond in all material respects to the terms and conditions detailed in the Scheme Press Release (including without limitation that the Scheme is recommended by the Company and the Target) except to the extent required by law or regulation (including the City Code), the Panel or an order of the Court.

22.42.7 Certificates of Registration of the Scheme

The Company shall, as soon as reasonably practicable following receipt, deliver office copies of the Court Orders to the Registrar of Companies and obtain certificates of registration relating to the same.

22.42.8 Take Private

The Company must ensure that (subject always to the provisions of Clause 4.4 (*Utilisations during the Tranche A Period*)) so that any failure to comply with this Clause 22.42.8 will not be a Major Default and will not prevent or limit the making of a Tranche A Utilisation):-

- (a) as soon as practicable after the Effective Date and in any event before any Loan is drawn under Tranche A subject always to the provisions of Clause 4.4 (*Utilisations during the Tranche A Period*), the Target Shares are cancelled from trading on the Main Market operated by London Stock Exchange plc (such date being the "**Cancellation Date**");
- (b) promptly after the Cancellation Date and in any event before any Loan is drawn under Tranche A, the Target serves notice to convene a general meeting of the shareholders of the Target to be held on short notice in respect of a special resolution to re-register as a private limited company and that such general meeting is duly held and that the Company attends in person or by proxy and votes in favour of such resolution; and
- (c) as soon as reasonably practicable and in any event before any Loan is drawn under Tranche A, the Target is re-registered as a private limited company.

22.43 Accession

The Company shall deliver the following documents to the Agent as soon as practicable after the Effective Date, but in any event before any Loan is drawn under Tranche A (subject always to the provisions of Clause 4.4 so that any failure to comply with this Clause 22.43 will not be a Major Default and will not prevent or limit the making of a Tranche A Utilisation):-

- 22.43.1 an Accession Letter, duly executed by the Target and each of the Subsidiaries of the Target in England & Wales (the “**Initial Target Group Companies**”);
- 22.43.2 a Debenture (or such other Transaction Security Document in form and substance agreed to by the Agent and Security Agent) and accession deed to the Subordination Agreement, duly executed by the Initial Target Group Companies;
- 22.43.3 the deed of priority to be entered into between Barclays Bank PLC, the Target, the Security Agent duly executed by the Target;
- 22.43.4 a copy of the constitutional documents of the Initial Target Group Companies;
- 22.43.5 a copy of a resolution of the board of directors of the Initial Target Group Companies:-
 - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Accession Letter and any 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 (including, in relation to an Additional Borrower, any Utilisation Request) 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 Company to act as its agent in connection with the Finance Documents;
- 22.43.6 a specimen of the signature of each person authorised by the resolution referred to in Clause 22.43.5 above;
- 22.43.7 a copy of a resolution signed by all the holders of the issued shares of the Initial Target **Group** Companies, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Initial Target Group Companies is a party; and
- 22.43.8 a copy of a resolution of the board of directors of each corporate shareholder of each Initial Target Group Companies approving the terms of the resolution referred to in Clause 22.43.7 above.
- 22.43.9 An IP Power of Attorney granted by each Initial Target Group Company.
- 22.43.10 The Group Structure Chart.

22.44 **Acquisition Undertakings**

The Company must, to the extent not prohibited by law or regulation, promptly notify the Lender if:-

- (a) the Scheme lapses or is withdrawn; or
- (b) the Company becomes aware of a circumstance or event which, if not waived, would entitle the Target to lapse or withdraw the Scheme.

22.45 Real Property Undertakings

22.45.1 Leases

- (a) The Obligors must:-
 - (i) pay the rents reserved by and exercise its rights and comply with its obligations under each Lease;
 - (ii) use its reasonable endeavours to ensure that each landlord complies with its obligations under each Lease;
 - (iii) immediately notify the Agent of any matter or event under or by reason of which any lease has or may become subject to determination or forfeiture or if any notice of forfeiture is received by it; and
 - (iv) if so required by the Security Agent, apply for relief against forfeiture of any Lease,

in a proper and timely manner.
- (b) No Obligor may without the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld):-
 - (i) enter into any Agreement for Lease or lease;
 - (ii) acquire any freehold or long leasehold (or equivalent in the relevant jurisdiction); or
 - (iii) enter into any replacement lease for an operational site which is on materially worse terms than the existing equivalent lease.
- (c) No Obligor may change the head office of the Target without the consent of the Lenders (such consent not to be unreasonably withheld).

22.46 Lenders' Monitoring Adviser

22.46.1 The Company shall engage as soon as reasonably practicable and within 30 days of the Effective Date (or such later date agreed by the Lenders where the Lenders have not identified a Monitoring Adviser in that period) (on such terms as approved by the Agent (acting on the instructions of the Lenders)) for the period from the Effective Date to the date falling on the first anniversary of the Effective Date, an independent monitor which shall be selected from a shortlist provided by the Lenders (the "**Monitoring Adviser**").

22.46.2 The costs of the Monitoring Adviser up to an amount of £60,000 plus VAT (or as otherwise agreed) shall be paid by the Company.

22.47 Conditions Subsequent

22.47.1 The Company shall:

- (a) request consent from Flushing Bank to the Security Agent being granted second ranking security by the US Subsidiaries and that the US Subsidiaries are permitted to become Additional Guarantors in accordance with this Agreement; and
- (b) provide assistance to all parties including executing relevant security documentation (provided that such assistance shall not require the Company to pay any fee to any party) to ensure that:-
 - (i) the Security Agent is granted second ranking Security in form and substance satisfactory to it over the assets of the members of the Target Group incorporated in the United States of America (the "**US Subsidiaries**"); and
 - (ii) consent is received from Flushing Bank such that the US Subsidiaries are permitted to become Additional Guarantors in accordance with this Agreement,

provided that the Company shall not breach such obligation by reason of any delays or inaction by the Lenders and/or Flushing Bank.

22.47.2 The Company shall engage with the Lenders within 30 days of the Effective Date in respect of the provision of a Valuation and such final Valuation shall be issued within 60 days of the Effective Date.

22.47.3 The Company shall:-

- (a) ensure that the Target serves a notice of prepayment pursuant to the Existing Target Finance Document listed at paragraph (a) of that definition to take effect immediately upon the Target being re-registered as a private limited company;
- (b) promptly after the Cancellation Date, deliver a Utilisation Request under Tranche B for Utilisation of the full amount of Tranche B immediately on the Target being re-registered as a private limited company; and
- (c) ensure the Target prepays the whole of the Existing Target Finance Document listed at paragraph (a) of that definition immediately following the end of the required notice period in the prepayment notice referred to in paragraph (a) above from the Utilisation under Tranche B referred to in (b) above.

22.47.4 The Company shall within 30 days of the Effective Date provide the Agent with details of all Group bank accounts.

22.47.5 The Company shall within 60 days of the Effective Date provide to the Agent (in form and substance satisfactory to the Agent acting reasonably):

- (a) all insurance policies subject to or expressed to be subject to the Transaction Security;
- (b) written evidence that the insurance policies contain an endorsement naming the Security Agent as co-insured and sole loss payee and that the insurance policies ensure all Inventory at cost; and

- (c) details in relation to insurance policies in place in relation to Inventory including amounts insured by reference to cost of such Inventory.

22.48 Further assurance

22.48.1 Each Obligor shall (and the Company shall procure that each other member of the Group 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)):-

- (a) 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;
- (b) 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;
- (c) to confer on the Security Agent Security over bank accounts held by any members of the Group that are not Obligors (subject to any local legal requirements); and/or
- (d) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

22.48.2 Each Obligor shall (and the Company shall procure that each other member of the Group will) 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.

22.49 Inventory Liquidation Consultant

In the event an Obligor intends to conduct an Inventory Liquidation Sale, the relevant Obligor shall:

22.49.1 not less than 20 Business Days before the proposed start date of the relevant Inventory Liquidation Sale:

- (a) provide to the Agent (or one of its Affiliates) (the "**Liquidation Consultant**") copies of any proposals prepared by (i) the management of the relevant Obligor and/ or the Group; and (ii) any arm's length third party, in respect of the Inventory Liquidation Sale (each an "**ILS Proposal**"); and
- (b) invite the Liquidation Consultant to submit a proposal to act as its exclusive consultant for the Inventory Liquidation Sale; and

22.49.2 if the Liquidation Consultant's proposal is more favourable for the relevant Obligor than any ILS Proposal, appoint the Liquidation Consultant as its exclusive agent in respect of the Inventory Liquidation Sale.

23. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 23 is an Event of Default (save for Clause 23.21 (*Acceleration*)).

23.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:-

23.1.1 such payment is made within two Business Days of its due date; and

23.1.2 its failure to pay is caused by an administrative or technical error.

23.2 Financial covenants and other obligations

23.2.1 Any requirement of Clause 21 (*Financial covenants*) is not satisfied or an Obligor does not comply with the provisions of Clause 20 (*Information Undertakings*), and/or Clauses 22.5, 22.6, 22.8, 22.9, 22.10, 22.11, 22.16, 22.17, 22.18, 22.27, 22.30, 22.32, 22.31, 22.35 22.37 (other than 22.37.3) 22.42, 22.43 and 22.47 (*General Undertakings*).

23.2.2 An Obligor does not comply with any provision of any Transaction Security Document.

23.2.3 No Event of Default under 23.2.1 above will occur in respect of non-compliance with the provisions of Clause 20 (*Information Undertakings*) if non-compliance is remedied within 5 Business Days and provided non-compliance can only be remedied in such manner twice in any Financial Year.

23.3 Other obligations

23.3.1 An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) and Clause 23.2 (*Financial covenants and other Obligations*)).

23.3.2 No Event of Default under Clause 23.3.1 above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (A) the Agent giving notice to the Company or the relevant Obligor and (B) the Company or an Obligor becoming aware of the failure to comply.

23.4 Misrepresentation

23.4.1 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 in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

23.4.2 For the purposes of Utilisation of Tranche A only, no Event of Default under Clause 23.4.1 above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (A) the Agent giving notice to the Company and (B) the Company becoming aware of the failure to comply.

23.5 **Cross default**

- 23.5.1 Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- 23.5.2 Any Financial Indebtedness of any member of the Group 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).
- 23.5.3 Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- 23.5.4 Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 23.5.5 No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 23.5.1 to 23.5.4 above is less than £200,000 (or its equivalent in any other currency or currencies).

23.6 **Insolvency**

- 23.6.1 A member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or is declared to be unable to pay its debts 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 of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- 23.6.2 The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 23.6.3 A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

23.7 **Insolvency proceedings**

- 23.7.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:-
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;
 - (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
 - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, monitor or other similar officer in respect of any member of the Group or any of its assets; or
 - (d) enforcement of any Security over any assets of any member of the Group,
- or any analogous procedure or step is taken in any jurisdiction.

23.7.2 This Clause 23.7 shall not apply to:-

- (a) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement; or
- (b) any step or procedure contemplated by sub-clause (b) of the definition of Permitted Transaction.

23.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group.

23.9 **Unlawfulness and invalidity**

23.9.1 It is or becomes unlawful for an Obligor or any other member of the Group that is a party to the Subordination Agreement to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Subordination Agreement is or becomes unlawful.

23.9.2 Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Group under the Subordination Agreement are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

23.9.3 Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

23.10 **Subordination Agreement**

23.10.1 Any party to the Subordination Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Subordination Agreement; or

23.10.2 a representation or warranty given by that party in the Subordination Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 5 days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

23.11 **Blocked Account arrangements**

A Blocked Account Bank repudiates or purports to terminate the arrangements set out in the Transaction Security relation to any Blocked Account unless the Borrower procures that:

23.11.1 an alternative Blocked Account is opened with a bank acceptable to the Lender as soon as reasonably practicable and in any event within 30 Business Days of such repudiation or purported termination; and

23.11.2 until such alternative Blocked Account is operational, all amounts which are required to be paid into a Blocked Account are paid directly to the Agent to such account as it may specify for this purpose.

23.12 Cessation of business

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

23.13 Personal Indemnity

A Shareholder breaches any term of a Personal Indemnity.

23.14 Change of ownership

23.14.1 After the Effective Date, an Obligor (other than the Company) which is a wholly-owned Subsidiary of the Company on the date of this Agreement ceases to be a wholly-owned Subsidiary of the Company; or

23.14.2 an Obligor ceases to own at least the same percentage of shares in an Obligor as on the Effective Date,

except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

23.15 Audit qualification

The Company's Auditors:-

23.15.1 qualify the audited annual consolidated financial statements of the Company or of any member of the Group;

23.15.2 issue a qualified opinion, a disclaimer of opinion report or an adverse opinion in relation to the Company or any member of the Group; or

23.15.3 conclude that there is a material uncertainty about the any member of the Group's ability to continue as a going concern

23.16 Expropriation

The authority or ability of any member of the Group 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 or other person in relation to any member of the Group or any of its assets.

23.17 Repudiation and rescission

23.17.1 An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

23.17.2 Any party to the Subordination Agreement (other than the Finance Parties and the Original Obligor) rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

23.18 Litigation

Any litigation, arbitration or administrative proceedings or investigations of, or before any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have, or has, or is, or are likely to have a Material Adverse Effect.

23.19 Material adverse change

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

23.20 Conditional sale agreement

The sale of Apinder Ghura's entire shareholding in the Target to the Company pursuant to the conditional and purchase agreement between the Company and Apinder Ghura does not complete on the Effective Date.

23.21 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders:-

23.21.1 cancel each Available Commitment of each Lender at which time each such Available Commitment shall immediately be cancelled and the Facility shall immediately cease to be available for further utilisation;

23.21.2 declare that all or part of the Loans, 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;

23.21.3 declare that all or part of the Loans 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

23.21.4 exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

23.22 Clean-Up Period

Notwithstanding any other provision of any Finance Document:-

23.22.1 any breach of a Clean-Up Representation will be deemed not to be a breach of representation or warranty or an Event of Default or Default (as the case may be) if:-

(a) it would have been (if it were not for this provision) a breach of representation or warranty or an Event of Default or Default only by reason of circumstances relating exclusively to any member of the Target Group (or any obligation to procure or ensure in relation to a member of the Target Group) as at the Effective Date;

(b) it is capable of remedy and reasonable steps are being taken to remedy it;

(c) the circumstances giving rise to it have not been procured by or approved by the Company or where the Company (as applicable)

knew the matter they procured or approved would give rise to such circumstances; and

- (d) it is not reasonably likely to have a Material Adverse Effect.

If the relevant circumstances are continuing on or after the Clean-Up Date, there shall be a breach of representation or warranty or Event of Default, as the case may be notwithstanding the above (and without prejudice to the rights and remedies of the Lenders).

SECTION 9

CHANGES TO PARTIES

24. CHANGES TO THE LENDERS

24.1 Assignments and transfers by the Lenders

Subject to this Clause 24, a Lender (the "**Existing Lender**") may:-

24.1.1 assign any of its rights; or

24.1.2 transfer by novation any of its rights and obligations,

under any Finance Document to (i) an Affiliate or (ii) 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 (the "**New Lender**").

24.2 Prior to the Utilisation of Tranche A, the consent of the Company is required for any assignment or transfer of a Lender's rights and obligations under any Finance Document, other than if such assignment or transfer is to an Affiliate of that Lender.

24.3 Conditions of assignment or transfer

24.3.1 An assignment will only be effective on:-

(a) 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) 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; and

(b) 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 Existing Lender and the New Lender; and

(c) compliance with the procedure set out in Clause 24.6 (*Procedure for transfer*)

24.3.2 If:-

(a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or a Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or a 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 the Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

24.3.3 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.

24.3.4 The New Lender shall, as soon as reasonably practicable after completion of any transfer or assignment under this Clause 24 notify the Company of the transfer or assignment.

24.4 **Assignment or transfer fee**

24.4.1 Subject to Clause 24.4.2 below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £2,500.

24.4.2 No fee is payable pursuant to Clause 24.4.1 above if:-

- (a) the Agent agrees that no fee is payable; or
- (b) the assignment or transfer is made by an Existing Lender:-
 - (i) to an Affiliate of that Existing Lender; or
 - (ii) to a fund which is a Related Fund of that Existing Lender.

24.5 **Limitation of responsibility of Existing Lenders**

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

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- (b) the financial condition of any Obligor;
- (c) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
- (d) 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.

24.5.2 Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:-

- (a) 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 Transaction Document or Transaction Security; and

- (b) 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.

24.5.3 Nothing in any Finance Document obliges an Existing Lender to:-

- (a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24.5; or
- (b) 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.

24.6 Procedure for transfer

24.6.1 Subject to the conditions set out in Clause 24.3 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 24.6.3 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 Clause 24.6.2 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.

24.6.2 The Agent shall only be obliged to execute a Transfer Certificate 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 other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

24.6.3 Subject to Clause 24.10 (*Pro rata interest settlement*), on the Transfer Date:-

- (a) 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**");
- (b) 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 member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (c) the Agent, the Security Agent, each Arranger, 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 Security Agent, each Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (d) the New Lender shall become a Party as a "Lender".

24.7 Procedure for assignment

24.7.1 Subject to the conditions set out in Clause 24.3 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 24.7.3 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 Clause 24.7.2 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.

24.7.2 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 other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

24.7.3 Subject to Clause 24.10 (*Pro rata interest settlement*), on the Transfer Date:-

- (a) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and 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
- (c) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

24.7.4 Lenders may utilise procedures other than those set out in this Clause 24.7 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 24.6 (*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 24.3 (*Conditions of assignment or transfer*).

24.8 Copy of Transfer Certificate or Assignment Agreement to Company

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

24.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 24, 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:-

24.9.1 any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

24.9.2 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:-

(a) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or

(b) require any payments to be made by an Obligor other than or in excess of, 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.

24.10 **Pro rata interest settlement**

24.10.1 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 24.6 (*Procedure for transfer*) or any assignment pursuant to Clause 24.7 (*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 Months, on the next of the dates which falls at six 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 to 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 24.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

24.10.2 In this Clause 24.10 references to Interest Period shall be construed to include a reference to any other period for accrual of fees.

25. **CHANGES TO THE OBLIGORS**

25.1 **Assignments and transfers by Obligor**

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

25.2 Additional Borrowers

- 25.2.1 Subject to compliance with the provisions of Clauses 20.15.3 and 20.15.4, the Company may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:-
- (a) it is incorporated in the same jurisdiction as an existing Borrower and all the Lenders approve the addition of that Subsidiary;
 - (b) the Company and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;
 - (c) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
 - (d) the Agent has received all of the documents and other evidence listed in Part 2 and, if applicable Part 4 of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- 25.2.2 The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 and, if applicable Part 4 of Schedule 2 (*Conditions precedent*).
- 25.2.3 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 Clause 25.2.2, 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 such notification.

25.3 Resignation of a Borrower

- 25.3.1 With the prior written consent of all the Lenders, the Company may request that a Borrower (other than the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- 25.3.2 The Agent shall accept a Resignation Letter and notify the Company and the other Finance Parties of its acceptance if:-
- (a) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case);
 - (b) that Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;
 - (c) where the Borrower is also a Guarantor, its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Company has confirmed that this is the case); and
 - (d) the Company has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 22.19 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*).

25.3.3 Upon notification by the Agent to the Company of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower.

25.3.4 The Agent may, at the cost and expense of the Company, require a legal opinion from counsel to the Agent confirming the matters set out in Clause 25.3.2(c) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

25.4 **Additional Guarantors**

25.4.1 Subject to compliance with the provisions of Clauses 20.15.3 and 20.15.4, the Company must ensure that each of its wholly owned Subsidiaries becomes a Guarantor.

25.4.2 The Company shall procure that any other member of the Group which becomes a Subsidiary shall, as soon as possible after becoming a Subsidiary, become an Additional Guarantor and grant Security as the Agent may require and shall accede to the Subordination Agreement.

25.4.3 A member of the Group shall become an Additional Guarantor if:-

(a) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter and shall accede to the Subordination Agreement; and

(b) the Agent has received all of the documents and other evidence listed in Part 4 of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

25.4.4 The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 3 of Schedule 2 (*Conditions precedent*).

25.4.5 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 Clause 25.4.4, 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 such notification.

25.5 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

SECTION 10

THE FINANCE PARTIES

26. ROLE OF THE AGENT THE SECURITY AGENT AND THE ARRANGERS

26.1 Appointment of the Agent

26.1.1 Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

26.1.2 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.

26.2 Instructions

26.2.1 The Agent shall:

(a) 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:-

(i) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;

(ii) in all other cases, the Majority Lenders; and

(b) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.

26.2.2 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 those instructions or that clarification.

26.2.3 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 to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.

26.2.4 The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that 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 which it may incur in complying with those instructions.

26.2.5 In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

26.2.6 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 Clause 26.2.6 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.

26.3 **Duties of the Agent**

26.3.1 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

26.3.2 Subject to Clause 26.3.3 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.

26.3.3 Without prejudice to Clause 24.8 (*Copy of Transfer Certificate or an Assignment Agreement to the Company*), Clause 26.3.1 above shall not apply to any Transfer Certificate or any Assignment Agreement.

26.3.4 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.

26.3.5 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.

26.3.6 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, each Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.

26.3.7 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).

26.4 **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.

26.5 **No fiduciary duties**

26.5.1 Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.

26.5.2 Neither the Agent nor 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.

26.6 **Business with the Group**

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

26.7 **Rights and discretions of the Agent**

26.7.1 The Agent may:-

- (a) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (b) assume that:
 - (i) 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
 - (ii) unless it has received notice of revocation, that those instructions have not been revoked; and
- (c) rely on a certificate from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (ii) 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 Clause 26.7.1 above, may assume the truth and accuracy of that certificate.

26.7.2 The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:-

- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
- (b) any right, power, authority or discretion vested in any Party or any group of Lenders or the Majority Lenders has not been exercised; and
- (c) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

26.7.3 The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisors, surveyors or other professional advisors or experts.

26.7.4 Without prejudice to the generality of Clause 26.7.3 above or Clause 26.7.5 below, 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 desirable.

26.7.5 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.

26.7.6 The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:

- (a) be liable for any error of judgment made by any such person; or

- (b) 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.

- 26.7.7 Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- 26.7.8 Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arrangers are 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.
- 26.7.9 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.

26.8 **Responsibility for documentation**

Neither the Agent nor the Arrangers are responsible or liable for:-

- 26.8.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, each Arranger, an Obligor or any other person in or in connection with any Finance Document or the Information Memorandum or the Reports 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; or
- 26.8.2 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
- 26.8.3 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.

26.9 **No duty to monitor**

The Agent shall not be bound to enquire:

- 26.9.1 whether or not any Default has occurred;
- 26.9.2 as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- 26.9.3 whether any other event specified in any Finance Document has occurred.

26.10 **Exclusion of liability**

- 26.10.1 Without limiting Clause 26.10.2 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:

- (a) 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;
- (b) 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
- (c) without prejudice to the generality of paragraphs (a) and (b) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (i) any act, event or circumstance not reasonably within its control; or
 - (ii) 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.

26.10.2 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 Transaction Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.

26.10.3 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.

26.10.4 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 or for any Affiliate of 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.

26.10.5 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 finally judicially determined to have 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.

26.11 **Lenders' indemnity to the Agent**

26.11.1 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 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 29.11 (*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).

26.11.2 Subject to Clause 26.11.3 below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to Clause 26.11.1 above.

26.11.3 Clause 26.11.2 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.

26.12 **Resignation of the Agent**

26.12.1 The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Company.

26.12.2 Alternatively the Agent may resign by giving 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.

26.12.3 If the Majority Lenders have not appointed a successor Agent in accordance with Clause 26.12.2 above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the United Kingdom).

26.12.4 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 Clause 26.12.2 above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to

persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 26 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with the then current market practice for the appointment and protection of corporate trustees together with 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.

- 26.12.5 The retiring Agent shall 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. The Company shall, within 3 Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- 26.12.6 The Agent's resignation notice shall only take effect upon the appointment of a successor.
- 26.12.7 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 26.12.5 above) but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*) and this Clause 26 (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.
- 26.12.8 The Agent shall resign in accordance with Clause 26.12.2 above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to Clause 26.12.3 above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:-
- (a) the Agent fails to respond to a request under Clause 13.8 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (b) the information supplied by the Agent pursuant to Clause 13.8 (*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
 - (c) 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) 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 that Lender, by notice to the Agent, requires it to resign.

26.13 Replacement of the Agent

- 26.13.1 After consultation with the Company, the Majority Lenders may, by giving 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.

- 26.13.2 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.
- 26.13.3 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 (other than its obligations under Clause 26.13.2 above) but shall remain entitled to the benefit of Clause 15.3 (*Indemnity to the Agent*) and this Clause 26 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- 26.13.4 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.

26.14 **Confidentiality**

- 26.14.1 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.
- 26.14.2 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.
- 26.14.3 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 regulation or a breach of a fiduciary duty.

26.15 **Relationship with the Lenders**

- 26.15.1 Subject to Clause 24.10 (*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:-
- (a) entitled to or liable for any payment due under any Finance Document on that day; and
 - (b) 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 Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- 26.15.2 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 31.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission 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 (or other such information), department and officer by that Lender for the purposes of Clause 31.2 (*Addresses*) and Clause 31.6.1 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.

26.16 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 and each Arranger 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:-

26.16.1 the financial condition, status and nature of each member of the Group;

26.16.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, 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;

26.16.3 whether that Lender 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;

26.16.4 the adequacy, accuracy or completeness of the Information Memorandum or the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

26.16.5 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.

26.17 Agent's Management Time

Any amount payable to the Agent under Clause 15.3 (*Indemnity to the Agent*), Clause 17 (*Costs and expenses*) and Clause 26.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 12 (*Fees*).

26.18 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.

26.19 **Appointment of the Security Agent**

Each Finance Party (other than the Security Agent) appoints the Security Agent to hold on trust for the Secured Parties on the terms of the Finance Documents any Security created by the Transaction Security Documents.

26.20 **Duties of the Security Agent**

26.20.1 Nothing in this Agreement constitutes the Security Agent as a trustee or fiduciary of any person except the Secured Parties.

26.20.2 The Security Agent, its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration and profits paid to it in connection with:-

- (a) its activities under the Finance Documents; and
- (b) its engagement in any kind of banking or other business with any Obligor.

26.21 **Delegation by the Security Agent**

The Security Agent may delegate to any person on such terms (which may include the power to sub delegate) and subject to such conditions as it thinks fit, all or any of the rights, powers, authorities and discretions vested in it by any of the Finance Documents and shall not be obliged to supervise any such delegate or sub delegate or be responsible to any person for any loss incurred by reason of any act, omission, misconduct or default on the part of any such delegate or sub delegate.

26.22 **Separate Security Agents**

26.22.1 The Security Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint any person to act jointly with the Security Agent either as a separate trustee or as a co-trustee (each an "**Appointee**") on such terms and subject to such conditions as the Security Agent thinks fit and with such of the rights, powers, authorities and discretions vested in the Security Agent by any Finance Document as may be conferred by the instrument of appointment of the Appointee.

26.22.2 The Security Agent may pay reasonable remuneration to any Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement and any Fee Letter, as paid or incurred by the Security Agent.

26.23 **The Transaction Security Documents**

26.23.1 Each Finance Party confirms its approval of the Transaction Security Documents and of any Transaction Security, and authorises and instructs the Security Agent, on its behalf:-

- (a) to execute and deliver the Transaction Security Documents; and
- (b) to give any authorisations and confirmations to be given by the Security Agent under them.

26.23.2 The Security Agent may accept without enquiry the title (if any) which any person may have to any assets over which Transaction Security is intended to be created.

26.24 **Security Agent as proprietor**

Each Finance Party (other than the Security Agent) confirms that it does not wish to be registered as a joint proprietor of any mortgage or charge created pursuant to any Transaction Security Document and accordingly:-

26.24.1 authorises the Security Agent to hold such mortgages and charges in its sole name as trustee for the Finance Parties; and

26.24.2 requests the Land Registry (or other relevant registry) to register the Security Agent as a sole proprietor of any such mortgage or charge.

26.25 **Investments**

Except to the extent that a Transaction Security Document otherwise requires, any monies received by the Security Agent under or pursuant to a Transaction Security Document may be:-

26.25.1 invested in any investments which it may select and which are authorised by applicable law; or

26.25.2 placed on deposit at any bank or institution (including itself) on such terms as it may think fit,

in each case in the name or under the control of the Security Agent, and those monies, together with any accrued income (net of any applicable Tax) shall be held by the Security Agent to the order of the Agent, and shall be payable to the Agent on demand.

26.26 **Exclusion of the Security Agent's liability**

The Security Agent shall not be:-

26.26.1 liable or responsible to any other Party for:-

(a) any defect in or failure of the title (if any) which any person may have to any assets over which Security is intended to be granted by any Transaction Security Document; or

(b) any loss resulting from the investment or deposit at any bank of monies which it invests or deposits in a manner permitted by the Finance Documents;

26.26.2 liable or responsible to any other Finance Party for any failure to perfect, protect, register, make any filing or give notice in respect of the Security intended to be created by any Transaction Security Document, unless that failure arises directly from its own gross negligence or wilful misconduct;

26.26.3 obliged to insure any assets over which Security is intended to be created by any Transaction Security Document, to require any other person to maintain any such insurance, or to make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy or enforceability of any insurance existing over any such asset;

26.26.4 obliged to obtain any Authorisation in respect of any such asset; or

26.26.5 obliged to hold in its own possession any Transaction Security Document, title deed or other document relating to any such asset.

26.27 **Lenders' indemnity to the Security Agent**

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 before their reduction to zero) indemnify the Security Agent and all Delegates and appointees (each an "**Indemnified Party**"), within three Business Days of demand, against any cost, loss or liability incurred by the Security Agent or the relevant Indemnified Party (otherwise than by reason of the gross negligence or wilful misconduct of the Security Agent or that Indemnified Party) in acting as Security Agent or its Delegate or Appointee under the Finance Documents (except to the extent that the Security Agent, or the relevant Indemnified Party has been reimbursed by an Obligor pursuant to a Finance Document).

26.28 **Appointment of successor Security Agent**

Every appointment of a successor Security Agent shall be by deed.

26.29 **Further provisions**

All of the provisions of this Clause 26 (*Role of the Agent, the Security Agent, the Issuing Bank and the Arrangers*), except for Clauses 26.1.1 (*Appointment of the Agent*), 26.3.6 and 26.3.7 (*Duties of the Agent*), 26.4 (*Role of the Arrangers*), 26.5.1 (*No fiduciary duties*), 26.11 (*Lenders' indemnity to the Agent*), the references to "Impaired Agent" in Clause 26.13 (*Replacement of the Agent*) and 26.15 (*Relationship with the Lenders*) shall apply to the Security Agent and its delegates, sub delegates and appointees (and, in the case of Clauses 26.8 (*Responsibility for documentation*) and 26.10.2 (*Exclusion of liability*), to their respective officers, employees and agents) as they apply to the Agent, so that references to the Agent in those clauses shall be construed also as references to the Security Agent, its delegates, sub delegates and appointees.

26.30 **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 to the Reports or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, 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.

27. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:-

- 27.1 interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 27.2 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
- 27.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

28. **SHARING AMONG THE FINANCE PARTIES**

28.1 **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment mechanics*)

(a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:-

28.1.1 the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;

28.1.2 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 29 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

28.1.3 the Recovering Finance Party shall, within three 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 29.5 (*Partial payments*).

28.2 **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 29.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

28.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 28.2 (*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.

28.4 **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:-

28.4.1 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

28.4.2 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.

28.5 **Exceptions**

28.5.1 This Clause 28 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.

28.5.2 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:-

- (a) it notified the other Finance Party of the legal or arbitration proceedings; and
- (b) that 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.

SECTION 11

ADMINISTRATION

29. PAYMENT MECHANICS

29.1 Payments to the Agent

29.1.1 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.

29.1.2 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 or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

29.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback and pre-funding*) 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 5 Business Days' notice with a bank specified by that Party 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 as specified by that Party).

29.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*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.

29.4 Clawback and pre-funding

29.4.1 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.

29.4.2 Unless Clause 29.4.3 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.

29.4.3 If the Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower 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 a Borrower:

- (a) the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
- (b) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, 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.

29.5 Impaired Agent

29.5.1 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 29.1 (*Payments to the Agent*) may instead either:

- (a) pay that amount direct to the required recipient(s); or
- (b) 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 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.

29.5.2 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.

29.5.3 A Party which has made a payment in accordance with this Clause 29.5 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.

29.5.4 Promptly upon the appointment of a successor Agent in accordance with Clause 26.13 (*Replacement of the Agent*), each Paying Party (other than to the extent that that Party has given an instruction pursuant to Clause 29.5.5 below) shall 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 29.2 (*Distributions by the Agent*).

29.5.5 A Paying Party shall, promptly upon request by a Recipient Party and to the extent:

- (a) that it has not given an instruction pursuant to Clause 29.5.4 above; and
- (b) 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.

29.6 **Partial payments**

29.6.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:-

- (a) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent or the Security Agent under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- (c) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (d) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

29.6.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in Clauses 29.6.1(b) to 29.6.1(d) above.

29.6.3 Clauses 29.6.1 and 29.6.2 above will override any appropriation made by an Obligor.

29.7 **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.

29.8 **Business Days**

29.8.1 Any payment under the Finance Documents 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).

29.8.2 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.

29.9 **Currency of account**

29.9.1 Subject to Clauses 29.9.2 to 29.9.5, sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.

29.9.2 A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated pursuant to this Agreement on its due date.

29.9.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated pursuant to this Agreement when that interest accrued.

29.9.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

29.9.5 Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

29.10 **Change of currency**

29.10.1 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:-

(a) 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

(b) 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).

29.10.2 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 reflect the change in currency.

29.11 **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:-

29.11.1 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;

29.11.2 the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in Clause 29.11.1 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;

29.11.3 the Agent may consult with the Finance Parties in relation to any changes mentioned in Clause 29.11.1 but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

29.11.4 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 35 (*Amendments and Waivers*);

29.11.5 the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability 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 29.11; and

29.11.6 the Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 29.11.4 above.

30. **SET-OFF**

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.

31. **NOTICES**

31.1 **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, shall be made by email or if expressly stated, by way of letter.

31.2 **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:-

- 31.2.1 in the case of the Company, that identified with its name below;
- 31.2.2 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;
- 31.2.3 in the case of any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- 31.2.4 in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address 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 Business Days' notice.

31.3 **Delivery**

- 31.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective if by way of fax, when received in legible form and, if a particular department or officer is specified as part of its address details provided under Clause 31.2 (*Addresses*), if addressed to that department or officer.
- 31.3.2 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 the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or the Security Agent shall specify for this purpose).
- 31.3.3 All notices from or to an Obligor shall be sent through the Agent.

31.3.4 Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

31.3.5 Any communication or document which becomes effective, in accordance with Clauses 31.3.1 to 31.3.4, after 5:00pm, in the place of receipt shall be deemed only to become effective on the following day.

31.4 Notification of address

Promptly upon changing its address, the Agent shall notify the other Parties.

31.5 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.

31.6 Electronic communication

31.6.1 Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) to the following email address:-

Party	Email Address
Lenders and Arrangers	[Redacted]
Agent	[Redacted]
Security Agent	[Redacted]
the Company	[Redacted]

and a Party shall notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

31.6.2 Any such electronic communication or delivery as specified in Clause 31.6.1 above to be made between an Obligor and a Finance Party may only be made in that way 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 or delivery.

31.6.3 Any such communication or delivery as specified in Clause 31.6.1 above made or delivered by one Party to another will be effective only when actually

received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.

31.6.4 Any electronic communication or document which becomes effective, in accordance with Clause 31.6.1, after 5:00pm, in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

31.6.5 Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 31.6.

31.7 **Direct electronic delivery by Company**

The Company may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 31.7 (*Electronic communication*) to the extent that Lender and the Agent agree to this method of delivery.

31.8 **English language**

31.8.1 Any notice given under or in connection with any Finance Document must be in English.

31.8.2 All other documents provided under or in connection with any Finance Document must be:-

(a) in English; or

(b) if not in English, and if so required by the Agent, 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.

32. **CALCULATIONS AND CERTIFICATES**

32.1 **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.

32.2 **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, conclusive evidence of the matters to which it relates.

32.3 **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.

33. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents 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.

34. **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 the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents 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 shall 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.

35. **AMENDMENTS AND WAIVERS**

35.1 **Required consents**

35.1.1 Subject to Clause 35.2 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of all of the Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.

35.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

35.1.3 Without prejudice to the generality of Clauses 26.7.3, 26.7.4 and 26.7.5 (*Rights and discretions of the Agent*), 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.

35.1.4 Each Obligor agrees to any such amendment or waiver permitted by this Clause 35 which is agreed to by the Company. This includes any amendment or waiver which would, but for this Clause 35.1.4, require the consent of all of the Guarantors.

35.2 **Other exceptions**

35.2.1 An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent or the Arrangers (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent or the Arrangers, as the case may be.

35.2.2 Any amendment or waiver which:

(a) relates only to the rights or obligations applicable to a particular Utilisation, Facility or class of Lender; and

(b) does not materially and adversely affect the rights or interests of Lenders in respect of any other Utilisation or Facility or another class of Lender,

may be made in accordance with this Clause 35 but as if references in this Clause 35 to the specified proportion of Lenders (including, for the avoidance

of doubt, all the Lenders) whose consent would, but for this Clause 35.2.2, be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or Facility or forming part of that particular class.

36. **CONFIDENTIAL INFORMATION**

36.1 **Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 36.2 (*Disclosure of Confidential Information*) and Clause 36.3 (*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.

36.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:-

36.2.1 to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, 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 Clause 36.2.1 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;

36.2.2 to any person:-

- (a) 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;
- (b) 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;
- (c) appointed by any Finance Party or by a person to whom Clause 36.2.2(a) or 36.2.2(b) 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 Clause 26.15.2);
- (d) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clause 36.2.2(a) or 36.2.2(b) above;
- (e) 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;

- (f) 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;
- (g) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.9 (*Security over Lenders' rights*);
- (h) who is a Party; or
- (i) with the consent of the Company;

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

- (i) in relation to Clause 36.2.2(a), 36.2.2(b) and 36.2.2(c) 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;
- (ii) in relation to Clause 36.2.2(d) 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;
- (iii) in relation to Clauses 36.2.2(e), 36.2.2(f) and 36.2.2(g) 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;

36.2.3 to any person appointed by that Finance Party or by a person to whom Clause 36.2.2(a) or 36.2.2(b) 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 Clause 36.2.3 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 or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party;

36.2.4 in connection with the exercise of any remedies hereunder or under any other Finance Documents or any action or proceedings relating to this Agreement or any other Finance Document or the enforcement of rights hereunder or thereunder;

- 36.2.5 Confidential Information to the extent necessary in order to perfect or preserve any rights under the Transaction Security; and
- 36.2.6 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; and
- 36.2.7 to any person Confidential Information for a Finance Party's marketing, communication and advertising purposes and by countersigning this Agreement the Company agrees that the Finance Parties may use any Obligor's name, reproduce its corporate logo, if any, and describe the transaction details (including, without limitation, facility size, type and the Lender's role) in its own marketing and promotional materials.

36.3 Disclosure to numbering service providers

- 36.3.1 Notwithstanding any other term of any Finance Document or any other agreement between the Parties to the contrary (whether express or implied), 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:-
 - (a) names of Obligors;
 - (b) country of domicile of Obligors;
 - (c) place of incorporation of Obligors;
 - (d) date of this Agreement;
 - (e) Clause 39 (*Governing law*);
 - (f) the names of the Agent and the Arrangers;
 - (g) date of each amendment and restatement of this Agreement;
 - (h) amounts of, and names of, the Facility (and any tranches);
 - (i) amount of Total Commitments;
 - (j) currencies of the Facility;
 - (k) type of Facility;
 - (l) ranking of Facility;
 - (m) Termination Date for Facility;
 - (n) changes to any of the information previously supplied pursuant to Clauses 36.3.1(a) to 36.3.1(m) ; and
 - (o) 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.

36.3.2 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.

36.3.3 Each Obligor represents that none of the information set out in Clauses 36.3.1(a) to 36.3.1(o) above is, nor will at any time be, unpublished price-sensitive information.

36.3.4 The Agent shall notify the Company and the other Finance Parties of:-

- (a) 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
- (b) 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.

36.4 **Entire agreement**

This Clause 36 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.

36.5 **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.

36.6 **Notification of disclosure**

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

- 36.6.1 of the circumstances of any disclosure of Confidential Information made pursuant to Clause 36.2.2(e) except where such disclosure is made to any of the persons referred to in that sub-clause during the ordinary course of its supervisory or regulatory function; and
- 36.6.2 upon becoming aware that Confidential Information has been disclosed in breach of this Clause 36.

36.7 **Continuing obligations**

The obligations in this Clause 36 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:-

- 36.7.1 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

36.7.2 the date on which such Finance Party otherwise ceases to be a Finance Party.

37. **DISCLOSURE OF LENDER DETAILS BY AGENT**

37.1 **Supply of Lender details to Company**

The Agent shall provide to the Company within 10 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 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, 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.

37.2 **Supply of Lender details at Company's direction**

37.2.1 The Agent shall, at the request of the Company, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:

- (a) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and
- (b) member of the Group.

37.2.2 Subject to Clause 37.2.3 below, the Company shall procure that the recipient of information disclosed pursuant to Clause 37.2.1 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.

37.2.3 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.

37.3 **Supply of Lender details to other Lenders**

37.3.1 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.

37.3.2 The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

37.4 **Lender enquiry**

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

37.5 **Lender details definitions**

In this Clause 37:-

"Requisite Lenders" means a Lender or Lenders whose Commitments aggregate 15 per cent. (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15 per cent. (or more) of the Total Commitments immediately prior to that reduction).

38. **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.

SECTION 12

GOVERNING LAW AND ENFORCEMENT

39. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

40. ENFORCEMENT

40.1 Jurisdiction

40.1.1 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**").

40.1.2 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.

40.1.3 Notwithstanding Clause 40.1.1, 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.

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

SCHEDULE 1

THE ORIGINAL PARTIES

PART 1

THE ORIGINAL OBLIGORS

Name of Original Borrower	Original Jurisdiction	Registration number (or equivalent, if any)	(or
MIP Holdings Ltd	England and Wales	12981062	
Name of Original Guarantor	Original Jurisdiction	Registration number (or equivalent, if any)	(or
MIP Holdings Ltd	England and Wales	12981062	

PART 2

THE ORIGINAL LENDERS OTHER THAN UK NON-BANK LENDERS

Name of Original Lender	Tranche A Commitment	Tranche B Commitment	Tranche C Commitment
1903 Partners, LLC	£12,600,000	£4,200,000	£700,000

PART 3

THE ORIGINAL LENDERS - UK NON-BANK LENDERS

Name of Original Lender	Tranche Commitment	A	Tranche Commitment	B	Tranche Commitment	C
Aurelius Finance Company Limited	£5,400,000		£1,800,000		£300,000	

SCHEDULE 2

CONDITIONS PRECEDENT

PART 1

CONDITIONS PRECEDENT TO SIGNING OF THE AGREEMENT

1. **Original Obligors**
- 1.1 A copy of the Constitutional Documents and the constitutional documents of each Original Obligor.
- 1.2 A copy of a resolution of the board of directors of each Original Obligor:-
 - 1.2.1 approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
 - 1.2.2 authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - 1.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - 1.2.4 in the case of an Obligor other than the Company, authorising the Company to act as its agent in connection with the Finance Documents.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above in relation to the Finance Documents and related documents.
- 1.4 A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.
- 1.5 In the case of an Original Obligor which is incorporated in a jurisdiction other than England and Wales and which has registered a UK establishment in accordance with Part 2 of the Overseas Companies Regulations 2009, a copy of its company register of charges.
- 1.6 A copy of a resolution of the board of directors of each corporate shareholder of each Original Guarantor approving the terms of the resolution referred to in paragraph 1.4 above.
- 1.7 A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- 1.8 A certificate of an authorised signatory of the Company or other relevant Original Obligor 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.
- 1.9 An independent legal advice certificate in relation to the Shareholders entry into the Share Charge, the Subordination Agreement and the Personal Indemnities.

1.10 The Agent being satisfied that it and each Original Lender has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to Finance Documents

2. Transaction Documents

2.1 The agreed form of the Scheme Press Release.

2.2 The executed Investor Finance Documents.

3. Finance Documents

3.1 The Subordination Agreement executed by the members of the Group party to that Agreement.

3.2 This Agreement executed by the members of the Group party to this Agreement.

3.3 The executed Shareholders Agreement.

3.4 The Fee Letters executed by the Company

3.5 At least two originals of the following Transaction Security Documents executed by the Original Obligors specified below opposite the relevant Transaction Security Document:-

Name of Original Obligor	Transaction Security Document
The Company	Debenture
The Investors	Share Charge

3.6 Each Personal Indemnity, executed by the Shareholders.

3.7 A copy of all notices required to be sent under the Transaction Security Documents executed by the relevant Obligors and duly acknowledged by the addressee.

3.8 All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

4. Legal opinions

4.1 A legal opinion of Pinsent Masons LLP, legal advisers to the Arrangers and the Agent as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

5. Other documents and evidence

5.1 A group structure chart relating to the Company.

5.2 The Budget.

5.3 The Reports.

5.4 The pro forma balance sheet of the Company.

5.5 A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Company

accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

- 5.6 Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid.
- 5.7 In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:-
- 5.7.1 a certificate of an authorised signatory of the Company certifying that:
- (a) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
 - (b) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,
- together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Company to be correct, complete and not amended or superseded as at a date no earlier than the date of this Agreement; or
- 5.7.2 a certificate of an authorised signatory of the Company certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.
- 5.8 The Funds Flow Statement in a form agreed by the Company and the Lenders detailing the proposed movement of funds on or before the Effective Date.

PART 2

CONDITIONS PRECEDENT TO UTILISATION OF TRANCHE A

1. **Scheme**
 - 1.1 A copy of each Scheme Document duly executed and/or issued.
 - 1.2 A copy of the Scheme Court Order.
 - 1.3 A copy of the RNS announcement made by the Company confirming that the Effective Date has occurred.
2. **Miscellaneous**
 - 2.1 A copy of the account ledger of Shoosmiths evidencing that the money of equity funds (in an amount not less than £5,171,428.60) is in the escrow account and then a SWIFT confirmation it has been sent to the receiving agent.
 - 2.2 A certificate of the Company confirming that no Major Default is outstanding.

PART 3

CONDITIONS PRECEDENT TO THE INITIAL UTILISATION OF TRANCHE B AND TRANCHE C

1. Evidence that the notice of prepayment of the Existing Target Finance Documents referred to in paragraph (a) of that definition has been served.
2. Evidence that the Existing Target Finance Documents referred to in paragraphs (a) and (b) of that definition have been released.
3. In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:-
 - 3.1.1 a certificate of an authorised signatory of the Company certifying that:
 - (a) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
 - (b) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Company to be correct, complete and not amended or superseded as at a date no earlier than the date of the Accession Deed; or
 - 3.1.2 a certificate of an authorised signatory of the Company certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.
4. The Intellectual Property Report.
5. A copy of each Material Intellectual Property Licence.

6. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

PART 4

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL OBLIGOR

1. An Accession Letter, duly executed by the Additional Obligor and the Company.
2. A deed of accession to the Subordination Agreement, duly executed by the Additional Obligor.
3. A copy of the constitutional documents of the Additional Obligor.
4. A copy of a resolution of the board of directors of the Additional Obligor:-
 - 4.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Documents to which it is a party;
 - 4.2 authorising a specified person or persons to execute the Accession Letter and any other Finance Documents on its behalf;
 - 4.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - 4.4 authorising the Company to act as its agent in connection with the Finance Documents.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 4 above.
6. 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.
7. A copy of a resolution of the board of directors of each corporate shareholder of each Additional Obligor approving the terms of the resolution referred to in paragraph 6 above.
8. In the case of an Additional Obligor which is incorporated in a jurisdiction other than England and Wales and which has registered a UK establishment in accordance with Part 2 of the Overseas Companies Regulations 2009, a copy of its company register of charges.
9. A certificate of the Additional Obligor (signed by a director) 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.
10. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 4 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 Letter.
11. If required by the Agent, a IP Power of Attorney.
12. If available, the latest audited financial statements of the Additional Obligor.

13. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:-
 - 13.1 A legal opinion of the legal advisers to the Arrangers and the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
 - 13.2 If the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in Clause 19.29 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Documents which is governed by a law other than English law, a legal opinion of the advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
14. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that a process agent has accepted its appointment in relation to the proposed Additional Obligor.
15. Any security documents which are required by the Agent to be executed by the proposed Additional Obligor.
16. Any notices or documents required to be given or executed under the terms of those security documents.
- 17.
- 17.1 If the Additional Obligor 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 Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
18. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
19. In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:-
 - 19.1.1 a certificate of an authorised signatory of the Company certifying that:
 - (a) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
 - (b) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Company to be correct, complete and not amended or superseded as at a date no earlier than the date of the Accession Deed; or

19.1.2 a certificate of an authorised signatory of the Company certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

SCHEDULE 3
REQUESTS AND NOTICES
PART 1
UTILISATION REQUEST

From: [Borrower][Company]*
To: [Agent]
Dated:

Dear Sirs

MIP Holdings Ltd – Facility Agreement

dated [] (the "Agreement")

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the 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:-

Borrower []

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Tranche to be utilised**:

Amount: [] or, if less, the Available Facility

3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) 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 on behalf of [name of relevant Borrower]/[name of Borrower]*]

NOTES:

*Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Company.

** Select the Tranche to be utilised

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:

MIP Holdings Ltd – Facility Agreement

dated [] (the "**Agreement**")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 24.6 (*Procedure for transfer*):-
 - 2.1 the Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 24.6 (*Procedure for transfer*) of the Facility Agreement, all of the Existing Lender's rights and obligations under the Agreement, the other Finance Documents, and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Agreement as specified in the Schedule;
 - 2.2 the proposed Transfer Date is [];
 - 2.3 the Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 24.5.3 of the Agreement.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:-
 - 4.1 [a Qualifying Lender (other than a Treaty Lender);]
 - 4.2 [a Treaty Lender;]
 - 4.3 [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:-
 - 5.1 a company resident in the United Kingdom for United Kingdom tax purposes;
 - 5.2 a partnership each member of which is:-
 - 5.2.1 a company so resident in the United Kingdom; or

5.2.2 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; or

5.3 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.]**

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 Additional Borrower that it wishes that scheme to apply to the Facility Agreement.****

[6/7]. This Transfer Certificate 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 Transfer Certificate.

[7/8]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

[8/9]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

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

NOTES:

* Delete as applicable – each New Lender is required to confirm which of these three categories it falls within.

** Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 13.1 (*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 Agreement

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 Transfer Certificate is accepted by the Agent and the Security Agent , and the Transfer Date is confirmed as [].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: [] as Agent, [] as Security Agent and MIP Holdings Ltd 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:

MIP Holdings Ltd - Facility Agreement

dated [] (the "**Agreement**")

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 24.7 (*Procedure for assignment*):-
 - 2.1 the Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule;
 - 2.2 the Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule;
 - 2.3 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 2.2 above.*
3. The proposed Transfer Date is [].
 - 3.1 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
4. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) of the Agreement are set out in the Schedule.
5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 24.5.3 of the Agreement.
6. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:-
 - 6.1 [a Qualifying Lender (other than a Treaty Lender);]
 - 6.2 [a Treaty Lender;]
 - 6.3 [not a Qualifying Lender].**

7. [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:-
- 7.1 a company resident in the United Kingdom for United Kingdom tax purposes; or
 - 7.2 a partnership each member of which is:-
 - 7.2.1 a company so resident in the United Kingdom; or
 - 7.2.2 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; or
 - 7.3 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.]***
8. 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:
- 8.1 each Borrower which is a Party as a Borrower as at the Transfer Date; and
 - 8.2 each Additional Borrower which becomes an Additional Borrower after the Transfer Date,
- that it wishes that scheme to apply to the Agreement.*****
- [8/9]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 24.8 (*Copy of Transfer Certificate or Assignment Agreement or Increase Confirmation to the Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
- [11/12]. This Assignment 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 Assignment Agreement.
- [12/13]. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- [13/14]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment 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.**

NOTES:

- * If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at Primary documentation stage. This footnote is not intended to be included in the scheduled form of Assignment Agreement in the signed Agreement.
- ** Delete as applicable – each New Lender is required to confirm which of these three categories it falls within
- *** Include if New Lender comes within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 13.1
- **** 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 Agreement

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[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 Assignment Agreement is accepted by the Agent and the Security Agent, and the Transfer Date is confirmed as [].

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

[Agent]

By:

[Security Agent]

By:

SCHEDULE 6

FORM OF ACCESSION LETTER

To: [] as Agent
From: [*Subsidiary*] and MIP Holdings Ltd
Dated:

Dear Sirs

MIP Holdings Ltd –Facility Agreement

dated [] (the "Agreement")

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Subsidiary*] agrees to become an Additional [Borrower][Guarantor] and to be bound by the terms of the Agreement as an Additional [Borrower] pursuant to [Clause 25.2 (*Additional Borrowers*)] or as an additional Guarantor pursuant to Clause 25.4 (*Additional Guarantors*) of the Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [The Company confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional [Borrower][Guarantor].]*
4. [*Subsidiary's*] administrative details are as follows:-

Address:

Fax No:

Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[This Accession Letter is entered into by deed.]

[Company]

[Subsidiary]

Notes:

- * Include in the case of an Additional Borrower

SCHEDULE 7

FORM OF RESIGNATION LETTER

To: [] as Agent
From: [resigning Obligor] and MIP Holdings Ltd
Dated:

Dear Sirs

**MIP Holdings Ltd – Facility Agreement
dated [] (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 25.3 (*Resignation of a Borrower*)], we request that [resigning Obligor] be released from its obligations as a [Borrower] under the Agreement.
3. We confirm that:-
 - 3.1 no Default is continuing or would result from the acceptance of this request;
 - 3.2 all other requirements of [Clause 25.3 (*Resignation of a Borrower*)] of the Agreement are satisfied; and
 - 3.3 the Disposal Proceeds have been or will be applied in accordance with Clause 22.19 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Agreement.
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

MIP Holdings Ltd

[Subsidiary]

By:

By:

SCHEDULE 8

FORM OF COMPLIANCE CERTIFICATE

To: [] as Agent
From: MIP Holdings Ltd
Dated:

Dear Sirs

**MIP Holdings Ltd – Facility Agreement
dated [] (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [Insert details of covenants to be certified].
3. [We confirm that no Event of Default is continuing and will not be continuing following payment of £[] under the Investor Finance Documents on [].]*.
4. [We confirm that (in each case calculated on an unconsolidated basis and excluding all intra-group items and investment in Subsidiaries of any member of the Group) represents not less than [] per cent of the Group.]¹

Signed:
Director	Director
of	of
MIP Holdings Ltd	MIP Holdings Ltd

Notes:

* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

¹ If requested under Clause 20.9

SCHEDULE 9

TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*)) U-3
9.30 a.m.

Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (*Lenders' participation*) U-3
Noon

Agent determines (in relation to a Utilisation) the amount of the Loan, if required under Clause 5.4 (*Lenders' participation*) and notifies the Lenders of the Loan in accordance with Clause 5.4 (*Lenders' participation*) U-1
Noon

"U" = date of utilisation

"U-X" = Business Days prior to date of utilisation

SCHEDULE 10
FORM OF INTELLECTUAL PROPERTY REPORT

SCHEDULE 11

BLOCKED ACCOUNTS

None at the date of this Agreement.

SCHEDULE 12
FORM OF BORROWING BASE CERTIFICATE

MIP Holdings Ltd Borrowing Base Certificate as at	Week #		00-Jan-00	00-Jan-00	00-Jan-00	00-Jan-00
£	Date	TOTAL	FCUCL	FCLL	FCL	YMC
ACCOUNTS RECEIVABLE						
Available Accounts Receivable		-	-	-	-	-
<i>Less: Exclusions</i>						
Normandy - Sam Corporation (rent recharge)		-	-	-	-	-
Normandy - Toast (Mail Order) Ltd (non product & contra)		-	-	-	-	-
Pro Forma Invoices - Normandy - Truth i.e.		-	-	-	-	-
Normandy FC - Woking (associated business)		-	-	-	-	-
Normandy FC - Madrid (associated business)		-	-	-	-	-
Normandy - Noatum Logistics (rent and rates)		-	-	-	-	-
Normandy - JOHN LEWIS AND COMPANY LTD E/M (concession)		-	-	-	-	-
Fenwick Group Accounts (concession)		-	-	-	-	-
YMC - The Box (sample sale)		-	-	-	-	-
Other Intercompany/shareholder/director debtor recommended by the Field Exam		-	-	-	-	-
Debtors not subject to a valid fixed charge		-	-	-	-	-
Other non product invoices		-	-	-	-	-
Debtor subject to insolvency or court proceedings		-	-	-	-	-
Debtor that arises or relates to a contract and subject to non performance by the borrower/no invoice/prohibition on creating security		-	-	-	-	-
Total Exclusions		-	-	-	-	-
<i>Less: Ineligible AR</i>						
Past Dues 120+		-	-	-	-	-
Past Dues 90+		-	-	-	-	-
Past Due Credits		-	-	-	-	-
Cross Ageing @ 50%		-	-	-	-	-
Contra-Trading		-	-	-	-	-
Non Eligible Jurisdiction (i.e. non EU, UK and US debtors)		-	-	-	-	-
Retro Rebates / Over-riders/conditional/subject to right of return		-	-	-	-	-
Settlement Discount Reserve		-	-	-	-	-
30% Concentration Limit for any one group debtor		-	-	-	-	-
ASOS 3% deduction		-	-	-	-	-
Account debtor which is not a Company		-	-	-	-	-
Debtor subject to tax deductions		-	-	-	-	-
Owed by an account debtor which is not credit insured under arrangements as requested by Agent (recommended by Field Exam)		-	-	-	-	-
Amount owed by an account debtor exceeds any credit limit set by Agent		-	-	-	-	-
Amount owed by account debtor which is not supported by a Credit Rating Report as requested by Agent		-	-	-	-	-
Debtor subject to facts, events, or circumstances which would impair the validity, enforceability, collectability		-	-	-	-	-
Total ineligible		-	-	-	-	-
Eligible AR		-	-	-	-	-
Net Availability on AR	80.0%	-	-	-	-	-
BRAND						
Availability on Brand		-	-	-	-	-
Less: RESERVES (if applicable):						
Excess dilutions		-	-	-	-	-
Amounts due and unpaid under the Finance Documents		-	-	-	-	-
Amounts vulnerable to any deficiency in the Transaction Security		-	-	-	-	-
Preferential Creditors		-	-	-	-	-
Amounts for any material inaccuracies in any report or information		-	-	-	-	-
Ransom Creditors		-	-	-	-	-
Rental Arrears		-	-	-	-	-
Warehouse costs or rent payments		-	-	-	-	-
Unpaid insurance premiums		-	-	-	-	-
Fees, costs, expenses or potential liabilities relating to insolvency		-	-	-	-	-
Other reserves identified by the Agent/valuations		-	-	-	-	-
Total Reserves		-	-	-	-	-
Net Borrowing Base Availability (A)		-	-	-	-	-
Plus: Blocked Account cash available to meet Borrowing Base Shortfall		-	-	-	-	-
Total Borrowing Base Availability (B)		-	-	-	-	-
Term Loan "Obligations" (C)						25,000,000
"Borrowing Base Covenant" compliant (B > C)						YES/NO
"Blocked Account Availability" calculation						
Blocked Account balance						
Cash available to meet Borrowing Base Shortfall						-
Less: cash to be held in Blocked Account to meet BBC Covenant (A minus C)						(25,000,000)
Less: GB Term Loan interest and fee's due (enter negative number)						-
Maximum available for Company to Withdraw from Blocked Account (E)						(25,000,000)
"Borrowing Base Shortfall" and additional cash requirement (if applicable)						
Additional cash required to meet "Borrowing Base Covenant": shortfall						25,000,000
Plus: GB Term Loan interest and fee's due						-
"Borrowing Base Shortfall" - required cash injection to meet BBC Shortfall						25,000,000
Rent Declarations						
Date of last rent payment						xx/xx/xx
Amount of last rent payment (£'000)						
Value of outstanding rent arrears (£'000) -						
Date of next rent payment						
Amount of next rent payment (£'000)						
Creditor Declarations						
VAT paid up to date						Yes / No
Most Recent ROT schedule provided						Yes / No
Any new Suppliers with ROT claims						Yes / No
New trade suppliers (since last BBC)						Yes / No
Changes to supplier terms (since last BBC)						Yes / No
Covenant Compliance						
Compliance with Minimum Liquidity covenant at all times						Yes / No
Compliance with Minimum EBITDA at the last relevant period						Yes / No
Compliance with Brand covenants at the last Relevant Period						Yes / No
Facility Agreement Declarations						
Inventory insurance expiry date						xx/xx/xx
Cost of inventory is calculated on same methodology used in the latest Inventory Valuation						Yes / No
13 week cash flow forecast attached						Yes / No
Weekly sales data provided						Yes / No
Screenshot of Bank Accounts						Yes / No
All other supporting information has been provided						Yes / No
I certify that the information contained in this Borrowing Base Certificate is true and correct as at the date of this certificate.						
PREPARED BY:	_____					
SIGNED BY:	_____					
TITLE:	_____					
KEY						

SIGNATURES

THE COMPANY

MIP HOLDINGS LTD

By: [REDACTED]

Address: [REDACTED]

Fax: N/A

THE ORIGINAL BORROWER

MIP HOLDINGS LTD

By: [REDACTED]

Address: [REDACTED]

Fax: N/A

THE ORIGINAL GUARANTORS

MIP HOLDINGS LTD

By: [REDACTED]

Address: [REDACTED]

Fax: N/A

THE ARRANGERS

1903 PARTNERS, LLC

By: [REDACTED]

Address: [REDACTED]

Fax: N/A

Attention: [REDACTED]

AURELIUS FINANCE COMPANY LIMITED

By: [REDACTED]

Address: [REDACTED]

Fax: N/A

Attention: [REDACTED]

THE ORIGINAL LENDERS

1903 PARTNERS, LLC

By:



Address:



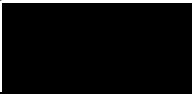
Fax: N/A

Attention:



AURELIUS FINANCE COMPANY LIMITED

By:



Address:



Fax: N/A

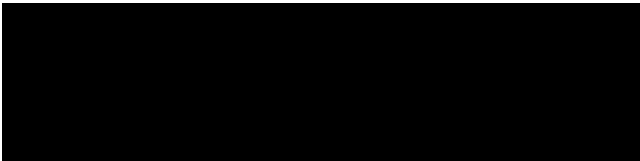
Attention:



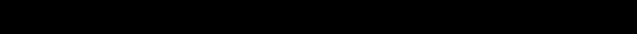
THE AGENT

GB EUROPE MANAGEMENT SERVICES LIMITED

By:



Address:



Fax: N/A

Attention:



THE SECURITY AGENT

GB EUROPE MANAGEMENT SERVICES LIMITED

By:



Address:



Fax: N/A

Attention:

