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| FIELDLINK NV  arranged by  ABN AMRO BANK N.V., ING BELGIUM SA/NV and KBC Bank nv  as BOOKRUNNING Mandated Lead Arrangers  and  ABN AMRO BANK N.V.  acting as Agent  and  ING BANK N.V. acting as Security Agent | | | |
|  | SENIOR FACILITY AGREEMENT | |  |

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**THIS AGREEMENT** is dated 14 November 2013 and made between:

* 1. **FIELDLINK NV,** a Belgian company with its registered office at Strijbroek 10, 2860 Sint-Katelijne-Waver, Belgium, enterprise number 847,600,648 RPR/RPM Mechelen (the "**Parent**");
  2. **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original borrowers (the "**Original Borrowers**");
  3. **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with the Parent, the "**Original Guarantors**");
  4. **ABN AMRO BANK N.V.**, **ING BELGIUM SA/NV** and **KBC BANK NV** as bookrunning mandated lead arrangers (whether acting individually or together the "**Arranger**");
  5. **KBC BANK NV** as documentation agent (the "**Documentation Agent**");
  6. **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
  7. **THE ENTITIES** listed in Part III of Schedule 1 (*The Original Parties)* as hedge counterparties (the "**Original Hedge Counterparties**");
  8. **ABN AMRO BANK N.V.** as agent of the other Finance Parties (the "**Agent**");
  9. **ING BANK N.V.** as security agent for the Secured Parties (the "**Security Agent**").

**IT IS AGREED** as follows:

SECTION 1

INTERPRETATION

1. Definitions and Interpretation
   1. Definitions

In this Agreement and its Schedules (other than Schedule 16 (*Restrictive covenants*) except to the extent provided for therein):

1. "**Acceptable Bank**" means:
   1. 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 A3 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
   2. any other bank or financial institution approved by the Agent.
2. "**Acceding Accordion Lender**" has the meaning given to it in Clause 27.10 (*Acceding Accordion Lenders*).
3. "**Accession Deed**" means a document substantially in the form set out in Schedule 8 (*Form of Accession Deed*).
4. "**Accounting Principles**" means IFRS or generally accepted accounting principles in the jurisdiction of incorporation of the relevant member of the Restricted Group.
5. "**Accounting Reference Date**" means 31 December.
6. "**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause 29 (*Changes to the Obligors*).
7. "**Additional Cost Rate**" has the meaning given to that term in Schedule 4 (*Mandatory Cost formula*).
8. "**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 29 (*Changes to the Obligors*).
9. "**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.
10. "**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.
11. "**Agent's Spot Rate of Exchange**" means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the eurozone foreign exchange market at or about 11:00 a.m. on a particular day.
12. "**Agreed Security Principles**" means the principles set out in Schedule 13 (*Agreed Security Principles*).
13. "**Ancillary Commencement Date**" means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period.
14. "**Ancillary Commitment**" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 7 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.
15. "**Ancillary Document**" means each document relating to or evidencing the terms of an Ancillary Facility.
16. "**Ancillary Facility**" means any ancillary facility made available by an Ancillary Lender in accordance with Clause 7 (*Ancillary Facilities*).
17. "**Ancillary Lender**" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 7 (*Ancillary Facilities*).
18. "**Ancillary Outstandings**" means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) in the Base Currency of the following amounts outstanding under that Ancillary Facility:
    1. the principal amount under each overdraft facility and on-demand short term loan facility (net of any Available Credit Balance);
    2. the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
    3. the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

in each case as determined by such Ancillary Lender, acting reasonably in accordance with its normal banking practice and in accordance with the relevant Ancillary Document.

1. "**Annual Financial Statements**" has the meaning given to that term in Clause 23 (*Information Undertakings*).
2. "**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee that constitutes a "Creditor/Creditor Representative Accession Undertaking" under paragraph (b) of the definition in the Intercreditor Agreement.
3. "**Auditors**" means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).
4. "**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Available Credit Balance**" means, in relation to an Ancillary Facility, credit balances on any account of any Borrower of that Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that those credit balances are freely available to be set off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility.

1. "**Availability Period**" means the period from and including the Closing Date to and including the date falling the Month prior to the Termination Date.
2. "**Available Commitment**" means a Lender's Commitment minus (subject as set out below):
   1. the Base Currency Amount of its participation in any outstanding Loans and the Base Currency Amount of the aggregate of its (and its Affiliate's) Ancillary Commitments; and
   2. in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Loans that are due to be made on or before the proposed Utilisation Date and the Base Currency Amount of its (and its Affiliate's) Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation, the following amounts shall not be deducted from that Lender's Commitment:

* + 1. that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
    2. that Lender's (and its Affiliate's) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

1. "**Available Facility**" means the aggregate for the time being of each Lender's Available Commitment.
2. "**Bank Levy**" means (i) the United Kingdom Tax known as "the bank levy" introduced by Finance Act 2011, (ii) the French Tax under Article 235 ter ZE of the French tax code (*Code Général des Impôts*), (iii) the German special contribution under the German Restructuring Fund Act and ordinance (*Bankenabgabe*), (iv) the Netherlands bank levy as set out in the bank levy act (*Wet bankenbelasting*) together with (v) anysimilar Tax levied or imposed in any other jurisdiction, in each case as existing at the date of this Agreement or as formally announced (though not yet enacted into law) as at the date of this Agreement.
3. "**Base Currency**" means euro.
4. "**Base Currency Amount**" means:
   1. in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three (3) Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement); and
   2. in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to Clause 7.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three (3) Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement),

as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility.

1. "**Belgian Obligor**" means an Obligor incorporated in or established in Belgium and, for the purpose of Clause 16 (*Tax gross up and indemnities*) an Obligor resident in Belgium for Tax purposes or having a permanent establishment in Belgium to which the advances under the Finance Documents are effectively connected.
2. "**Borrower**" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 29 (*Changes to the Obligors*) and in respect of an Ancillary Facility only, any Obligor which becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to Clause 7.9 (*Obligors as Borrowers*).
3. "**Break Costs**" means the amount (if any) by which:
   1. the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

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

1. "**Budget**" means:
   1. in relation to the period beginning on 1 January 2013 and ending on 31 December 2013, the most recent budget delivered to the lenders under the Existing Facility Agreement; and
   2. in relation to any other period, any budget delivered by the Parent to the Agent in respect of that period pursuant to Clause 23.4 (*Budget*).
2. "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Brussels and Amsterdam and:
   1. (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
   2. (in relation to any date for payment or purchase of euro) any TARGET Day.
3. "**Change of Control**" means the occurrence of any of the following:
   1. the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries taken as a whole to any Person (including any “person” as that term is used in Section 13(d)(3) of the U.S. Exchange Act) other than to Permitted Holder(s);
   2. the adoption of a plan relating to the liquidation or dissolution of the Parent and its Subsidiaries other than in a transaction which complies with Clause 6 (*Merger, consolidation or sale of assets*) of Schedule 16 (*Restrictive covenants*);
   3. prior to the consummation of an Initial Public Offering, the consummation of any transaction the result of which is that any Person (including any “person” as defined above) other than the Permitted Holders becomes the Beneficial Owner, directly or indirectly, of more than 50% of the issued and outstanding Voting Stock of the Parent measured by voting power rather than number of shares, whether as a result of issuance of securities of the Parent, amalgamation, consolidation, liquidation or dissolution of the Parent or otherwise;
   4. following the consummation of an Initial Public Offering, the consummation of any transaction the result of which is that any Person (including any “person” as defined above) other than the Permitted Holders becomes the Beneficial Owner, directly or indirectly, of more than 35% of the issued and outstanding Voting Stock of the Parent measured by voting power rather than number of shares, whether as a result of issuance of securities of the Parent, amalgamation, consolidation, liquidation or dissolution of the Parent or otherwise, and Permitted Holders Beneficially Own, directly and indirectly, in the aggregate a lesser percentage of the issued and outstanding Voting Stock of the Parent, measured by voting power rather than number of shares, than such other Person;
   5. the Parent ceases to own, directly or indirectly, 100% of the outstanding Voting Stock of the Issuer (except directors’ qualifying shares and any de minimis number of shares held by other Persons to the extent required by applicable law to be held by a Person other than by the Parent or a Subsidiary of its Parent); or
   6. Hein Deprez and his affiliates (or any group of which Hein Deprez and his affiliates form a part, or in or with which Hein Deprez and his affiliates act in concert) fail to control the Parent.

For the purposes of paragraphs (a) through (e) of this definition, terms not otherwise defined in this Clause 1.1 shall have the meaning given to them in Part II of Schedule 16 (*Restrictive covenants*). For the purposes of paragraph (f) of this definition, "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate control over a specified person, "**affiliate**" means, in respect of any specified person, any other person directly or indirectly controlled by such specified person, and "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a specified person, whether through the ownership of voting securities, by agreement or otherwise.

1. "**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.
2. "**Closing Date**" means the date on which the Agent notifies the Parent and the Lenders as required under Clause 4.1 (*Initial conditions precedent*).
3. "**Code**" means the US Internal Revenue Code of 1986.
4. "**Commitment**" means:
   1. in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Accordion feature – Increase of Facility*) or Clause 2.3 (*Increase*); and
   2. in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Accordion feature – Increase of Facility*) or Clause 2.3 (*Increase*),

to the extent not cancelled, reduced or transferred by it under this Agreement.

1. "**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 10 (*Form of Compliance Certificate*).
2. **"Confidential Information**" means all information relating to the Parent, any Obligor, the Group, the Finance Documents 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 the Facility from either:
   1. any member of the Group or any of its advisers; or
   2. 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:

* + 1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 40 (*Confidentiality*); or
    2. is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
    3. 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.

1. "**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 11 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Agent.
2. "**CTA**" means the Corporation Tax Act 2009.
3. "**Cure Amount**" means the cash proceeds received directly or indirectly by the Parent from any New Equity or New Shareholder Debt for the purposes of Clause 24.4 (*Equity cure*).
4. "**Debt Purchase Transaction**" means, in relation to a person, a transaction where such person:
   1. purchases by way of assignment or transfer;
   2. enters into any sub-participation in respect of; or
   3. enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

1. "**Default**" means an Event of Default or any event or circumstance specified in Clause 26 (*Events of Default*) 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.
2. "**Defaulting Lender**" means any Lender (other than a Lender which is an Investor Affiliate):
   1. which has failed to make its participation in a Loan available or has notified the Agent or the Parent (which has notified the Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*);
   2. which has otherwise rescinded or repudiated a Finance Document; or
   3. with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph ‎(a) above:

* + 1. its failure to pay is caused by:
       1. administrative or technical error; or
       2. a Disruption Event; and

payment is made within five (5) Business Days of its due date; or

* + 1. the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

1. "**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.
2. "**Designated Gross Amount**" means the amount notified by the Parent to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Gross Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.
3. "**Designated Net Amount**" means the amount notified by the Parent to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Net Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.
4. "**Disruption Event**" means either or both of:
   1. 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
   2. 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:
      1. from performing its payment obligations under the Finance Documents; or
      2. from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

1. "**Dormant Subsidiary**" means a member of the Restricted 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 EUR 10,000 or more (or its equivalent in the currency of the relevant Dormant Subsidiary's Original Jurisdiction at the Agent's Spot Rate of Exchange as at the date of this Agreement).
2. "**Dutch Civil Code**" means the Dutch Civil Code (*Burgelijk Wetboek*).

"**Dutch Obligor**" means an Obligor incorporated or established in the Netherlands and for the purposes of Clause 16 (*Tax gross up and indemnities*) an Obligor resident in the Netherlands for Tax purposes or having a permanent establishment in the Netherlands to which the advances under the Finance Documents are effectively connected.

1. "**EBITDA**" has the meaning given to such term in Clause 24.1 (*Financial definitions*).
2. "**Environment**" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
   1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
   2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
   3. land (including, without limitation, land under water).
3. "**Environmental Claim**" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.
4. "**Environmental Law**" means any applicable law or regulation which relates to:
   1. the pollution or protection of the Environment;
   2. the conditions of the workplace relating to health and safety; or
   3. 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,

and are binding at any time on any member of the Restricted Group.

1. "**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 Restricted Group conducted on or from the properties owned or used by any member of the Restricted Group.
2. "**EURIBOR**" means, in relation to any Loan in euro:
   1. the applicable Screen Rate;
   2. (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
   3. if:
      1. no Screen Rate is available for the Interest Period of that Loan; and
      2. it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for euro and for a period equal in length to the Interest Period of that Loan and, if any such rate is below zero, EURIBOR will be deemed to be zero.

1. "**Event of Default**" means any event or circumstance specified as such in Clause 26 (*Events of Default*).
2. "**Existing Facilities Agreement**" means the facility agreement originally dated 30 May 2006 (as amended from time to time) between, amongst others, the Parent and ABN AMRO BANK N.V. as agent and security agent.
3. "**Existing Hedging Arrangements**" means interest rate swap agreements, interest rate cap agreements, interest rate collar agreements or other agreements or arrangements designated to manage interest rates or interest rate risk originally entered into in respect of the Existing Facilities Agreement (or renewals, but without extensions of maturity thereof).
4. "**Facility**" means the revolving credit facility made available under this Agreement as described in Clause 2.1 (*The Facility*).
5. "**Facility Office**" means:
   1. in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
   2. in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.
6. "**FATCA**" means:
   1. sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
   2. any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
   3. any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
7. "**FATCA Application Date**" means:
   1. 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;
   2. in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
   3. in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,

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

1. "**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.
2. "**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.

"**FATCA Protected Lender**" means any Lender irrevocably designated as a "FATCA Protected Lender" by the Parent by notice to that Lender and the Agent at least six months prior to the earliest FATCA Application Date for a payment by a Party to that Lender (or to the Agent for the account of that Lender).

1. "**Fee Letter**" means:
   1. any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Agent and the Parent) setting out any of the fees referred to in Clause 15 (*Fees*); and
   2. any agreement setting out fees payable to a Finance Party referred to in paragraph (f) of Clause 2.2 (*Increase*), or Clause 15.5 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.
2. "**Finance Document**" means this Agreement, the Mandate Letter, any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Parent **provided that** where the term "Finance Document" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement a Hedging Agreement shall be a Finance Document only for the purposes of:
   1. the definition of "Material Adverse Effect";
   2. the definition of "Transaction Document";
   3. the definition of "Transaction Security Document";
   4. paragraph (a)(iv) of Clause 1.2 (*Construction*);
   5. Clause 21 (*Guarantee and Indemnity*); and
   6. Clause 26 (*Events of Default*) (other than paragraph (b) of Clause 26.15 (*Repudiation and rescission of agreements*) and Clause 26.18 (*Acceleration*)).
3. "**Finance Party**" means the Agent, the Arranger, the Security Agent, a Lender, a Hedge Counterparty or any Ancillary Lender **provided that** where the term "Finance Party" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement a Hedge Counterparty shall be a Finance Party only for the purposes of:
   1. the definition of "Secured Parties";
   2. paragraph (a)(i) of Clause 1.2 (*Construction*);
   3. paragraph (c) of the definition of "Material Adverse Effect";
   4. Clause 21 (*Guarantee and Indemnity*); and
   5. Clause 31 (*Conduct of Business by the Finance Parties*).
4. "**Financial Indebtedness**" means any indebtedness for or in respect of:
   1. moneys borrowed and debit balances at banks or other financial institutions;
   2. any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
   3. any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
   4. the amount of any liability in respect of finance leases treated as a finance or capital lease under IFRS;
   5. receivables sold or discounted (other than any Receivables Assets);
   6. any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
   7. any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
   8. 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);
   9. any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than forty-five (45) days after the date of supply;
   10. any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
   11. without double counting, the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.
5. "**Financial Model**" means the financial model provided to the Arranger dated 25 September 2013.
6. "**Financial Quarter**" has the meaning given to that term in Clause 24.1 (*Financial definitions*).
7. "**Financial Year**" has the meaning given to that term in Clause 24.1 (*Financial definitions*).
8. "**French Obligor**" means an Obligor incorporated or established in France and, for the purpose of Clause 14 (*Tax gross up and indemnities*) an Obligor resident in France for Tax purposes or having a permanent establishment in France to which the advances under the Finance Documents are effectively connected.
9. "**Fruitpartners Group**" means Univeg Fruitpartners B.V. and each of its direct and indirect Subsidiaries, together with (to the extent they are not Subsidiaries of Univeg Fruitpartners B.V.), Univeg Katope Brasil Ltda and Univeg Katope Peru SAC.
10. "**Funds Flow Statement**" means a funds flow statement in agreed form.

"**German Obligor**" means an Obligor incorporated or established in Germany and for the purpose of Clause 16 (*Tax gross up and indemnities*) an Obligor resident in Germany for Tax purposes or having a permanent establishment in Germany to which the advances under the Finance Documents are effectively connected.

"**Gross Outstandings**" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft but calculated on the basis that the words "(net of any Available Credit Balance)" in paragraph (a) of the definition of "Ancillary Outstandings" were deleted.

1. "**Group**" means the Parent and each of its Subsidiaries for the time being.
2. "**Group Structure Chart**" means the Group's structure chart delivered to the Agent pursuant to Part I of Schedule 2 (*Conditions precedent*).
3. "**Guarantor**" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 29 (*Changes to the Obligors*).
4. "**Hedge Counterparty**" means:
   1. any Original Hedge Counterparty; and
   2. any entity which has become a Party as a Hedge Counterparty in accordance with Clause 27.8 (*Accession of Hedge Counterparties*),

which, in each case, is or has become a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement.

1. "**Hedging Agreement**" means the Existing Hedging Arrangements entered into with the Arrangers or any party that becomes a Lender on or prior to the Syndication Date, together with any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by the Borrower and a Hedge Counterparty for the purpose of hedging interest rate liabilities in relation to the Facility.
2. "**Holding Account**" means an account:
   1. held in Belgium or the Netherlands by the Parent with the Agent or Security Agent;
   2. identified in a letter between the Parent and the Agent as a Holding Account; and
   3. subject to Transaction Security in favour of the Security Agent for the benefit of the Secured Parties (as defined in the Intercreditor Agreement),
3. (as the same may be redesignated, substituted or replaced from time to time).
4. "**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.
5. "**IFRS**" means the International Financial Reporting Standards promulgated by the International Accounting Standards Board or any successor board or agency as endorsed from time to time by the European Union or any variation thereof with which the Parent or its Restricted Subsidiaries are, or may be, required to comply. Except as otherwise set forth in this Agreement, all ratios and calculations based on IFRS contained in this Agreement shall be computed in accordance with IFRS as in effect from time to time.
6. "**Impaired Agent**" means the Agent at any time when:
   1. 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;
   2. the Agent otherwise rescinds or repudiates a Finance Document;
   3. (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of "Defaulting Lender"; or
   4. an Insolvency Event has occurred and is continuing with respect to the Agent,

unless, in the case of paragraph (a) above:

* + 1. its failure to pay is caused by:
       1. administrative or technical error; or
       2. a Disruption Event; and

payment is made within five (5) Business Days of its due date; or

* + 1. the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

1. "**Increase Confirmation**" means a confirmation substantially in the form set out in Schedule 14 (*Form of Increase Confirmation*).
2. "**Increase Lender**" has the meaning given to that term in Clause 2.3 (*Increase*).
3. "**Information Package**" means the Financial Model and the Rating Agency Presentation.
4. "**Insolvency Event**" in relation to an entity means that the entity:
   1. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
   2. 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;
   3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
   4. 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;
   5. 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:
      1. 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
      2. is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof;
   6. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
   7. 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);
   8. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
   9. 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 ‎(h) above; or
   10. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
5. "**Intellectual Property**" means:
   1. any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may on or after the date of this Agreement subsist), whether registered or unregistered; and
   2. the benefit of all applications and rights to use such assets of each member of the Restricted Group (which may on or after the date of this Agreement subsist).
6. "**Intercreditor Agreement**" means the intercreditor agreement dated on or about the same date as this Agreement and made between, among others, the Parent, Univeg Holding B.V. as Senior Note Issuer, the Agent, Citibank N.A., London Branch as the Senior Note Trustee, the Security Agent, the original hedge counterparties named therein and the companies listed therein as Original Debtors (each as defined therein).
7. "**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 13 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 12.3 (*Default interest*).
8. "**Interpolated Screen Rate**" means, in relation to LIBOR or EURIBOR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:
   1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
   2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

1. "**Investor Affiliate**" means each Investor, each of its Affiliates, any trust of which an Investor or any of its Affiliates is a trustee, any partnership of which an Investor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, an Investor or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least 3 months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by an Investor or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute an Investor Affiliate.
2. "**Investors**" means Deprez Holding NV, Green Valley S.A., Sujajo Investments S.A. and Mr Marc Ooms and their or any subsequent successors or assigns or transferees.
3. "**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.
4. "**Legal Opinion**" means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 29 (*Changes to the Obligors*).
5. "**Legal Reservations**" means:
   1. 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;
   2. the time barring of claims, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
   3. similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
   4. any other matters which are set out as qualifications or reservations as to matters of law in the Legal Opinions.
6. "**Lender**" means:
   1. any Original Lender; and
   2. any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Accordion feature – Increase of Facility*), Clause 2.3 (*Increase*) or Clause 27 (*Changes to the Lenders*),

which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

1. "**Lender Accordion Accession Agreement**" means a document substantially in the form set out in Part II of Schedule 7 (*Accordion Documentation*).

"**Lender Accordion Increase Certificate**" means a document substantially in the form set out in Part I of Schedule 7 (*Accordion Documentation*).

1. "**LIBOR**" means, in relation to any Loan:
   1. the applicable Screen Rate;
   2. (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
   3. if:
      1. no Screen Rate is available for the currency of that Loan; or
      2. no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and, if any such rate is below zero, LIBOR will be deemed to be zero.

1. "**LMA**" means the Loan Market Association.
2. "**Loan**" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.
3. "**Majority Lenders**" means a Lender or Lenders whose Commitments aggregate more than 662/3 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 662/3 per cent. of the Total Commitments immediately prior to that reduction).

"**Mandate Letter**" means the letter dated 17 October 2013 between the Arranger and the Parent.

1. "**Mandatory Cost**" means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost Formula*).
2. "**Margin**" means:
   1. in relation to any Loan in the Base Currency, 3.60 per cent. per annum; and
   2. in relation to any Unpaid Sum the rate per annum specified above,

but if:

* 1. no Event of Default has occurred and is continuing;
  2. a period of at least three (3) Months has expired since the Closing Date; and
  3. the ratio of Total Net Debt to EBITDA in respect of the most recently completed Relevant Period is within a range set out below,

then the Margin for each Loan will be the percentage per annum set out below in the column opposite that range:

| Ratio of Total Net Debt to EBITDA | Margin  % p.a. |
| --- | --- |
| Greater than or equal to 4.25:1 | 3.75 |
| Less than 4.25:1 but greater than or equal to 4.00:1 | 3.60 |
| Less than 4.00:1 but greater than or equal to 3.50:1 | 3.40 |
| Less than 3.50:1 but greater than or equal to 3.00:1 | 3.20 |
| Less than 3.00:1 but greater than or equal to 2.50:1 | 3.00 |
| Less than 2.50:1 | 2.75 |

The Margin for any Loan to be made in an Optional Currency shall be subject to the applicable Margin Premium.

However:

* + 1. any increase or decrease in the Margin for a Loan shall take effect on the date (the "**reset date**") which is five (5) Business Days after receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 23.2 (*Provision and contents of Compliance Certificate*);
    2. if, following receipt by the Agent of the Compliance Certificate related to the relevant Annual Financial Statements, that Compliance Certificate does not confirm the basis for a reduced Margin, then paragraph ‎(b) of Clause 12.2 (*Payment of interest*) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised ratio of Total Net Debt to EBITDA calculated using the figures in that Compliance Certificate;
    3. while an Event of Default is continuing, the Margin for each Loan shall be the highest percentage per annum set out above; and
    4. for the purpose of determining the Margin, Total Net Debt, EBITDA and Relevant Period shall be determined in accordance with Clause 24.1 (*Financial definitions*).

1. "**Margin Premium**" means, in relation to any Loan to be made in an Optional Currency, an additional amount of 0.30 per cent. per annum on top of the then current Margin.
2. "**Material Adverse Effect**" means a material adverse effect on:
   1. the business, assets or financial condition of the Restricted Group taken as a whole; or
   2. the ability of the Obligors (taken as a whole) to perform their material obligations (including their payment obligations and obligations under Clause 24.2 (*Financial condition*)) under the Finance Documents; or
   3. 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.
3. "**Material Company**" means, at any time:
   1. an Obligor;
   2. a member of the Restricted Group whose shares are subject to Transaction Security; and
   3. a Restricted Subsidiary of the Parent which has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA, representing 5 per cent. or more of EBITDA, calculated on a consolidated basis,

but excluding at all times any member of the Fruitpartners Group.

Compliance with the conditions set out in paragraph ‎(c)‎ above shall be determined by reference to the most recent Compliance Certificate supplied by the Parent and/or the latest financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group.

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

1. "**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:
   1. (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
   2. 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
   3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

"**Multi-account Overdraft**" means an Ancillary Facility which is an overdraft facility comprising more than one account.

"**Net Outstandings**" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft.

1. "**New Equity**" means the proceeds of a subscription for shares in the Parent or any other form of equity contribution to the Parent which, in each case, is not redeemable at the option of the holder prior to the date falling five years and one month after the date of this Agreement or, if earlier, the date of repayment and cancellation in full of all amounts due under this Agreement.
2. "**New Lender**" has the meaning given to that term in Clause 27 (*Changes to the Lenders*).
3. "**New Shareholder Debt**" means any loan to the Parent by any Holding Company of the Parent or any other direct or indirect equity investor in the Parent or any of their Affiliates (other than a member of the Group) which is subordinated to the Facility on terms reasonably satisfactory to the Agent (provided that if such subordination is pursuant to the Intercreditor Agreement, it shall be considered to be satisfactory).
4. "**Non-Consenting Lender**" has the meaning given to that term in Clause 39.5 (*Replacement of Lender*).
5. "**Non-Cooperative Jurisdiction**" means:
   1. with respect to a Belgian Obligor:
      1. a jurisdiction within the meaning of article 307 §1, a) of the Belgian Income Tax Code 1992 that is considered by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes as a jurisdiction not effectively and substantially implementing the OECD standard for exchange of information; or
      2. jurisdiction listed in Article 179 of the Royal Decree implementing the Belgian Income Tax Code 1992 as a jurisdiction without any tax system or having a nominal corporate income tax rate not exceeding 10% (as such list may be amended from time to time); and
   2. with respect to a French Obligor, a non-cooperative state or territory (*Etat ou territoire non coopératif*) as set out in the list referred to in Article 238-0 A of the French tax code (*Code général des impôts*), as such list may be amended from time to time; and
   3. with respect to a Spanish Obligor, a country or territory classified as a tax haven pursuant to the Spanish Royal Decree 1080/1991, dated 5 July 1991, as such list may be amended from time to time.
6. "**Notifiable Debt Purchase Transaction**" has the meaning given to that term in paragraph ‎(b) of Clause 28.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*).
7. "**Obligor**" means a Borrower or a Guarantor.
8. "**Obligors' Agent**" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.5 (*Obligors' Agent*).
9. "**Optional Currency**" means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).
10. "**Original Financial Statements**" means:
    1. in relation to the Parent, the audited financial statements of the Parent (or any predecessor entity) for the Financial Year ended 31 December 2012; and
    2. in relation to each Original Borrower, its audited financial statements for its Financial Year ended 31 December 2012; and
    3. in relation to any other Borrower, the audited financial statements of such Borrower (or any predecessor entity) delivered to the Agent as required by Clause 29 (*Changes to the Obligors*).
11. "**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).
12. "**Original Obligor**" means an Original Borrower or an Original Guarantor.
13. "**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.
14. "**Party**" means a party to this Agreement.
15. "**Quarter Date**" has the meaning given to it in Clause 24.1 (*Financial definitions*).
16. "**Qualified Receivables Financing**" has the meaning given to it in Part II of Schedule 16 (*Restrictive covenants*).
17. "**Qualifying Lender**" has the meaning given to it in Clause 16 (*Tax gross up and indemnities*).
18. "**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:
    1. (if the currency is sterling) the first day of that period;
    2. (if the currency is euro) two TARGET Days before the first day of that period; or
    3. (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

1. "**Rating Agency Presentation**" means the rating agency presentation delivered to the rating agencies by the Parent dated 7 November 2013.
2. "**Receivables Assets**" has the meaning given to it in Part II of Schedule 16 (*Restrictive covenants*).
3. "**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.
4. "**Reference Banks**" means, in relation to LIBOR the principal London offices of ABN AMRO Bank N.V., ING Bank N.V. and KBC Bank NV and in relation to EURIBOR, the principal office in Amsterdam of ABN AMRO Bank N.V. and in Brussels of ING Belgium SA/NV and KBC Bank NV or such other banks as may be appointed by the Agent in consultation with the Borrower.
5. "**Reference Bank Rate**" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:
   1. in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market; or
   2. in relation to EURIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market,
6. in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.
7. "**Relevant Interbank Market**" means in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.
8. "**Relevant Jurisdiction**" means, in relation to an Obligor:
   1. its Original Jurisdiction;
   2. any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
   3. any jurisdiction where it conducts its business; and
   4. the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.
9. "**Relevant Period**" has the meaning given to that term in Clause 24.1 (*Financial definitions*).
10. "**Repeating Representations**" means each of the representations set out in Clause 22.2 (*Status*) to Clause 22.7 (*Governing law and enforcement*), Clause 22.11 (*No default*), paragraph (e) of Clause 22.13 (*No misleading information*), Clause 22.14 (*Original Financial Statements*), Clause 22.21 (*Ranking*) to Clause 22.23 (*Legal and beneficial ownership*), Clause 22.28 (*Dormant Subsidiaries*), Clause 22.33 (*No financial assistance*), and Clause 22.35 (*No cluster bombs or anti-personnel mines*).
11. "**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
12. "**Resignation Letter**" means a letter substantially in the form set out in Schedule 9 (*Form of Resignation Letter*).
13. "**Restricted Country**" means a country or territory which is subject to any Sanctions.
14. "**Restricted Group**" means the Group excluding the Unrestricted Subsidiaries.
15. "**Restricted Person**" means a person:
    1. located, domiciled, resident, organised under the laws of or incorporated in a Restricted Country;
    2. who is the government or owned or controlled by the government of a Restricted Country or by a party located, domiciled, resident, organised under the laws of or incorporated in a Restricted Country;
    3. subject to any Sanction; or
    4. named on any Sanctions List; or
    5. to the best of any Obligor’s knowledge and belief, acting or purporting to act on behalf of any of the persons listed in paragraphs (a), (b), (c) or (d) above.
16. "**Restricted Subsidiary**" means any Subsidiary of the Parent that is not an Unrestricted Subsidiary.
17. "**Rollover Loan**" means one or more Loans:
    1. made or to be made on the same day that a maturing Loan is due to be repaid;
    2. the aggregate amount of which is equal to or less than the amount of the maturing Loan;
    3. in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 6.2 (*Unavailability of a currency*)); and
    4. made or to be made to the same Borrower for the purpose of refinancing that maturing Loan.
18. "**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by:
    1. the United Nations Security Council; or
    2. the European Union or any of its constituent countries.
19. "**Sanctions List**" means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by:
    1. the United Nations Security Council; or
    2. the European Union or any of its constituent countries,
20. each as amended, supplemented or substituted from time to time.
21. "**Screen Rate**" means:
    1. in relation to LIBOR, the London interbank offered rate administered by the British Bankers Association (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate); and
    2. in relation to EURIBOR, the euro interbank offered rate administered by the Banking Federation of the European Union (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate),
22. or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Parent.
23. "**Secured Parties**" means each Finance Party from time to time party to this Agreement, any Receiver or Delegate.
24. "**Security**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement or any lease in the nature thereof.
25. "**Senior Note Documents**" has the meaning given to that term in the Intercreditor Agreement.
26. "**Senior Note Indenture**" has the meaning given to that term in the Intercreditor Agreement.
27. "**Senior Notes**" has the meaning given to that term in the Intercreditor Agreement.
28. "**Separate Loan**" has the meaning given to that term in Clause 8.1 (*Repayment of Loans*).
29. "**Shareholder Loan**" means:
    1. the EUR 21,500,000 subordinated loan provided by the Investors to the Parent; and
    2. any other subordinated loan which may be made available to the Parent by the Investors or De Weide Blik NV.
30. "**Spanish Obligor**" means an Obligor incorporated or established in Spain and for the purpose of Clause 16 (*Tax gross up and indemnities*) an Obligor resident in Spain for Tax purposes or having a permanent establishment in Spain to which the advances under the Finance Documents are effectively connected.
31. "**Specified Time**" means a time determined in accordance with Schedule 12 (*Timetables*).
32. "**Subsidiary**" means, with respect to any specified person:
    1. any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock (as such term is defined in Part II of Schedule 16 (*Restrictive covenants*)entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that person or one or more of the other Subsidiaries of that person (or a combination thereof); and
    2. any partnership or limited liability company of which (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of that person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (b) such person or any Subsidiary of such person is a controlling general partner or otherwise controls such entity.
33. "**Syndication Date**" means the day on which the Arranger confirms that the primary syndication of the Facility has been completed.
34. "**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.
35. "**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.
36. "**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).
37. "**Termination Date**" means the date falling five (5) years after the Closing Date.
38. "**Total Commitments**" means the aggregate of the Commitments, being EUR 90,000,000 at the date of this Agreement.
39. "**Total Net Debt**" has the meaning given to such term in Clause 24.1 (*Financial definitions*).
40. "**Transaction Documents**" means the Finance Documents and the Senior Note Documents.
41. "**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent and/or the Secured Parties (or any of them) pursuant to the Transaction Security Documents.
42. "**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in Part III of Schedule 2 (*Conditions precedent*) together with any other document constituting a "Transaction Security Document" under paragraph (b) of that definition in the Intercreditor Agreement.
43. "**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Parent.
44. "**Transfer Date**" means, in relation to an assignment or a transfer, the later of:
    1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
    2. the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.
45. "**Treasury Transactions**" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.
46. "**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.
47. "**Unrestricted Subsidiary**" has the meaning given to it in Schedule 16 (*Restrictive covenants*).
48. "**Utilisation**" means a utilisation of the Facility.
49. "**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.
50. "**Utilisation Request**" means a notice substantially in the form set out in Schedule 3 (*Requests*).
51. "**VAT**" means:
    1. 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
    2. any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.
    3. Construction
       1. Unless a contrary indication appears a reference in this Agreement to:
          1. the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Hedge Counterparty**", 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;
          2. a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;
          3. "**assets**" includes present and future properties, revenues and rights of every description;
          4. 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;
          5. a "**group of Lenders**" includes all the Lenders;
          6. "**guarantee**" means (other than in Clause 21 (*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;
          7. "**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;
          8. a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
          9. 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;
          10. a provision of law is a reference to that provision as amended or re-enacted; and
          11. a time of day is a reference to London time.
       2. Section, Clause and Schedule headings are for ease of reference only.
       3. 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.
       4. A Borrower providing "**cash cover**" for an Ancillary Facility means a Borrower paying an amount in the currency of the Ancillary Facility to an interest-bearing account in the name of the Borrower and the following conditions being met:
          1. the account is with the Ancillary Lender for which that cash cover is to be provided;
          2. until no amount is or may be outstanding under that Ancillary Facility, withdrawals from the account may only be made to pay the relevant Finance Party amounts due and payable to it under this Agreement in respect of that Ancillary Facility; and
          3. the Borrower has executed a security document over that account, in form and substance satisfactory to the Finance Party with which that account is held, creating a first ranking security interest over that account.
       5. A Default is "**continuing**" if it has not been remedied or waived.
       6. A Borrower "**repaying**" or "**prepaying**" Ancillary Outstandings means:
          1. that Borrower providing cash cover in respect of the Ancillary Outstandings;
          2. the maximum amount payable under the Ancillary Facility being reduced or cancelled in accordance with its terms; or
          3. the Ancillary Lender being satisfied that it has no further liability under that Ancillary Facility,

and the amount by which Ancillary Outstandings are repaid or prepaid under paragraphs (i) and (ii) above is the amount of the relevant cash cover, reduction or cancellation.

* + 1. An amount borrowed includes any amount utilised under an Ancillary Facility.
    2. The Schedules (in each case as amended, modified or supplemented from time to time) form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules.
  1. Dutch terms

In this Agreement, where it relates to a Dutch entity, a reference to:

* + 1. a necessary action to authorise, where applicable, includes without limitation:
       1. any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
       2. obtaining unconditional positive advice (*advies*) from each competent works council;
    2. a winding-up, administration or dissolution includes a Dutch entity being:
       1. declared bankrupt (*failliet verklaard*);
       2. dissolved (*ontbonden*);
    3. a moratorium includes *surséance van betaling* and granted a moratorium includes *surseance verleend*;
    4. any "step" or "procedure" taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Article 36(2) of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
    5. a liquidator includes a *curator*;
    6. an administrator includes a *bewindvoerder*;
    7. a receiver or an administrative receiver does not include a *curator* or *bewindvoerder*;
    8. an attachment includes a *beslag*; and
    9. "financial assistance" includes any act contemplated by Section 2:98c of the Dutch Civil Code;
  1. Belgian terms

In this Agreement, where it relates to a Belgian entity, a reference to:

* + 1. a winding up, administration or dissolution includes *vereffening, ontbinding, faillissement* and *sluiting van een onderneming*;
    2. insolvency includes *gerechtelijke reorganisatie* and *faillissement*;
    3. a trustee in bankruptcy, administrator or similar officer inclues a curator, *vereffenaar, voorlopig bewindvoerder, gedelegeerd rechter* and *sekwerster*;
    4. an attachment includes a *beslag*; and
    5. "financial assistance" includes any act contemplated by Section 629 of the Belgian Company Code.
  1. French terms

In this Agreement, where it relates to a French entity, a reference to:

* + 1. "**acting in concert**" has the meaning given in article L.233-10 of the French *Code de commerce*;
    2. "**control**" has the meaning given in article L.233-3 of the French *Code de commerce* ;
    3. "**financial assistance**" has the meaning given in article L.225-216 of the *French Code de commerce*
    4. "**gross negligence**" means "*faute lourde*" ;
    5. a "**guarantee**" includes any "*cautionnement*", "*aval*" and any "*garantie*" which is independent from the debt to which it relates ;
    6. "**merger**" includes any "*fusion*" implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de commerce* ;
    7. a "**reconstruction**" includes, in relation to any company, any contribution of part of its business in consideration of shares (*apport partiel d'actifs*) and any demerger (*scission*) implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de commerce* ;
    8. a "**security interest**" includes any type of security (*sûreté réelle*), transfer or assignment by way of security and *fiducie-sûreté* ;
    9. "**wilful misconduct**" means "*dol*".
    10. a winding-up, administration or dissolution includes a *redressement judiciaire*, a *cession totale de l'entreprise*, a *liquidation judiciaire*, a *sauvegarde* or a *sauvegarde financière accélérée* under articles L. 620-1 to L. 644-6 of the French Commercial Code;
    11. a composition, assignment or similar arrangement with any creditor includes a conciliation or a *mandat ad hoc* under articles L. 611-3 to L. 611-15 of the French Commercial Code;
    12. a compulsory manager, receiver or administrator includes an *administrateur judiciaire*, a *mandataire ad hoc,* a *conciliateur*, a *mandataire liquidateur* or any other person appointed as a result of any proceedings described in paragraphs (a) and (b) above;
    13. a person being unable to pay its debts includes that person being in a state of *cessation des paiements* as defined in article L. 631-1 of the French Commercial Code.
  1. Spanish terms

In this Agreement, where it relates to a Spanish entity, a reference to:

* + 1. an insolvency proceeding includes a *declaración de concurso*, *con independencia de su carácter necesario o voluntario*, (including, with respect to a member of the Group incorporated in Spain, any notice to a competent court pursuant to article 5 bis of the Spanish Insolveny Law and its "*solicitud de inicio de procedimiento solicitud de inicio de procedimento de concurso, auto de declaracion de concurso, convenio judicial o extrajudicial con acreedores and transacción judicial o extrajudicial*");
    2. a winding-up, administration or dissolution includes, without limitation, *disolución*, *liquidación*, *procedimiento concursal* or any other similar proceedings;
    3. a receiver, administrative receiver, administrator or the like includes, without limitation, *administración* *del concurso* or any other person performing the same function;
    4. a composition, compromise, assignment or arrangement with any creditor includes the celebration of a *convenio*;
    5. a matured obligation includes, without limitation, any *crédito líquído vencido y exigible*;
    6. a security interest includes, without limitation, any *prenda*, *hipoteca* and any other *garantía real o personal*, *derecho de retención*, *crédito privilegiado, preminencia en el orden de prelación de créditos* or other transaction having the same effect as each of the foregoing; and
    7. a person being unable to pay its debts includes that person being in a state of *insolvencia* or *concurso*.
  1. Currency Symbols and Definitions

"**$**" and "**dollars**" denote the lawful currency of the United States of America and "**€**", "**EUR**" and "**euro**" denote the single currency of the Participating Member States.

* 1. Third party rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

* 1. Intercreditor Agreement

This Agreement is subject to the terms of the Intercreditor Agreement. In the event of any inconsistency between this Agreement and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

SECTION 2

THE FACILITY

1. The Facility
   1. The Facility
      1. Subject to the terms of this Agreement, the Lenders make available a multicurrency revolving credit facility in an aggregate amount equal to the Total Commitments.
      2. Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Commitment available to any Borrower as an Ancillary Facility up to a maximum aggregate amount of   
         EUR 30,000,000.
   2. Accordion feature - Increase of Facility
      1. So long as no Event of Default has occurred and is continuing and no Event of Default would occur as a result of such increase and subject to the provisions of this Clause ‎2.2, the Parent may, at any time during the period from the Closing Date to the date falling one year before the Termination Date, request, by written notice to the Agent (a "**Request**") (who shall promptly provide a copy of such notice to each Lender), an increase in the Total Commitments by an additional amount which shall be at least EUR 10,000,000, but no more than, when aggregated with any other Additional Commitment Amount requested under this Clause 2.2, EUR 25,000,000(the amount of any such increase, the "**Additional Commitment Amount**").
      2. Each Lender shall have the right for a period of five (5) Business Days following receipt of such notice by the Agent, to register by written notice to the Parent and the Agent (the "**Increase Intention Notice**") its intention (subject to satisfaction of all applicable internal approvals) to increase its Commitment. Each Lender which has so registered its intention to increase its Commitment shall confirm within fifteen (15) Business Days of its Increase Intention Notice that it has received all applicable internal approvals to increase its Commitment in accordance with Clause 27.9 (*Lender Accordion Increase*), by a principal amount which shall be pro rata to the amount its Commitment bears to the Total Commitments at that time.
      3. No Lender (or any successor thereto) shall have any obligations to increase its Commitment or incur any other obligations under this Agreement and the other Finance Documents in relation to such Additional Commitment Amount, and any decision by a Lender to increase its Commitment shall be made in its sole discretion independently from any other Lender.
      4. The Request delivered by the Parent pursuant to paragraph (a) shall set out:
         1. the amount of the Additional Commitment Amount being requested;
         2. the date on which such Additional Commitment Amount is requested to become effective which must be a date falling at least forty-five (45) days after the date of that notice; and
         3. the purpose for which the Additional Commitment Amount will be used, provided always that the purpose of any Loan must comply with Clause 3 (*Purpose*).
      5. No more than two Requests may be delivered by the Parent under this Agreement.
      6. Subject to paragraph (g) below, if any Lender (at its sole discretion) does not elect to increase its Commitment pursuant to paragraph (a) above, the Parent may request that another bank or other financial institution participate in the Additional Commitment Amount, provided that:
         1. if the invited bank or financial institution is an existing Lender, which at the time agrees to increase its Commitment, it does so in accordance with Clause 27.9 (*Lender Accordion Increase*);
         2. if the invited bank or financial institution is an Acceding Lender, it does so in accordance with Clause ‎27.10 (*Acceding Accordion Lenders*); and
         3. the sum of the increases in the Commitments of the existing Lenders and the new Commitment of the Acceding Accordion Lenders pursuant to this Clause shall not in aggregate exceed the unsubscribed amount of the Additional Commitment Amount.
      7. In the event any Lender does not elect to increase its Commitment pursuant to paragraph (a) above, the Parent shall first offer each existing Lender an additional participation in the Additional Commitment Amount and may only approach other banks or financial institutions in the event that, on the date which is fifteen (15) Business Days following the date of such offer to existing Lenders, there still remains an unsubscribed amount of the Additional Commitment Amount.
      8. If the Parent requests that another bank or financial institution participate in the Additional Commitment Amount in accordance with paragraph (f) above, the time periods and the mechanics set out in paragraph (a) and (b) above shall apply to the extent such a request is made to an existing Lender. If the invited bank or financial institution is an Acceding Accordion Lender the mechanics and time periods will apply as agreed between the Parent and that Acceding Accordion Lender.
      9. An increase in the Total Commitments pursuant to this Clause shall become effective upon execution by the Agent of a Lender Accordion Increase Certificate signed by the Parent and by the relevant Lender whose Commitment is to be increased and/or a Lender Accordion Accession Agreement signed by the Acceding Accordion Lender and the Agent.
      10. Upon the acceptance of any such Lender Accordion Increase Certificate by the Agent and/or execution of any such Lender Accordion Accession Agreement by the Agent, the Total Commitments shall automatically be increased by the amount of the Commitment added through such Lender Accordion Increase Certificate and Lender Accordion Accession Agreement and Part II of ‎Schedule 1 (*The Parties*) shall automatically be deemed to be amended to reflect the Total Commitments of all Lenders after giving effect to the addition of such Commitment.
   3. Increase
      1. The Parent may by giving prior notice to the Agent by no later than the date falling fifteen (15) Business Days after the effective date of a cancellation of:
         1. the Available Commitments of a Defaulting Lender in accordance with Clause 9.6 (*Right of cancellation in relation to a Defaulting Lender*); or
         2. the Commitments of a Lender in accordance with:
            1. Clause 9.1 (*Illegality*); or
            2. paragraph (a) of Clause 9.4 (*Right of cancellation and repayment in relation to a single Lender*),

request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:

* + - 1. the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Parent (each of which shall not be an Investor Affiliate or a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
      2. each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
      3. each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
      4. the Commitments of the other Lenders shall continue in full force and effect; and
      5. any increase in the Commitments shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
    1. An increase in the Commitments will only be effective on:
       1. the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;
       2. in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
          1. the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
          2. the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Parent and the Increase Lender upon being so satisfied.
    2. Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
    3. The Parent shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
    4. The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 27.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 27.5 (*Procedure for transfer*) and if the Increase Lender was a New Lender.
    5. The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.
    6. Clause 27.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
       1. an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
       2. the "**New Lender**" were references to that "**Increase Lender**"; and
       3. a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".
  1. Finance Parties' rights and obligations
     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. 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 shall be a separate and independent debt.
     3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
  2. Obligors' Agent
     1. Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
        1. the Parent 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 Deed, 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
        2. each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

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. For this purpose, each Obligor incorporated in Germany releases the Parent to the fullest extent possible from the restrictions of Section 181 of the German Civil Code (*Bűrgerliches Gesetzbuch*).

* + 1. 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.

1. Purpose
   1. Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility towards:

* + 1. the partial refinancing of Revolving Facility A and Revolving Facility B of the Existing Facilities Agreement (each as defined therein); and
    2. the general corporate and working capital purposes of the Restricted Group.
  1. Monitoring

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

1. Conditions of Utilisation
   1. Initial conditions precedent
      1. The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.
      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 paragraph ‎(a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
   2. Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*), if on the date of the Utilisation Request and on the proposed Utilisation Date:

* + 1. in the case of a Rollover Loan, no Event of Default under Clause 26.1 (*Non-payment*) or, in the case of a Borrower only, Clause 26.6 (*Insolvency*) or Clause 26.7 (*Insolvency proceedings*) has occurred and is continuing or would result from the proposed Loan, and in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and
    2. the Repeating Representations to be made by each Obligor are true in all material respects.
  1. Conditions relating to Optional Currencies
     1. A currency will constitute an Optional Currency in relation to a Loan if:
        1. it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market on the Quotation Day and the Utilisation Date for that Loan; and
        2. it is dollars or has been approved by the Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request for that Loan.
     2. If the Agent has received a written request from the Parent for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Parent by the Specified Time:
        1. whether or not the Lenders have granted their approval; and
        2. if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.
  2. Maximum number of Utilisations
     1. A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation more than five (5) Loans would be outstanding.
     2. Any Loan made by a single Lender under Clause 6.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.
     3. Any Separate Loan shall not be taken into account in this Clause 4.4.

SECTION 3

UTILISATION

1. Utilisation – Loans
   1. Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time, unless such Utilisation is to be made on the Closing Date, in which case it shall be delivered no later than the time agreed by the Parent and the Agent.

* 1. Completion of a Utilisation Request
     1. Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
        1. the proposed Utilisation Date is a Business Day within the Availability Period;
        2. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
        3. the proposed Interest Period complies with Clause 13 (*Interest Periods*).
     2. Only one Loan may be requested in each Utilisation Request.
  2. Currency and amount
     1. The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
     2. The amount of the proposed Loan must be:
        1. if the currency selected is the Base Currency, a minimum of EUR 10,000,000 or, if less, the Available Facility; or
        2. if the currency selected is dollars, a minimum of USD 10,000,000 or, if less, the Available Facility; or
        3. if the currency selected is an Optional Currency other than dollars, the minimum amount specified by the Agent pursuant to paragraph (b) (ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility; or
        4. in any event such that its Base Currency Amount is less than or equal to the Available Facility.
     3. The aggregate amount of Loans outstanding in Optional Currencies shall not exceed, at any time, the equivalent of EUR 50,000,000 calculated at the Agent's Spot Rate of Exchange.
  3. Lenders' participation
     1. If the conditions set out in this Agreement have been met, and subject to Clause 8.1 (*Repayment of Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
     2. Other than as set out in paragraph ‎(c) below, 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.
     3. If a Utilisation is made to repay Ancillary Outstandings, each Lender's participation in that Utilisation will be in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Utilisations then outstanding bearing the same proportion to the aggregate amount of the Utilisations then outstanding as its Commitment bears to the Total Commitments.
     4. The Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 33.1 (*Payments to the Agent*) by the Specified Time.
  4. Cancellation of Commitment

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

* 1. Clean down

The Parent shall ensure that the aggregate of the Base Currency Amounts of:

* + 1. all Loans; and
    2. any cash loan element of the Ancillary Outstandings under all the Ancillary Facilities,

(as confirmed in a certificate jointly signed by the finance director and any other authorised signatory of the Parent provided to the Agent within five (5) Business Days after the end of each Financial Year) shall not exceed EUR 30,000,000 for a period of not less than five (5) successive Business Days in each of its Financial Years. Not less than 180 days shall elapse between two such periods.

1. Optional Currencies
   1. Selection of currency

A Borrower (or the Parent on its behalf) shall select the currency of a Loan in a Utilisation Request.

* 1. Unavailability of a currency

If before the Specified Time on any Quotation Day:

* + 1. a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
    2. a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the Borrower to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 6.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

* 1. Agent's calculations

Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

1. Ancillary Facilities
   1. Type of Facility

An Ancillary Facility may be made available by way of:

* + 1. an overdraft facility;
    2. a guarantee, bonding, documentary or stand-by letter of credit facility;
    3. a short term loan facility; or
    4. any other facility or accommodation required in connection with the business of the Restricted Group and which is agreed by the Parent with an Ancillary Lender.
  1. Availability
     1. If the Parent and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Commitment as an Ancillary Facility.
     2. An Ancillary Facility shall not be made available unless, not later than five (5) Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the Parent:
        1. a notice in writing of the establishment of an Ancillary Facility and specifying:
           1. the proposed Borrower(s) (or Obligors) which may use the Ancillary Facility;
           2. the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
           3. the proposed type of Ancillary Facility to be provided;
           4. the proposed Ancillary Lender;
           5. the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and
           6. the proposed currency of the Ancillary Facility (if not denominated in the Base Currency);
           7. the proposed amount of the Ancillary Facility, when aggregated with all other Ancillary Facilities, then outstanding does not exceed the equivalent of EUR 30,000,000 calculated at the Agent's Spot Rate of Exchange; and
        2. any other information which the Agent may reasonably request in connection with the Ancillary Facility.
     3. The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
     4. The Parent shall procure that Utilisations under the Ancillary Facilities are divided, to the extent possible, as nearly as possible on a pro rata basis (in terms of both amount and type of facility) between the Lenders.
     5. Subject to compliance with paragraph ‎(b) above:
        1. the Lender concerned will become an Ancillary Lender; and
        2. the Ancillary Facility will be available,

with effect from the date agreed by the Parent and the Ancillary Lender.

* 1. Terms of Ancillary Facilities
     1. Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.
     2. Those terms:
        1. must be based upon normal commercial terms at that time (except as varied by this Agreement);
        2. may allow only Borrowers (or Obligors nominated pursuant to Clause 7.9 (*Obligors as Borrowers*) to use the Ancillary Facility;
        3. may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
        4. may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment (before taking into account the effect of the Ancillary Facility on that Available Commitment); and
        5. must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date (or such earlier date as the Commitment of the relevant Ancillary Lender (or its Affiliate) is reduced to zero).
     3. If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for:
        1. Clause 36.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;
        2. an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to the extent required to permit the netting of balances on those accounts; and
        3. where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.
     4. Interest, commission and fees on Ancillary Facilities are dealt with in Clause 15.5 (*Interest, commission and fees on Ancillary Facilities*).
  2. Repayment of Ancillary Facility
     1. An Ancillary Facility shall cease to be available on the Termination Date or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
     2. If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero.
     3. No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility unless:
        1. required to reduce the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
        2. the Total Commitments have been cancelled in full, or all outstanding Loans have become due and payable in accordance with the terms of this Agreement;
        3. it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility (or it becomes unlawful for any Affiliate of the Ancillary Lender for the Ancillary Lender to do so); or
        4. both:
           1. the Available Commitments relating to the Facility; and
           2. the notice of the demand given by the Ancillary Lender,

would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of a Loan.

* + 1. If a Loan is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.
  1. Limitation on Ancillary Outstandings

Each Borrower shall procure that:

* + 1. the Ancillary Outstandings under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and
    2. in relation to a Multi-account Overdraft:
       1. the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and
       2. the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.
  1. Adjustment for Ancillary Facilities upon acceleration
     1. In this Clause 7.6:
     2. "**Facility Outstandings**" means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
        1. its participation in each Loan then outstanding; and
        2. if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (or by its Affiliate) (together with the aggregate amount of all accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender in respect of the Ancillary Facility); and
     3. "**Total Facility Outstandings**" means the aggregate of all Facility Outstandings.
     4. If a notice is served under Clause 26.18 (*Acceleration*) (other than a notice declaring Loans to be due on demand), each Lender and each Ancillary Lender shall (subject to paragraph ‎(g) below) promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Facility Outstandings) their claims in respect of amounts outstanding to them under the Facility and each Ancillary Facility to the extent necessary to ensure that after such transfers the Facility Outstandings of each Lender bear the same proportion to the Total Facility Outstandings as such Lender's Commitment bears to the Total Commitments, each as at the date the notice is served under Clause 26.18 (*Acceleration*).
  2. If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph ‎(b) above, then each Lender and Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Facility Outstandings (to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
  3. Any transfer of rights and obligations relating to Facility Outstandings made pursuant to this Clause ‎9 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Facility Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to Clause 27.12 (*Pro rata interest settlement*)).
  4. Prior to the application of the provisions of paragraph ‎(b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.
  5. All calculations to be made pursuant to this Clause 7.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Agent's Spot Rate of Exchange.
  6. This Clause 7.6 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either the Base Currency, a currency which has been an Optional Currency for the purpose of any Facility Utilisation or in another currency which is acceptable to that Lender.
  7. Information

Each Borrower and each Ancillary Lender shall, promptly upon request by the Agent, supply the Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Agent and the other Finance Parties.

* 1. Affiliates of Lenders as Ancillary Lenders
     1. Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Commitment is the amount set out opposite the relevant Lender's name in Part II of Schedule 1 (*The Original Parties*) and/or the amount of any Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement.
     2. The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 7.2 (*Availability*).
     3. An Affiliate of a Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as an Ancillary Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a Party as an Ancillary Lender in accordance with clause 20.12 (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement.
     4. If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender, its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
     5. Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.
  2. Obligors as Borrowers
     1. Subject to the terms of this Agreement, an Obligor may, with the approval of the relevant Lender, become a borrower with respect to an Ancillary Facility.
     2. The Parent shall specify any relevant Obligor in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause ‎7.2 (*Availability*).
     3. If an Obligor ceases to be an Obligor under this Agreement in accordance with Clause ‎29 (*Changes to the* Obligors) it shall cease to have any rights under this Agreement or any Ancillary Document.
     4. Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Obligor which is not a party to that document, the Parent shall ensure that the obligation is performed by that Obligor.
     5. Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Obligor being under no obligations under any Finance Document or Ancillary Document.
  3. Commitment amounts

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Commitment is not less than:

* + 1. its Ancillary Commitment; or
    2. the Ancillary Commitment of its Affiliate.
  1. Amendments and Waivers – Ancillary Facilities

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 7). In such a case, Clause 39 (*Amendments and Waivers*) will apply.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

1. Repayment
   1. Repayment of Loans
      1. Subject to paragraphs (b) and (c) below, each Borrower shall repay each Loan on the last day of its Interest Period.
      2. Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Loans are to be made available to a Borrower:
         1. on the same day that a maturing Loan is due to be repaid by that Borrower;
         2. in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 6.2 (*Unavailability of a currency*)); and
         3. in whole or in part for the purpose of refinancing the maturing Loan,

the aggregate amount of the new Loans shall, unless the relevant Borrower or the Parent notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Loan so that:

* + - * 1. if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:

the relevant Borrower will only be required to make a payment under Clause 33.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and

each Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan and that Lender will not be required to make a payment under Clause 33.1 (*Payments to the Agent*) in respect of its participation in the new Loans; and

* + - * 1. if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:

the relevant Borrower will not be required to make a payment under Clause 33.1 (*Payments to the Agent*); and

each Lender will be required to make a payment under Clause 33.1 (*Payments to the Agent*) in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender's participation in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.

* + 1. At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Loans then outstanding will be automatically extended to the last day of the Availability Period and will be treated as separate Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.
    2. If the Borrower makes a prepayment of a Utilisation pursuant to Clause 9.3 (*Voluntary prepayment of Utilisations*), a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than fifteen (15) Business Days' prior notice to the Agent. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
    3. Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.
    4. The terms of this Agreement relating to Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

1. Illegality, Voluntary Prepayment and Cancellation
   1. Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation or it becomes unlawful for any Affiliate of a Lender (acting as an Ancillary Lender) to do so:

* + 1. that Lender shall promptly notify the Agent upon becoming aware of that event;
    2. upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled; and
    3. to the extent that the Lender's participation has not been transferred pursuant to Clause 39.5 (*Replacement of Lender*), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent 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 cancelled in the amount of the participations repaid.
  1. Voluntary cancellation

The Parent may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of EUR 1,000,000) of an Available Facility. Any cancellation under this Clause 9.2 shall reduce the Commitments of the Lenders rateably.

* 1. Voluntary prepayment of Loans

A Borrower to which a Loan has been made may, if it or the Parent gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Loan (but if in part, being an amount that reduces the Base Currency Amount of the Loan by a minimum amount of EUR 1,000,000).

* 1. Right of cancellation and repayment in relation to a single Lender
     1. If:
        1. any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 16.2 (*Tax gross-up*);
        2. any Lender claims indemnification from the Parent or an Obligor under Clause 16.3 (*Tax indemnity*) or Clause 17.1 (*Increased costs*); or
        3. any FATCA Protected Lender notifies the Agent of a FATCA Event pursuant to Clause 9.5 (*Mandatory repayment and cancellation of FATCA Protected Lenders*),

the Parent may, whilst the circumstance giving rise to the requirement for that increase, indemnification or FATCA Event continues, give the Agent notice (if such circumstances relate to a Lender) of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.

* + 1. On receipt by the Agent of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.
    2. On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.
  1. Mandatory repayment and cancellation of FATCA Protected Lenders

If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a FATCA Protected Lender (or to the Agent for the account of that Lender), that Lender is not a FATCA Exempt Party and, in the opinion of that Lender (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that Lender (or to the Agent for the account of that Lender) on or after that FATCA Application Date (a "**FATCA Event**"):

* + 1. that Lender shall, reasonably promptly after that date, notify the Agent of that FATCA Event and the relevant FATCA Application Date;
    2. if, on the date falling one month before such FATCA Application Date, that FATCA Event is continuing and that Lender has not been repaid or replaced pursuant to Clause 9.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*) (other than by reason of that Lender's failure to comply with its obligations pursuant to paragraph (d) of Clause 9.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*)):
       1. that Lender may, at any time between one month and two weeks before such FATCA Application Date, notify the Agent;
       2. upon the Agent notifying the Parent, the Commitment of that Lender will be immediately cancelled; and
       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 Parent or, if earlier, the last Business Day before the relevant FATCA Application Date.
  1. Right of cancellation in relation to a Defaulting Lender
     1. If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent fifteen (15) Business Days' notice of cancellation of each Available Commitment of that Lender.
     2. On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
     3. The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

1. Mandatory Prepayment
   1. Exit

Upon the occurrence of a Change of Control:

* + 1. the Parent shall promptly notify the Agent of that event and the Agent shall inform the Lenders thereof;
    2. a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan); and
    3. if a Lender so required and notifies the Agent within thirty (30) days of the Parent notifying the Agent of the event, the Agent shall cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans and Ancillary Outstandings of that Lender or the Affiliate of that Lender, together with accrued interest and all other amounts accrued under the Finance Documents, immediately due and payable, at which time the Commitment of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

1. Restrictions
   1. Notices of Cancellation or Prepayment

Any notice of cancellation or prepayment given by any Party under Clause 9 (*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.

* 1. Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, save for any prepayment made on the last day of an Interest Period, subject to any Break Costs, without premium or penalty.

* 1. Reborrowing of Facility

Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

* 1. 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.

* 1. No reinstatement of Commitments

Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

* 1. Agent's receipt of Notices

If the Agent receives a notice under Clause 9 (*Illegality, voluntary prepayment and cancellation*) it shall promptly forward a copy of that notice to either the Parent or the affected Lender, as appropriate.

* 1. Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in a Utilisation under a Facility 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 Base Currency Amount of the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5

COSTS OF UTILISATION

1. Interest
   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:

* + 1. Margin;
    2. LIBOR or, in relation to any Loan in euro, EURIBOR; and
    3. Mandatory Cost, if any.
  1. Payment of interest
     1. The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).
     2. If the Compliance Certificate received by the Agent which relates to the relevant Annual Financial Statements shows that a higher Margin should have applied during a certain period, then the Parent shall (or shall ensure the relevant Borrower shall) promptly pay to the Agent any amounts necessary to put the Agent and the Lenders in the position they would have been in had the appropriate rate of the Margin applied during such period.
  2. Default interest
     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 paragraph (b) below, is one 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 12.3 shall be immediately payable by the Obligor on demand by the Agent.
     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:
        1. 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
        2. the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
     3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at least once in any one year period or otherwise as soon as permitted by law but will remain immediately due and payable.
  3. Notification of rates of interest

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

1. Interest Periods
   1. Selection of Interest Periods
      1. A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan.
      2. Subject to this Clause 13, a Borrower (or the Parent) may select an Interest Period of one (1), two (2), three (3) or six (6) Months or any other period agreed between the Parent and the Agent (acting on the instructions of all the Lenders in relation to the relevant Loan).
      3. An Interest Period for a Loan shall not extend beyond the Termination Date.
      4. A Loan has one Interest Period only.
      5. To the extent a Borrower does not select an Interest Period for a Rollover Loan, the Interest Period for that new Loan shall be equal to that of the maturing Loan.
      6. Prior to the Syndication Date, Interest Periods shall be one Month or such other period as the Agent and the Parent may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.
   2. Non-Business Days

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

1. Changes to the Calculation of Interest
   1. Absence of quotations

Subject to Clause 14.2 (*Market disruption*) if LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

* 1. Market disruption
     1. If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
        1. the Margin;
        2. the rate notified to the Agent by that Lender as soon as practicable and in any event by close of business on the date falling two (2) Business Days after the Quotation Day (or, if earlier, on the date falling two (2) Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
        3. the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.
     2. If:
        1. the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than LIBOR or, in relation to any Loan in euro, EURIBOR; or
        2. a Lender has not notified the Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above,

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

* + 1. If a Market Disruption Event occurs the Agent shall, as soon as is practicable, notify the Parent.
    2. In this Agreement:

"**Market Disruption Event**" means:

* + - 1. at or about noon on the Quotation Day for the relevant Interest Period LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and Interest Period; or
      2. before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five (35) per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, EURIBOR.
  1. Alternative basis of interest or funding
     1. If a Market Disruption Event occurs and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
     2. Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.
  2. Break Costs
     1. Each Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
     2. Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

1. Fees
   1. Commitment fee
      1. The Parent shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of thirty-five (35) per cent. per annum of the then applicable Margin (for the avoidance of doubt, excluding any Margin Premium) on that Lender's Available Commitment for the Availability Period.
      2. The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
      3. No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.
   2. Arrangement fee

The Parent shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

* 1. Agency fee

The Parent shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

* 1. Security Agent fee

The Parent shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

* 1. Interest, commission and fees on Ancillary Facilities

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

1. Tax Gross-Up and Indemnities
   1. Definitions

In this Agreement:

1. "**Exempt Lender**" means a Finance Party which is (otherwise than by reason of being a Treaty Lender) able under the domestic law of the Obligor's jurisdiction, to receive interest from that Obligor without a Tax Deduction imposed by that jurisdiction.
2. "**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.
3. "**Qualifying Lender**" means a Finance Party which is beneficially entitled to interest payable to that Finance Party in respect of an advance under a Finance Document and which is:
   1. in respect of a Belgian Obligor:
      1. a company resident in Belgium for tax purposes or acting through a Facility Office established in Belgium to which the relevant Loan under a Finance Document is effectively attributed;
      2. a credit institution which is a resident for tax purposes in Belgium or which is acting through a Facility Office established in Belgium, as referred to in the law of 22 March 1993 regarding the supervision of credit institutions;
      3. a credit institution within the meaning of article 107, §2, 5, a), second dash of the Royal Decree implementing the Belgian Income Tax Code 1992 ("RD BITC"), that is acting through its head office and is resident for tax purposes in a country with which Belgium has entered into a double taxation agreement that is in force on the date of payment (except for Taiwan) (irrespective of whether or not the double taxation agreement makes provision for exemption from tax imposed by Belgium) or in a country which is a member state of the European Economic Area;
      4. a credit institution within the meaning of article 107, §2, 5, a), second dash RD BITC, that is acting through a permanent establishment to which the relevant Loan under a Finance Document is effectively attributed, which (i) itself qualifies as a credit institution within the meaning of the aforementioned article 107, §2, 5, a) second dash RD BITC and (ii) is located in a country with which Belgium has entered into a double taxation agreement that is in force on the date of payment (except for Taiwan) (irrespective of whether or not the double taxation agreement makes provision for exemption from tax imposed by Belgium) or in a country which is a member state of the European Economic Area;
   2. an Exempt Lender other than a Treaty Lender; or
   3. a Treaty Lender .
4. "**Tax Credit**" means a credit against, relief or remission for, or repayment of, any Tax.
5. "**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.
6. "**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 16.2 (*Tax gross-up*) or a payment under Clause 16.3 (*Tax indemnity*).
7. "**Treaty Lender**" means a Finance Party which is entitled to a payment under a Finance Document without a Tax Deduction by application of a double taxation agreement (subject to the completion of any necessary procedural formalities).
8. Unless a contrary indication appears, in this Clause 16 a reference to "**determines**" or "**determined**" means a determination made in the discretion of the person making the determination (acting reasonably).
   1. Tax gross-up
      1. Each Obligor shall make all payments to be made by it under a Finance Document without any Tax Deduction, unless a Tax Deduction is required by law.
      2. The Parent 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 Parent and that Obligor.
      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.
      4. A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the relevant taxing authority, if on the date on which the payment falls due:
         1. the payment could have been made to the relevant Finance Party without a Tax Deduction if the Finance Party had been a Qualifying Lender with respect to that payment, but on that date that Finance Party is not or has ceased to be a Qualifying Lender with respect to that payment other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration, or application of) any law or double taxation agreement, or any published practice or published concession of any relevant taxing authority; or
         2. 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 that Lender without the Tax Deduction (or, if applicable, with a Tax Deduction at a reduced rate) had that Lender complied with its obligations under paragraph (g) below.
      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.
      6. Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction or payment shall deliver to the Agent for the Finance Party entitled to the payment 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.
      7. The Lenders and the Parent shall co-operate in completing any procedural formalities necessary for the Obligors (or any other person making such payment on behalf of the Obligor) to obtain authorisation to make that payment without a Tax Deduction (or if applicable, with a Tax Deduction at a reduced rate). Lenders may be required for such purposes to provide on request, on an annual basis, a certificate of tax residence issued by the relevant tax authorities.
   2. Tax indemnity
      1. The Parent shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party suffered for or on account of Tax to the extent that such Tax is attributable to that Protected Party having entered into a Finance Document.
      2. Paragraph (a) above shall not apply:
         1. with respect to any Tax assessed on a Finance Party:
            1. 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
            2. 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; or
            3. under the laws of the Netherlands to the extent such Tax becomes payable as a result of such Protected Party having a substantial interest (*aanmerkelijk belang*) in the Obligor as laid down in the Netherlands Income Tax Act 2001 (*Wet inkomstenbelasting 2001*),

if that Tax is imposed on or calculated by reference to the net income, profits or gains received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

* + - 1. to the extent a loss, liability or cost:
         1. is compensated for by an increased payment under Clause 16.2 (*Tax gross-up*);
         2. would have been compensated for by an increased payment under Clause 16.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 16.2 (*Tax gross-up*) applied; or
         3. relates to a FATCA Deduction required to be made by a Party;
      2. with respect to any Bank Levy assessed or imposed on a Protected Party.
    1. A Protected Party making, or intending to make a claim under paragraph (a) 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 Parent.
    2. A Protected Party shall, on receiving a payment from an Obligor under this Clause 16.3, notify the Agent.
  1. Tax Credit

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

* + 1. a Tax Credit is attributable to an increased payment of which that Tax Payment forms part; and
    2. that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall as soon as reasonably practical 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. The relevant Finance Party shall use reasonable endeavours to claim such a Tax Credit.

* 1. Finance Party Status Confirmation
     1. As of the date of this Agreement, each Finance Party represents that it is a Qualifying Lender and a tax resident of a country other than a Non-Cooperative Jurisdiction and that, for the purposes of the Finance Documents, it will not be acting through any establishment it may have in a Non-Cooperative Jurisdiction.
     2. Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to the Borrower, which of the following categories it falls in:
        1. not a Qualifying Lender;
        2. a Qualifying Lender (other than a Treaty Lender); or
        3. a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this paragraph ((b)) then such New Lender shall be treated for the purposes of this Agreement (including by the Obligors) 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 Parent). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 16.5.

* + 1. Such New Lender shall also specify, in the Transfer Certificate or Assignment Agreement which it executes upon becoming a Party, whether it is incorporated or acts through a Facility Office situated in a Non-Cooperative Jurisdiction.
  1. Stamp taxes

The Parent shall pay and, within three (3) Business Days of presentation of supporting documents, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document (except for any such stamp duty, registration or other similar Tax payable in connection with the entry into of a Transfer Certificate or Assignment Agreement or in either case any transaction related thereto).

* 1. VAT
     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 paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (subject to such Finance Party having delivered to such Party an appropriate VAT invoice).
     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);
        1. (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
        2. (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.
     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.
     4. Any reference in this Clause 16.7 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 person who is treated as making the supply, or (as appropriate) receiving the supply under grouping rules (as provided for in Article 11 of the Council Directive 2006/112/EC as amended or as implemented by a member state of the European Union.
     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.
  2. FATCA Information
     1. Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
        1. (confirm to that other Party whether it is:
           1. a FATCA Exempt Party; or
           2. not a FATCA Exempt Party; and
        2. supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru payment percentage" or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
     2. If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
     3. Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
        1. any law or regulation;
        2. any fiduciary duty; or
        3. any duty of confidentiality.
     4. If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
        1. if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
        2. if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

* 1. FATCA Deduction
     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.
     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 Parent, the Agent and the other Finance Parties.

1. Increased Costs
   1. Increased costs
      1. Subject to Clause 17.3 (*Exceptions*) the Parent 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:
         1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
         2. compliance with any law or regulation made after the date of this Agreement; or
         3. the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III, including CRD IV.
      2. In this Agreement:
         1. "**Increased Costs**" means:
            1. a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
            2. an additional or increased cost; or
            3. 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 an Ancillary Commitment or funding or performing its obligations under any Finance Document ; and

* + - 1. "**Basel III**" means:
         1. 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; and
         2. 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
         3. any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".
      2. "**CRD IV**" means:
         1. 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
         2. 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.
  1. Increased cost claims
     1. A Finance Party intending to make a claim pursuant to Clause 17.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.
     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 and confirming that such Finance Party charges such Increased Costs to all borrowers and facilities in a similar situation.
  2. Exceptions
     1. Clause 17.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
        1. attributable to a Tax Deduction required by law to be made by an Obligor;
        2. attributable to a FATCA Deduction required to be made by a Party;
        3. compensated for by Clause 16.3 (*Tax indemnity*) (or would have been compensated for under Clause 16.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 16.3 (*Tax indemnity*) applied);
        4. compensated for by the payment of the Mandatory Cost; or
        5. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
     2. In this Clause 17.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 16.1 (*Definitions*).

1. Other Indemnities
   1. Currency indemnity
      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:
         1. making or filing a claim or proof against that Obligor; or
         2. 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 the Arranger and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (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.

* + 1. 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.
  1. Other indemnities
     1. The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:
        1. the occurrence of any Event of Default;
        2. 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 32 (*Sharing among the Finance Parties*);
        3. funding, or making arrangements to fund, its participation in a Loan requested by 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
        4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.
  2. Indemnity to the Agent

The Parent shall promptly indemnify the Agent against:

* + 1. any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
       1. investigating any event which it reasonably believes is a Default;
       2. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
       3. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
    2. 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 ‎‎33.11 (*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.
  1. Indemnity to the Security Agent
     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:
        1. any failure by the Parent to comply with its obligations under Clause 20 (*Costs and expenses*);
        2. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
        3. the taking, holding, protection or enforcement of the Transaction Security;
        4. 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;
        5. any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
        6. 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).
     2. Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause ‎18.4 will not be prejudiced by any release or disposal under clause 15.2 (*Distressed Disposals and Appropriation*) of the Intercreditor Agreement taking into account the operation of that clause.
     3. 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 18.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

1. Mitigation by the Lenders
   1. Mitigation
      1. Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in:
         1. any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 9.1 (*Illegality*), Clause 16 (*Tax gross-up and indemnities*) or Clause 17 (*Increased Costs*); or
         2. any amount payable under a Finance Document by a Belgian Obligor or a French Obligor becoming not deductible from that Obligor’s taxable income for tax purposes by reason of that amount being (i) paid or accrued to a Finance Party incorporated, domiciled, established or acting through a Facility Office situated in a Non-Cooperative Jurisdiction or (ii) paid to an account opened in the name of or for the benefit of that Finance Party in a financial institution situated in a Non-Cooperative Jurisdiction,

in each case, including, but not limited to, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

* + 1. Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.
  1. Limitation of liability
     1. The Parent 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 19.1 (*Mitigation*).
     2. A Finance Party is not obliged to take any steps under Clause 19.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so is or is likely to be prejudicial to it.

1. Costs and Expenses
   1. Transaction expenses

The Parent shall upon request, and in any event within five (5) Business Days pay the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees) 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, syndication and perfection of:

* + 1. this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
    2. any other Finance Documents executed after the date of this Agreement.
  1. Amendment costs

If:

* + 1. an Obligor requests an amendment, waiver or consent; or
    2. an amendment is required pursuant to Clause 33.10 (*Change of currency*),

the Parent 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) 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.

* 1. Security Agent's management time and additional remuneration
     1. Any amount payable to the Security Agent under Clause 18.4 (*Indemnity to the Security Agent*) and this Clause ‎20 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 Parent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
     2. Without prejudice to paragraph (a) above, in the event of:
        1. a Default;
        2. the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
        3. the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

* + 1. If the Security Agent and the Parent fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) 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 Parent 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 Parent) and the determination of any investment bank shall be final and binding upon the Parties.
  1. Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7

GUARANTEE

1. Guarantee and Indemnity
   1. Guarantee and indemnity

Subject to any limitations set out in this Clause 21, each Guarantor irrevocably and unconditionally jointly and severally:

* + 1. guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
    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
    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 21 if the amount claimed had been recoverable on the basis of a guarantee.
  1. 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.

* 1. 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 21 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

* 1. Waiver of defences

The obligations of each Guarantor under this Clause 21 will not be affected by an act, omission, matter or thing which, but for this Clause 21, would reduce, release or prejudice any of its obligations under this Clause 21 (without limitation and whether or not known to it or any Finance Party) including:

* + 1. any time, waiver or consent granted to, or composition with, any Obligor or other person;
    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 Restricted Group;
    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;
    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;
    5. any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
    6. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
    7. any insolvency or similar proceedings.
  1. Guarantor Intent

Without prejudice to the generality of Clause 21.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) 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.

* 1. 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 21. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

* 1. 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:

* + 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
    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 21.
  1. Deferral of Guarantors' rights

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 21:

* + 1. to be indemnified by an Obligor;
    2. to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
    3. 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;
    4. 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 21.1 (*Guarantee and indemnity*);
    5. to exercise any right of set-off against any Obligor; and/or
    6. to claim or prove as a creditor of any Obligor in competition with any Finance Party.

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 33 (*Payment mechanics*).

* 1. Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

* + 1. that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
    2. each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents 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 any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.
  1. 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.

* 1. Guarantee Limitations

1. This guarantee does not apply to any liability to the extent that it would result in this guarantee violating any applicable financial assistance rules or constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006, articles 329, 430 or 629, as applicable, of the Belgian Company Code, article L. 225-216 of the French Code de Commerce 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 Deed applicable to such Additional Guarantor.
   1. German guarantee limitation

In this Clause 21.12:

1. "**German Guarantor**" means a Guarantor incorporated or established in Germany in the legal form of a limited liability company (GmbH) or a limited partnership with a limited liability company as general partner (GmbH & Co. KG).
2. "**Guarantee**" means the guarantee and indemnity given pursuant to this Clause 21 (*Guarantee and indemnity*).
3. "**Net Assets**" means an amount equal to the sum of the amounts of the German Guarantor's (or, in the case of a GmbH & Co. KG, its general partner's) assets (consisting of all assets which correspond to the items set forth in section 266 paragraph 2 A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch* - "**HGB**")) less the aggregate amount of such German Guarantor's (or, in the case of a GmbH & Co. KG, its general partner's) liabilities (consisting of all liabilities and liability reserves which correspond to the items set forth in section 266 paragraph 3 B, C, D and E HGB), save that:
   1. any obligations (*Verbindlichkeiten*) of the German Guarantor (and, in the case of a GmbH & Co. KG, of its general partner)
      1. owing to any member of the Group or any other affiliated company which are subordinated by law or by contract to any Financial Indebtedness outstanding under this Agreement (including, for the avoidance of doubt, obligations that would in an insolvency be subordinated pursuant to section 39 paragraph 1 no. 5 or section 39 paragraph 2 of the German Insolvency Code (*Insolvenzordnung*)) and including obligations under guarantees for obligations which are so subordinated; or
      2. incurred wilful (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) in violation of any of the provisions of the Finance Documents,

shall be disregarded; and

* 1. the assets of the German Guarantor (and, in the case of a GmbH & Co. KG, its general partner) shall be assessed at their liquidation value (*Liquidationswert*) instead of their book value (*Buchwert*) if, at the time demand under the Guarantee is made, a negative prognosis as to whether the business can carry on as a going concern (negative *Fortführungsprognose*) must be made.

1. The Net Assets shall be determined in accordance with the generally accepted accounting principles applicable from time to time in Germany (*Grundsätze ordnungsmäßiger Buchführung*) and be based on the same principles that were applied by the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) in the preparation of its most recent annual balance sheet (*Jahresbilanz*).
2. "**Protected Capital**" means in relation to a German Guarantor the aggregate amount of:
   1. its (or, where the German Guarantor is a GmbH & Co. KG, its general partner's) share capital (*Stammkapital*) as registered in the commercial register (*Handelsregister*) provided that any increase registered after the date of this Agreement shall not be taken into account unless (i) such increase has been effected with the prior written consent of the Agent and (ii) only to the extent it is fully paid up; and
   2. its (or when applicable where the German Guarantor is a GmbH & Co. KG, its general partner's) amount of profits (Gewinne) which are not available for distribution to its shareholder(s) in accordance with section 268 paragraph 8 HGB.
3. "**Up-stream and/or Cross-stream Guarantee**" means any Guarantee if and to the extent such Guarantee secures the obligations of an Obligor which is a shareholder of the German Guarantor (and/or, in the case of a GmbH & Co. KG, of its general partner) or an affiliated company (*verbundenes Unternehmen*) of such shareholder within the meaning of section 16, 17 or 18 of the German Stock Corporation Act (*Aktiengesetz*) (other than the German Guarantor and its Subsidiaries and, in the case of a GmbH & Co. KG, the general partner and its Subsidiaries), provided that it shall not constitute an Up-stream or Cross-stream Guarantee if and to the extent the Guarantee guarantees amounts outstanding under any Finance Document in relation to any financial accommodation made available under such Finance Document to any Borrower and lent, on-lent or otherwise passed on to, or issued for the benefit of, the relevant German Guarantor or any of its Subsidiaries (and, where the German Guarantor is a GmbH & Co. KG, to, or for the benefit of, its general partner or any of its Subsidiaries) and outstanding from time to time.
   * 1. This Clause 21.12 applies if and to the extent the Guarantee is given by a German Guarantor and is an Up-stream and/or Cross-stream Guarantee.
     2. Each Finance Party agrees that the enforcement of the Guarantee given by a German Guarantor shall be limited if:
        1. (and to the extent that) the Guarantee constitutes an Upstream- and/or Cross-Stream Guarantee; and
        2. payment under the Guarantee would otherwise
           1. have the effect of reducing the German Guarantor's (or, where the German Guarantor is a GmbH & Co. KG, its general partner's) Net Assets to an amount that is lower than the amount of its (or, in the case of a GmbH & Co. KG, its general partner's) Protected Capital or, if the amount of the Net Assets is already lower than the amount of its (or, in the case of a GmbH & Co. KG, its general partner's) Protected Capital, cause the Net Assets to be further reduced; and
           2. thereby give rise to a violation of the capital maintenance requirement as set out in section 30 paragraph 1 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*); and
        3. the relevant German Guarantor has complied with its obligation to deliver the Management Determination and the Auditor's Determination, in each case together with an up-to-date balance sheet, in accordance with the requirements set out in paragraphs (c) and (d) below.
     3. The limitations set out in (b)(ii) above shall only apply if and to the extent that no later than twenty (20) Business Days after the Agent has made a demand under the Guarantee, the German Guarantor has provided a certificate signed by its managing director(s) (*Geschäftsführer*) confirming in writing if and to what extent the Guarantee is an Up-stream and/or Cross-stream Guarantee and an enforcement of the Guarantee would have the effects referred to in paragraph (b)(ii) above (the "**Management Determination**"). Such confirmation shall comprise an up-to-date balance sheet of the German Guarantor (and, in the case of a GmbH & Co. KG, its general partner) and a detailed calculation, based on the provisions of this Agreement, of the amount of the Net Assets and Protected Capital of the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner). The relevant German Guarantor shall fulfil its obligations under the Guarantee within fifteen (15) Business Days of providing the Management Determination (and each Finance Party shall be entitled to enforce the Guarantee) in an amount which pursuant to the Management Determination would not cause the effects set out in paragraph (b)(ii) above, irrespective of whether or not the Agent agrees with the Management Determination).
     4. If the Agent (acting on the instructions of the Majority Lenders) disagrees with the Management Determination, it may within twenty (20) Business Days of its receipt request the German Guarantor to deliver, at its own cost and expense (such cost and expense to be taken into account when determining the Net Assets), within twenty (20) Business Days of such request an up-to-date balance sheet of the German Guarantor (and, in the case of a GmbH & Co. KG, of its general partner), drawn-up by an Auditor appointed by the German Guarantor in consultation with the Agent, together with a detailed calculation, based on the provisions of this Agreement, of the amount of the Net Assets and Protected Capital of the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) (the "**Auditor's Determination**"). The German Guarantor shall fulfil its obligations under the Guarantee within fifteen (15) Business Days of providing the Auditor's Determination and each Finance Party shall be entitled to enforce the Guarantee up to an amount which pursuant to the Auditor's Determination would not cause the effects set out in paragraph (c) above.
     5. No reduction of the amount enforceable pursuant to this Clause 21.12 will prejudice the right of the Finance Parties to continue to enforce the Guarantee (subject always to the operation of the limitations set out above at the time of such enforcement) until full satisfaction of the claims guaranteed.
     6. Each German Guarantor shall (and, in the case of a German Guarantor in the form of a GmbH & Co. KG, shall procure that its general partner will) do everything commercially justifiable and legally permitted to avoid the enforcement of the Guarantee becoming limited pursuant to the terms of this Clause 21.12 and shall in particular, within six (6) months after a written request of the Agent (such request not to be made except in a situation where that German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) does not have sufficient Net Assets to maintain its Protected Capital) realise at least at market value any of its (and, in the case of a GmbH & Co. KG, any of its general partner's) assets that is not necessary for its business (*nicht betriebsnotwendig*) (or, in the case of a GmbH & Co. KG, that of its general partner) and is shown in its (or, in the case of a GmbH & Co. KG, its general partner's) balance sheet with a book value that is in the reasonable opinion of the Agent significantly lower than the market value.
   1. French guarantee limitation
      1. Without prejudice to Clause 21.11 (*Guarantee Limitations*), the obligations and liabilities of any Guarantor incorporated or established in France (a "French Guarantor") under the Finance Documents and in particular under this Clause 21 (*Guarantee and Indemnity*) shall not include any obligation or liability which, if incurred, would constitute a misuse of corporate assets within the meaning of article L.244-1 of the French *Code de Commerce* or any other law or regulation having the same effect, as interpreted by French courts.
      2. The obligations and liabilities of each French Guarantor under this Clause 21 (*Guarantee and Indemnity*) for the obligations under the Finance Documents of any other Obligor which is not a Subsidiary of such French Guarantor shall be limited, at any time, to an amount equal to the aggregate of all amounts directly or indirectly borrowed under this Agreement by such other Obligor to the extent directly or indirectly on-lent to such French Guarantor under intercompany loan agreements and outstanding at the date a payment is to be made by such French Guarantor under this Clause 21 (*Guarantee and Indemnity*); it being specified that any payment made by the French Guarantor under this Clause 21 (*Guarantee and Indemnity*) or clause 8 (*Guarantee and Indemnity*) of the Intercreditor Agreement in respect of the obligations of such Obligor shall reduce pro tanto the outstanding amount of the intercompany loans due by such French Guarantor under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Guarantor shall reduce pro tanto the amount payable under this Clause.
      3. The obligations and liabilities of each French Guarantor under this Clause 21 (*Guarantee and Indemnity*) for the obligations under the Finance Documents of any other Obligor which is a Subsidiary of such French Guarantor shall not be limited and shall therefore cover all amounts due by such Obligor as Borrower and/or as Guarantor. However, where such Subsidiary is itself a Guarantor which guarantees the obligations of a member of the Group which is not a Subsidiary of the relevant French Guarantor, the amounts payable by such French Guarantor under this paragraph (c) in respect of the obligations of this Subsidiary as Guarantor, shall be limited as set out in paragraph (b) above.
      4. It is acknowledged that no French Guarantor is acting jointly and severally with the other Obligors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Clause 21 (*Guarantee and Indemnity*).
   2. Belgium guarantee limitation
      1. The obligations and liabilities of any Original Guarantor (excluding the Parent) incorporated or established in Belgium (a "**Belgian Guarantor**") under this Clause 21 (*Guarantee and Indemnity*) for the obligations under the Finance Documents of any other Obligor which is not a Subsidiary of such Belgian Guarantor shall be limited, at any time, to an amount equal to the greater of:
         1. the amount set opposite its name below:
            1. EUR 15,000,000 in respect of Univeg Belgium NV;
            2. EUR 3,000,000 in respect of Nova-Veg Logistics NV;
            3. EUR 250,000 in respect of European Food Transport NV;
         2. 85% of such Belgian Guarantor’s net assets (as defined in Article 617 of the Belgian Company Code and the applicable Accounting Principles) as determined in its non-consolidated annual financial statements most recently audited prior to the date on which a demand is made on such Belgian Guarantor pursuant to this Clause 21 (*Guarantee and Indemnity*); and
         3. an amount equal to the aggregate of:
            1. all Utilisations drawn under this Agreement; and
            2. the aggregate proceeds of the Senior Notes,

to the extent on-lent (directly or indirectly) by the Borrowers or Univeg Holding B.V. under intercompany loan agreements to such Belgian Guarantor on or after the date of this Agreement, and which remain outstanding at the time a demand is made on such Belgian Guarantor pursuant to this Clause 21 (*Guarantee and Indemnity*);

*minus*, in each case, any amount of any demand made or amount paid by such Belgian Guarantor, on or prior to the date on which a claim is made against such Belgian Guarantor under this Clause 21 (*Guarantee and Indemnity*), under paragraph (c) of clause 11.02 (*Guarantee and Indemnity*) of the Senior Note Indenture and/or under clause 8 (*Guarantee and Indemnity*) of the Intercreditor Agreement.

* + 1. The burden of proof of the guarantee limitation set out in this Clause 21 (Guarantee and Indemnity) or in any Accession Deed in respect of a Belgian Guarantor shall bear on the relevant Belgian Guarantor. In order to avail itself of any such limitation, a Belgian Guarantor must promptly provide a certificate signed by any authorized signatory or by any two directors of such Belgian Guarantor confirming:
       1. the amounts owing both:
          1. to it from the other members of the Restricted Group; and
          2. from it to the other members of the Restricted Group,
       2. as the case may be, any amount paid by such Belgian Guarantor under this Clause 21 (*Guarantee and Indemnity*), paragraph (c) of clause 11.02 (*Guarantee and Indemnity*) of the Senior Note Indenture and/or under clause 8 (*Guarantee and Indemnity*) of the Intercreditor Agreement,

at the time a demand is made on such Belgian Guarantor pursuant to this Clause 21 (*Guarantee and Indemnity*).

* + 1. The obligations and liabilities of each Belgian Obligor under this Clause 21 (*Guarantee and Indemnity*) for the obligations under the Finance Documents of any other Obligor which is a Subsidiary of such Belgian Guarantor shall not be limited and shall therefore cover all amounts due by such Obligor as Borrower and/or as Guarantor. However, where such Subsidiary is itself a Guarantor which guarantees the obligations of a member of the Restricted Group which is not a Subsidiary of the relevant Belgian Guarantor, the amounts payable by such Belgian Guarantor under this paragraph (c) in respect of the obligations of this Subsidiary as Guarantor, shall be limited as set out in paragraph (a) above.
  1. Additional Guarantors

The guarantee of any Additional Guarantor is subject to any limitations relating to that Additional Guarantor set out in the Accession Deed relating to such Additional Guarantor and agreed with the Agent (acting reasonably and in accordance with the Agreed Security Principles) provided, however, that to the extent any additional guarantee is required by Clause 8 (*Limitation on Issuances of Guarantees of Indebtedness*) of Schedule 16 (*Restrictive covenants*), the limitations and qualifications of paragraphs (c) and (d) thereof shall apply.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

1. Representations
   1. General

Each Obligor in respect of itself and the Parent in respect of itself and, as the case may be, each member of the Restricted Group makes the representations and warranties set out in this Clause 22 to each Finance Party at the times set out in Clause 22.37 (*Times when representations are made*).

***Status, authorisations and governing law***

* 1. Status
     1. It is duly incorporated and validly existing under the law of its Original Jurisdiction.
     2. It has the power to own its assets and carry on its business as it is being conducted.
  2. Binding obligations

Subject to the Legal Reservations:

* + 1. the 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
    2. (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.
  1. 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 the Transaction Security pursuant to the Agreed Security Principles do not and will not conflict with:

* + 1. any law or regulation applicable to it that has, or would reasonably be expected to have a Material Adverse Effect;
    2. its constitutional documents; or
    3. any agreement or instrument binding upon it or any of its Subsidiaries' or any of its or any of its Subsidiaries' assets or constitute a default or termination event (however described) under any such agreement or instrument in a manner which will or is reasonably likely to lead to a material claim against any of the Finance Parties.
  1. Power and authority
     1. It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
     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.
  2. Validity and admissibility in evidence
     1. Subject to the Legal Reservations, all Authorisations required by it:
        1. 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
        2. to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

* + 1. All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Restricted Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.
  1. Governing law and enforcement

Subject to the Legal Reservations:

* + 1. the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
    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.

***No insolvency, default or tax liability***

* 1. Insolvency

No:

* + 1. corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 26.7 (*Insolvency proceedings*); or
    2. creditors' process described in Clause 26.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a Material Company and none of the circumstances described in Clause 26.6 (*Insolvency*) applies to a Material Company.

* 1. No filing or stamp taxes

It is not necessary under the laws of its Relevant Jurisdiction in force at the date of this Agreement that the Finance Documents to which it is a party 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 be paid on or in relation to the execution and enforceability of the Finance Documents or the transactions contemplated by the Finance Documents except as referred to in any Legal Opinion.

* 1. Deduction of Tax

It is not required under the laws of its Original Jurisdiction in force of the date of this Agreement to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Qualifying Lender, subject to completion by any such Qualifying Lender of any procedural formalities, if any, necessary for it to obtain authorization to make that payment without a Tax Deduction (provided in relation to payments made by a French Obligor that such payments are not made in a Non-Cooperative Jurisdiction nor to a person located in such Non Cooperative Jurisdiction).

* 1. No default
     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.
     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 (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.
  2. Taxation
     1. Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement, it is not (and none of its Subsidiaries is) materially 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 in an amount exceeding EUR 1,000,000 (or its equivalent in any other currency).
     2. 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 such that a liability of, or claim against, any member of the Restricted Group in an amount exceeding EUR 1,000,000 (or its equivalent in any other currency) is reasonably likely to arise.
     3. It is resident for Tax purposes only in its Original Jurisdiction.

***Provision of information – general***

* 1. No misleading information

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

* + 1. any factual information contained in the Information Package was true and accurate in all material respects as at the date of the relevant document containing the information or (as the case may be) as at the date the information is expressed to be given;
    2. any financial projection or forecast contained in the Information Package has been prepared in good faith on the basis of recent historical information and on the basis of assumptions (believed by the Parent to be reasonable as at the date of the relevant report or document containing the projection or forecast) and after careful consideration;
    3. the expressions of opinion or intention provided by or on behalf of an Obligor contained in the Information Package were made after careful consideration and were based on grounds believed by the Parent to be reasonable at the time they were made;
    4. no event or circumstance has occurred or arisen and no information has been omitted from the information contained in the Information Package and no information has been given or withheld that results in any fact contained in the Information Package being untrue or misleading in any material respect or any forecasts contained therein being unfair or unreasonable in any material respect;
    5. all other written information provided by the Parent to the Arranger, the Agent or the Security Agent was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.
  1. Original Financial Statements
     1. Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
     2. Its unaudited Original Financial Statements fairly represent its financial condition and results of operations for the relevant month or financial quarter.
     3. Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
     4. 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 the Parent) since the date of the Original Financial Statements.
     5. Its most recent financial statements delivered pursuant to Clause 23.1 (*Financial statements*):
        1. have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
        2. give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
     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 believed by the Parent to be reasonable as at the date they were prepared and supplied.
     7. Since the date of the most recent financial statements delivered pursuant to Clause 23.1 *(Financial statements)* there has been no change having a material adverse effect on the business, assets or financial condition of the Restricted Group taken as a whole.
  2. Accounting reference date

The Accounting Reference Date of each member of the Restricted Group is 31 December.

***No proceedings or breach of laws***

* 1. No proceedings pending or threatened

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement, no litigation, arbitration or administrative proceedings of, or before, any court, arbitral body or agency which are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against any member of the Restricted Group or its assets (or against the directors of any member of the Restricted Group).

* 1. No breach of laws
     1. It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
     2. No labour disputes are current or, to the best of its knowledge and belief, threatened against any member of the Restricted Group which have or are reasonably likely to have a Material Adverse Effect.
  2. Environmental laws
     1. Each member of the Restricted Group is in compliance with Clause 25.4 (*Environmental compliance*) and to the best of the Parent's knowledge and belief 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.
     2. No Environmental Claim has been commenced or (to the best of the Parent's knowledge and belief) is threatened against any member of the Restricted Group where that claim has or is reasonably likely to have a Material Adverse Effect.

***Security and ownership of assets***

* 1. Anti-corruption law

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

* 1. Security and Financial Indebtedness
     1. No 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.
     2. No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.
  2. Ranking

On the Closing Date and on each date on which this representation is repeated thereafter, the Transaction Security has or will, upon completion of all applicable perfection requirements, have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security other than as arising by operation of law or as otherwise permitted under this Agreement.

* 1. Good title to assets

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

* 1. Legal and beneficial ownership

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

* 1. Shares

The shares of any member of the Restricted 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 Restricted Group (including any option or right of pre-emption or conversion).

* 1. Intellectual Property

It:

* + 1. is the sole legal and beneficial owner of or has licensed to it on normal commercial terms 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;
    2. to the best of its knowledge, does not, in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
    3. has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it where failure to do so would have a Material Adverse Effect.

***Provision of information – Group***

* 1. Group Structure Chart

The Group Structure Chart is true, complete and accurate in all material respects and shows the following information:

* + 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
    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.
    3. all intra-Group Loans which have been made between members of the Restricted Group.
  1. Obligors

The aggregate earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) and the aggregate total assets (excluding goodwill) of the Obligors and all members of the Restricted Group whose shares are subject to Transaction Security (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds 80% of EBITDA and the consolidated total assets (excluding goodwill) of the Group.

* 1. Dormant Subsidiaries

Each of Univeg Iberia SLU and Winchester Bulb Growers Limited are Dormant Subsidiaries.

***Miscellaneous***

* 1. Centre of main interests and establishments

Its registered office is situated in its Original Jurisdiction and, except for Winchester Growers Limited, it has no "establishment" (within the meaning of Article 2(h) of the Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings) in any jurisdiction other than its Original Jurisdiction or any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated.

* 1. No adverse consequences
     1. It is not necessary under the laws of its Relevant Jurisdictions:
        1. in order to enable any Finance Party to enforce its rights under any Finance Document; or
        2. 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.

* + 1. 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.
  1. Pension schemes

All pension schemes applied within the Restricted Group comply with all provisions of applicable law and (except in the case of members of the Restricted Group incorporated in Italy) employ reasonable actuarial assumptions. No member of the Restricted Group has any material unsatisfied liability in respect of any pension scheme and there are no circumstances which may give rise to any such liability.

* 1. Industrial action

The Parent is not aware of any material industrial action which is currently ongoing or threatened against any member of the Restricted Group.

* 1. No financial assistance

The proceeds of the Facility have not been and will not be used to finance or refinance the acquisition of or subscription for shares in any Belgian Guarantor (save for share buy-backs carried out in accordance with Belgian company law).

* 1. No listed securities

None of the Belgian Obligors has issued listed securities, or is a Subsidiary of a Belgian company that has issued listed securities.

* 1. No cluster bombs or anti-personnel mines

None of the Borrowers and their Subsidiaries carries out activities related to the manufacturing, use, repair, exhibition for sale, sale, import, export, stockpiling or transport of cluster bombs, sub-munitions, inert munitions or armour plating containing depleted or industrial uranium, or anti-personnel mines.

* 1. Sanctions
     1. No Obligor directly or indirectly transfers, uses or applies, nor permits to be transferred, used or applied, or provides the benefit of any money, proceeds or services to, or in favour of a Restricted Person.
     2. No Obligor directly or indirectly transfers, uses or applies, nor permits to be transferred, used or applied, or provides the benefit of any money, proceeds or services to, or in favour of any person located, domiciled and/or resident in a Restricted Country.
  2. Times when representations are made
     1. All the representations and warranties in this Clause 22 are made by each Original Obligor on the date of this Agreement.
     2. The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that those contained in paragraphs (a)-(e) of Clause 22.14 (*Original* *Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
     3. The Repeating Representations 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.
     4. Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

1. Information Undertakings

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 23:

1. "**Annual Financial Statements**" means the audited financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 23.1 (*Financial statements*).
2. "**Monthly Financial Statements**" means the unaudited management accounts delivered pursuant to paragraph (c) of Clause 23.1 (*Financial statements*).
3. "**Quarterly Financial Statements**" means the unaudited management accounts delivered pursuant to paragraph (b) of Clause 23.1 (*Financial statements*).
   1. Financial statements

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

* + 1. as soon as they are available, but in any event within 120 days after the end of each of its Financial Years beginning with the Financial Year ending 31 December 2013:
       1. its audited consolidated financial statements for that Financial Year; and
       2. the audited financial statements (consolidated if appropriate) of each Borrower for that Financial Year;
    2. as soon as they are available, but in any event within sixty (60) days after the end of each Financial Quarter of each of its Financial Years its unaudited consolidated management accounts for that Financial Quarter; and
    3. as soon as they are available, but in any event within forty-five (45) days after the end of each month its unaudited consolidated management accounts for that month (to include cumulative management accounts for the Financial Year to date).
  1. Provision and contents of Compliance Certificate
     1. The Parent shall supply a Compliance Certificate to the Agent with each set of its Annual Financial Statements and each set of its Quarterly Financial Statements.
     2. Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 24 (*Financial Covenants*) and the Guarantor cover test contained in Clause 25.17 (*Guarantors*) and the Margin computations set out in the definition "Margin" as at the date as at which those financial statements were drawn up.
     3. Each Compliance Certificate shall be jointly signed by the finance director and any other authorised signatory of the Parent and, if required to be delivered with the Annual Financial Statements of the Parent, shall be reported on by the Parent's Auditors in a form the Auditors are prepared to give and only to the extent that firms of auditors of international repute have not adopted a general policy of not providing such reports.
  2. Requirements as to financial statements
     1. The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:
        1. each set of Annual Financial Statements shall be audited by the Auditors;
        2. each set of Quarterly Financial Statements includes a cashflow forecast in respect of the Group relating to the six (6) month period commencing at the end of the relevant Financial Quarter; and
        3. each set of Monthly Financial Statements is accompanied by a statement jointly signed by the finance director and any other authorised signatory of the Parent 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.
     2. Each set of financial statements delivered pursuant to Clause 23.1 (*Financial statements*):
        1. shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), 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 company by the Auditors and accompanying those Annual Financial Statements;
        2. in the case of consolidated financial statements of the Group, shall be accompanied by a statement jointly signed by the finance director and any other authorised signatory of the Parent comparing actual performance for the period to which the financial statements relate to:
           1. the projected performance for that period set out in the Budget; and
           2. the actual performance for the corresponding period in the preceding Financial Year of the Group provided however that:

no Annual Financial Statements will be required to restate or adjust any financial information for comparative periods in preceding Financial Years until the Annual Financial Statements for the Financial Year ending 31 December 2014;

financial information provided with respect to the Financial Year ending 31 December 2013 (including, for the avoidance of doubt, comparative period in the Annual Financial Statements for the Financial Year ending 31 December 2014) shall be for and as of the period beginning with the inception of the Parent and ended 31 December 2013; and

no Annual Financial Statements will require the preparation or inclusion of comparative financial information in respect of any period prior to (or in part prior to) the inception of the Parent (or any related comparative disclosures) save for a comparison of the balance sheet for the Financial Year ending 31 December 2012 against the balance sheet for the Financial Year ending 31 December 2013 which shall be signed jointly by the finance director and any other authorised signatory of the Parent confirming that such comparison fairly represents the differences between the performance of the Group in 2012 and 2013 (readjusted for 2012); and

* + - 1. shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements, unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the relevant Borrower) deliver to the Agent:

a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements were prepared; and

sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 24 (*Financial covenants*) has been complied with, to determine the Margin as set out in the definition of "Margin", and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

* + 1. If the Parent notifies the Agent of a change in accordance with paragraph (b)(iii) above, then the Parent and Agent shall enter into negotiations in good faith with a view to agreeing:
       1. whether or not the change results in any material alteration in the commercial effect of any of the terms of this Agreement; and
       2. if so, any amendments to this Agreement as are contemplated below which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

If no such agreement is reached within thirty (30) days of that notification of change, the Agent shall (if so requested by the Majority Lenders) instruct the Auditors of the Parent or independent accountants (approved by the Parent or, in the absence of such approval within five (5) days of request by the Agent of such approval, a firm with recognised expertise) to determine any amendment to Clause 24.1 (*Financial definitions*), Clause 24.2 (*Financial condition*), the Margin computations set out in the definition of "Margin", and any other terms of this Agreement which the Auditors or, as the case may be, accountants (acting as experts and not arbitrators) consider appropriate to ensure the change does not result in any material alteration in the commercial effect of the terms of this Agreement. Those amendments shall take effect when so determined by the Auditors, or as the case may be, accountants. The cost and expense of the Auditors or accountants shall be for the account of the Parent.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

* + 1. Following the occurrence of an Event of Default, if the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Parent must ensure that the Auditors are authorised (at the expense of the Parent):
       1. to discuss the financial position of each member of the Group with the Agent on request from the Agent; and
       2. to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.
  1. Budget
     1. The Parent shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within (i) 30 days after the start of each of its Financial Years, its preliminary annual Budget for that financial year and (ii) 60 days after the start of each of its Financial Years, its definitive annual Budget for that financial year.
     2. The Parent shall ensure that each Budget:
        1. is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected disposals and projected capital expenditure for the Group, projected financial covenant calculations and descriptions of the proposed activities of the Group for the financial year to which the Budget relates. The projections shall relate to the 12 month period comprising, and each month in, that Financial Year;
        2. is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 23.1 (*Financial statements*);
        3. has been approved by the board of directors of the Parent.
     3. If the Parent updates or changes the Budget, it shall promptly 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.
  2. Guarantor cover

The Parent shall, at the request of the Agent, supply to the Agent a report issued by its Auditors stating which of its Subsidiaries are Material Companies and confirming that it is in compliance with the provisions of Clause 25.17 (*Guarantors*).

* 1. Information: miscellaneous

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

* + 1. at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them) including, without limitation, the holders of Senior Notes or any other Creditor Representative (as defined in the Intercreditor Agreement) on their behalf;
    2. reasonable notice and access details for any public calls with the holders of Senior Notes;
    3. promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current against any member of the Restricted Group or its assets (or against the directors of any member of the Restricted Group), and which could reasonably be expected to have a Material Adverse Effect;
    4. promptly, upon request of the Security Agent, 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;
    5. promptly upon becoming aware of them, the details of any Environmental Claim which is current against any member of the Restricted Group which is referred to in Clause 25.5 (*Environmental claims*) which could reasonably be expected to have a Material Adverse Effect;
    6. promptly upon request by the Agent, information relating to the then current outstandings under any and all working capital facilities made available to Hilken Fruit Corp SA and any of its Subsidiaries and any other information relating to such working capital facilities as may be reasonably requested by the Agent;
    7. on a quarterly basis, an overview of the commercial factoring programme of the Restricted Group, including the amount outstanding and any change in commitments from the date of Closing;
    8. promptly, upon request by the Agent, such information as the Agent may reasonably require about the opening by any Obligor of an "establishment" (within the meaning of Article 2(h) of the Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings) outside its Original Jurisdiction or the change of its "establishment" to a jurisdiction other than its Original Jurisdiction and if such change has occurred, the Agent shall receive a memorandum from counsel to the Agent (in form and substance satisfactory to it) either (i) confirming that any such change will not adversely affect any of the Transaction Security or guarantees given by such Obligor pursuant to this Agreement or (ii) identifying such acts or such documents as may be required to perfect any Transaction Security created or intended to be created over any such Obligor's assets located in any such "establishment"; and
    9. promptly on request, any information regarding the financial condition, assets or operations of the Group (including any requested amplification or explanation of any item in the financial statements or other material provided in relation to the Group under this Agreement, any changes to the management of the Restricted Group and an up to date copy of its shareholders register (or equivalent in its jurisdiction of incorporation) as any Finance Party through the Agent may reasonably request.
  1. Notification of default
     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).
     2. Promptly upon a request by the Agent (acting on the instructions of the Majority Lenders), the Parent shall supply to the Agent a certificate signed by two of its directors or senior officers 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).
  2. "Know your customer" checks
     1. If:
        1. 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;
        2. any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
        3. a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied 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.

* + 1. 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.
    2. The Parent 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 29 (*Changes to the Obligors*).
    3. Following the giving of any notice pursuant to paragraph (c) 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 Parent 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.

1. Financial Covenants
   1. Financial definitions

In this Agreement:

1. "**Cash**" means, at any time, the aggregate of cash 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 (or together with other members of the Group) beneficially entitled and for so long as:
   1. that cash is repayable on demand;
   2. 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;
   3. there is no Security over that cash except for Transaction Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements or any Security arising by operation of law; and
   4. Cash Equivalent Investments at that time to which a member of the Group is alone beneficially entitled and of which the disposal by a member of the Group is not contingent on the prior discharge of any indebtedness of any Group member or of any person whatsoever or on the satisfaction of any other condition.
2. "**Cash Equivalent Investments**" means:
   1. securities denominated in sterling, dollars or euro with maturities less than 12 months from the date of acquisition issued or fully guaranteed or insured by the Government of the United States of America or any member state of the European Union (or any agency thereof) which is rated at least AA by Standard & Poor's Rating Group or Aa2 by Moody's Investor Services, Inc.;
   2. commercial paper of other debt security issued by an issuer rated at least A-1 by Standard & Poor's Rating Group or P-1 by Moody's Investor Services, Inc. and with a maturity of less than 12 months;
   3. certificates of deposit of any commercial bank (which has outstanding debt securities rated as referred to in subparagraph (b) above) and having maturities of less than 12 months; and
   4. such other securities approved by the Agent.
3. "**EBIT**" means, in respect of any Relevant Period, the consolidated net profit of the Group:
   1. plus corporation tax or other taxes on income or gains;
   2. plus Net Interest Expense in respect of that Relevant Period;
   3. plus any capitalised interest (including, for the avoidance of doubt, capitalised interest under or in respect of any shareholder loan) accrued in respect of such Relevant Period;
   4. less (to the extent otherwise included) the amount of net profit (or adding back the amount of loss) of any member of the Group which is attributable to any third party (other than a member of the Group) which is a shareholder in that member of the Group in respect of that Relevant Period;
   5. less (to the extent otherwise included) any gain over book value arising in favour of a member of the Group on the disposal of any asset during that Relevant Period and any gain arising on any revaluation of any asset during that Relevant Period;
   6. plus (to the extent otherwise deducted) any loss against book value incurred by a member of the Group on the disposal of any asset during that Relevant Period and any loss arising on any revaluation of any asset during that Relevant Period;
   7. plus extraordinary, exceptional and/or non-operational costs and charges less extraordinary, exceptional and/or non-operational income or gains in respect of that Relevant Period; and
   8. less any profit received by any member of the Group arising as a result of a Debt Purchase Transaction.
4. "**EBITDA**" means, in respect of any Relevant Period, EBIT for that Relevant Period plus depreciation and the amount attributable to amortisation or impairment of goodwill and any other intangible assets during that Relevant Period provided that in respect of any person which becomes a member of the Group during that Relevant Period, EBITDA shall be calculated as if that person became a member of the Group on the first day of that Relevant Period and in respect of any person which ceases to be a member of the Group during that Relevant Period, EBITDA shall be calculated as if that person ceased to be a member of the Group on the first day of that Relevant Period.
5. "**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

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

1. "**Interest Expense**" means, in respect of any Relevant Period and any Financial Indebtedness of the Group referred to in the definition of Total Net Debt the aggregate of all continuing, regular or periodic cash costs, charges and expenses incurred in effecting, servicing or maintaining such Financial Indebtedness in respect of such Relevant Period (but not agency or underwriting fees or any capitalised interest) including:
   1. gross interest and commitment fees on any form of such Financial Indebtedness which has accrued as an obligation of the Group during that Relevant Period, including the interest element of finance leases; and
   2. the consideration given by the Group during that Relevant Period by way of discount in connection with such Financial Indebtedness by way of acceptance credit, bill discounting or other like arrangement.
2. "**Net Interest Expense**" means, in respect of any Relevant Period and in respect of the Group on a consolidated basis, Interest Expense for such Relevant Period less (i) (to the extent taken into account when calculating Interest Expense) any fees payable by a member of the Group in relation to this Agreement and (ii) interest, commission, fees, discounts and other finance charges receivable during the Relevant Period.

"**Quarter Date**" means each 31 March, 30 June, 30 September and 31 December.

"**Relevant Period**" means each period of 12 Months ending on a Quarter Date.

1. "**Total Net Debt**" means, at any time the aggregate outstanding principal or capital amount of all Financial Indebtedness of the Group (without double counting and excluding any Financial Indebtedness referred to in paragraph (f) of the definition of Financial Indebtedness) less the aggregate of all Cash of the Group, excluding any amount arising under any Shareholder Loan.
   1. Financial condition

The Parent shall ensure that the ratio of Total Net Debt as at the end of each Relevant Period specified in column 1 below to EBITDA for such Relevant Period shall not exceed the ratio set out in column 2 below opposite that date:

| **Relevant Period ending** | **Leverage Ratio** |
| --- | --- |
| 31 December 2013 | 4.70:1.00 |
| 31 March 2014 | 4.00:1.00 |
| 30 June 2014 | 4.20:1.00 |
| 30 September 2014 | 3.70:1.00 |
| 31 December 2014 | 4.25:1.00 |
| 31 March 2015 | 4.10:1.00 |
| 30 June 2015 | 4.20:1.00 |
| 30 September 2015 | 4.00:1.00 |
| 31 December 2015 | 3.80:1.00 |
| 31 March 2016 | 3.90:1.00 |
| 30 June 2016 | 4.10:1.00 |
| 30 September 2016 | 4.10:1.00 |
| 31 December 2016 | 3.35:1.00 |
| 31 March 2017 | 3.5:1.0 |
| 30 June 2017 | 3.5:1.0 |
| 30 September 2017 and thereafter | 3.25:1.0 |

* 1. Financial testing

The financial covenant set out in Clause 24.2 (*Financial condition*) shall be tested by reference to the financial statements delivered pursuant to Clause 23.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 23.2 (*Provision and content of Compliance Certificate*).

* 1. Equity cure
     1. Subject to paragraph (c) below, if the requirements of Clause 24.2 (*Financial condition*) are not satisfied in respect of a Relevant Period, the Parent shall be entitled, not later than fifteen (15) Business Days following the date on which the Compliance Certificate for that Relevant Period is required to be delivered pursuant to Clause 23.2 (*Provision and contents of Compliance Certificate*), to recalculate the Leverage Ratio for that Relevant Period by making a pro forma adjustment consisting in deducting an amount equal to the Cure Amount received by the Parent during that Relevant Period, or during the fifteen (15) Business Days following the date on which the Compliance Certificate for that Relevant Period is required to be delivered, from the Total Net Debt for that Period.
     2. If, after giving effect to the re-calculation referred to in paragraph (a) above, and subject to paragraph (c) below, the requirements of Clause 24.2 (*Financial condition*) are satisfied, then such requirements shall be deemed to have been satisfied as at the relevant original date of determination as though there had been no failure to comply with such requirements and any Default or Event of Default arising as a result thereof shall be deemed to have been remedied for the purpose of this Agreement. The re-calculation will however not result in a decrease of the Margin to a lower level in accordance with the definition of Margin.
     3. The provisions of paragraphs (a) and (b) above will only apply if all of the following conditions are fulfilled:
        1. the Cure Amount is deposited on a Holding Account until such time as the Parent has delivered a certificate jointly signed by the finance director and any other duly authorised representative of the Parent confirming that at the Quarter Date preceding the delivery of such certificate (which shall be, in any event, no earlier than the Quarter Date following such breach), it was in compliance with the provisions of Clause 24.2 (*Financial condition*) without taking into account the Cure Amount, at which time the Cure Amount shall be released from the Holding Account by the Agent or the Security Agent (as the case may be). The Parties acknowledge that, notwithstanding any provision to the contrary, the Cure Amount so deposited will be treated as Cash for the purposes of Clause 24.2 (*Financial condition*);
        2. no adjustment (pro forma or otherwise) will be made to EBITDA;
        3. the Parent must deliver to the Agent a certificate jointly signed by the finance director and any other duly authorised representative of the Parent, confirming that taking into account the Cure Amount it is then in compliance with Clause 24.2 (*Financial condition*) and attaching the relevant calculations; and
        4. this Clause 24.4 may not be exercised in respect of consecutive Relevant Periods and may not be exercised more than twice over the duration of this Agreement.

1. General Undertakings

The undertakings in this Clause 25 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.

* 1. Restrictive covenants
     1. Each Obligor shall, and the Parent shall ensure that each member of the Restricted Group shall, comply with the covenants set out in Schedule 16 (*Restrictive covenants*) as if such terms formed part of this Agreement.
     2. Notwithstanding any provision to the contrary in this Agreement, including in Schedule 16 (*Restrictive covenants*) to this Agreement, the Parent shall procure that the maximum overall aggregate amount of commitments or limits which are utilised at any time pursuant to:
        1. all Qualified Receivables Financings entered into by all members of the Restricted Group shall not exceed EUR 350,000,000; and
        2. all Qualified Receivables Financings entered into by all Obligors shall not exceed EUR 320,000,000.

***Authorisations and compliance with laws***

* 1. Authorisations

Each Obligor shall:

* + 1. obtain, comply with and do all that is necessary to maintain in full force and effect; and
    2. supply, upon reasonable request of the Agent, certified copies to the Agent of,

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

* + - 1. enable it to perform its obligations under the Finance Documents;
      2. ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
      3. carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.
  1. Compliance with laws

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

* 1. Environmental compliance

Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will):

* + 1. comply with all Environmental Law;
    2. obtain, maintain and ensure compliance with all requisite Environmental Permits;
    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.

* 1. Environmental claims

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of any Environmental Claim against any member of the Restricted Group which is current, pending or threatened where such claim has or is reasonably likely to have a Material Adverse Effect.

* 1. Anti-corruption law
     1. No Obligor shall (and the Parent shall ensure that no other member of the Restricted 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.
     2. Each Obligor shall (and the Parent shall ensure that each other member of the Restricted Group will):
        1. conduct its businesses in compliance with applicable anti-corruption laws; and
        2. maintain policies and procedures designed to promote and achieve compliance with such laws.
  2. Taxation
     1. Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) duly and punctually pay and discharge all material Taxes imposed upon it or its assets within the time period allowed (taking into account available extensions) without incurring penalties unless and only to the extent that:
        1. such payment is being contested in good faith;
        2. 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 23.1 (*Financial Statements*); and
        3. 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.
     2. No member of the Restricted Group may change its residence for Tax purposes if to do so would adversely affect the interests of the Lenders.

***Restrictions on dealing with assets and Security***

* 1. Preservation of assets

Each Obligor shall (and the Parent shall ensure that each other member of the Restricted Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

* 1. Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Hedge Counterparty 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 law.

***Miscellaneous***

* 1. Insurance
     1. Each Obligor shall (and the Parent shall ensure that each other member of the Restricted Group will) maintain insurances (excluding any "key-man" insurance) on and in relation to its business and assets against those risks and to the extent as is usual for companies (acting reasonably) carrying on the same or substantially similar business taking into account in particular the size and nature of such business.
     2. All insurances must be with reputable independent insurance companies or underwriters.
  2. Pensions

The Parent shall ensure that all pension schemes operated by or maintained for the benefit of members of the Restricted Group and/or any of their employees comply with all provisions of applicable law and (except in the case of members of the Restricted Group incorporated in Italy) employ reasonable actuarial assumptions and that no member of the Restricted Group has any material unsatisfied liability in respect of any pension scheme and there are no circumstances which may give rise to any such liability.

* 1. Access

Each Obligor shall, and the Parent shall ensure that each member of the Restricted Group will, (not more than once in every Financial Year unless the Agent reasonably suspects an Event of Default is continuing or is likely to occur) 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 during normal business hours and on reasonable notice at the risk and cost of the Obligor to (a) the premises, assets, books, accounts and records of each member of the Restricted Group and (b) meet and discuss matters with Senior Management.

* 1. Intellectual Property

Each Obligor shall (and the Parent shall procure that each other member of the Restricted Group will):

* + 1. preserve and maintain the subsistence and validity of the Intellectual Property required by it in order to carry on its business;
    2. use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property required by it to carry on its business;
    3. make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property required by it to carry on its business in full force and effect and record its interest in that Intellectual Property; and
    4. not discontinue the use of the Intellectual Property required by it to carry on its business,

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

* 1. Amendments
     1. No Obligor shall (and the Parent shall ensure that no other member of the Restricted Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document, or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 29 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Restricted Group except in writing:
        1. in accordance with Clause 39 (*Amendments and Waivers*);
        2. to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;
        3. prior to or on the Closing Date, with the prior written consent of the Original Lenders; or
        4. after the Closing Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.
     2. The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iv) above.
  2. Financial assistance

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

* 1. Group bank accounts
     1. The Parent shall ensure that within one year of the Closing Date, all bank accounts of the Obligors shall be opened and maintained with a Finance Party or an Affiliate of a Finance Party, and shall be subject to valid Security under the Transaction Security Documents.
     2. Paragraph (a) shall not apply to bank accounts opened in jurisdictions where the Finance Parties do not operate or in jurisdictions where the Finance Parties do not provide cash pooling services in currencies other than the euro on operative terms substantially similar to those obtained from other credit institutions, subject to an aggregate amount to be held in such bank accounts not exceeding EUR 15,000,000 (or its equivalent in other currencies); and
     3. Paragraph (a) shall not apply to bank accounts which are used in connection with any Qualified Receivables Financing or bank accounts opened by any Obligor and intended to be dedicated to an arrangement which will constitute a Qualified Receivables Financing.
     4. The Parent shall procure that only amounts relating to a Qualified Receivables Financing are paid into any bank accounts required for the purposes of such Qualified Receivables Financing and that other amounts are paid into separate bank accounts which are, to the extent applicable, subject to Transaction Security.
  2. Guarantors
     1. The Parent shall ensure that at all times the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of and the aggregate total assets (excluding goodwill) of the Obligors and each member of the Group whose shares are subject to Transaction Security (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents not less than 80 per cent of EBITDA and consolidated total assets (excluding goodwill) of the Group.

In respect of any person which becomes a member of the Group, the total assets of the Group for that Relevant Period shall be calculated as if that person became a member of the Group on the first day of that Relevant Period and in respect of any person which ceases to be a member of the Group during that Relevant Period, total assets of the Group shall be calculated as if that person ceased to be a member of the Group on the first day of that Relevant Period.

* + 1. The Parent shall procure that, in the event additional Subsidiaries are required to accede to this Agreement as Additional Guarantors in order to meet the tests set out in paragraph (a) above, it shall endeavour to have any Material Company not then an Obligor under this Agreement accede as an Additional Guarantor prior to any other Subsidiary acceding.
    2. The Parent need only perform its obligations under paragraphs (a) and (b) 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, that person's directors or other management.
  1. Further assurance
     1. Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall procure that each other member of the Restricted 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)):
        1. 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;
        2. to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
        3. to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
     2. Each Obligor shall (and the Parent shall procure that each other member of the Restricted 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.
     3. Subject to paragraph (d) below, if at any time:
        1. any member of the Restricted Group which is not a Material Company on the date hereof subsequently becomes a Material Company; or
        2. the Parent (or any member of the Restricted Group) acquires any Subsidiary after the date hereof and (on the basis of the most recent consolidated financial statements of the Restricted Group delivered to the Agent pursuant to Clause 23.1 (*Financial statements*) and on the basis of any financial information which has been delivered to the Agent in relation to such subsidiary) such subsidiary is a Material Company,

the Parent shall, if requested to do so by the Agent (having due regard to the cost to the Restricted Group of doing so, the commercial benefit of the Finance Parties in obtaining such security and the terms of the Agreed Security Principles) and to the extent permitted by applicable law, as soon as reasonably practicable create (or procure the creation of) first ranking, fully perfected Security in favour of the Security Agent and/or the other Finance Parties for the Secured Liabilities on terms acceptable to the Security Agent in accordance with the Agreed Security Principles over or in respect of (a) the issued share capital of such member of the Restricted Group or such Restricted Subsidiary and (b) such other assets of such member of the Restricted Group or such Restricted Subsidiary as have been specified by the Agent (having regard to the cost of creating such security compared to the value of the assets to be secured) to the Parent for this purpose provided that such Security does not adversely affect the deductibility of interest referred to in the Structure Memorandum.

* 1. Sanctions
     1. No Obligor shall engage in any transaction that violates any Sanctions, to the extent such Sanctions are applicable to the Obligor.
     2. No Obligor shall directly or indirectly use or apply, nor permit to be used or applied, or provide the benefits of any money, proceeds or services provided or received under the Facility or an Ancillary Facility in connection with this Agreement to, or in favour of any business activity related to, a Restricted Person.
     3. No Obligor shall directly or indirectly transfer, use or apply, nor permit to be transferred, used or applied, or provide the benefits of any money, proceeds or services provided or received under the Facility or an Ancillary Facility or otherwise in connection with this Agreement to, or in favour of any person located, domiciled and/or resident in a Restricted Country.
     4. No Obligor shall fund all or part of any repayment under the Facility or an Ancillary Facility out of proceeds directly derived from transactions which would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions.
     5. Each Obligor shall ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the Facility or an Ancillary Facility from being used contrary to paragraphs (a), (b), (c) or (d) above.
  2. Anti-corruption law

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

* 1. Note purchase condition
     1. If any member of the Restricted Group repays, prepays, purchases, defeases or redeems (or otherwise retires for value) any principal amount of any Pari Passu Liabilities (as defined in the Intercreditor Agreement) (a "**Note Repurchase**") or initiates (by the giving of a notice of redemption or otherwise commencing) an offer for a Note Repurchase, the Parent will, promptly upon becoming aware of such event, notify the Agent of the details of the event, including the amount of the Notes Repurchase.
     2. No Note Repurchase may be initiated:
        1. while a Default is continuing or would result from such Notes Repurchase; or
        2. to the extent the aggregate of all Senior Notes subject to a Note Repurchase since the Closing Date exceeds 35 per cent. of the total aggregate amount of the Senior Notes issued by the Restricted Group (the "**Repurchase Limit**"), **provided that** members of the Restricted Group may repurchase any Notes in excess of the Repurchase Limit if the Parent ensures that such Note Repurchase (to the extent it exceeds the Repurchase Limit) is matched by a cancellation, to be made no later than the relevant repurchase, of an equal amount of the Commitments and (to the extent necessary as a result of such cancellation) prepayment of outstanding Utilisations unless such requirement is waived by all the Lenders.
  2. Conditions subsequent
     1. The Parent shall procure that each of Univeg Katope Brasil Ltda and Univeg Katope Peru SAC are transferred from their current position in the Restricted Group to sit as Subsidiaries of Univeg Fruitpartners B.V. within six (6) months of the Closing Date.
     2. Subject to the Agreed Security Principles, the Parent shall procure that Univeg Katope UK Limited shall grant Transaction Security over its assets (other than real estate) by no later than six (6) months after the date of this Agreement and shall carry out any action to protect, perfect or give priority to such Transaction Security as soon as reasonably practical thereafter.
     3. The Parent shall procure that the resolution of the shareholders of each Obligor incorporated in Belgium provided to the Agent pursuant to Schedule 2 (Conditions Precedent) approving Clauses 10.1 (*Exit*), 22.23 (*Legal and beneficial ownership*) and Clause 26.12 (*Change of Ownership*) of this Agreement is promptly filed with the clerk office of the competent commercial court in accordance with Article 556 of the Belgian Company Code and shall forthwith provide the Agent with evidence thereof.

1. Events of Default

Each of the events or circumstances set out in this Clause 26 is an Event of Default (save for Clause 26.18 (*Acceleration*).

* 1. Non-payment

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

* + 1. administrative or technical error; or
    2. a Disruption Event; and

payment is made within three (3) Business Days of its due date.

* 1. Financial covenants

Subject to Clause 24.4 (*Equity cure*),any requirement of Clause 24 (*Financial covenants*) is not satisfied.

* 1. Other obligations
     1. An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 26.1 (*Non-payment*) and Clause 26.2 (*Financial covenants*)).
     2. No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.
  2. Misrepresentation
     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.
     2. No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.
  3. Cross default
     1. Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
     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).
     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).
     4. No Event of Default will occur under this Clause 26.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (c) above is less than EUR 10,000,000 (or its equivalent in any other currency or currencies).
     5. If both:
        1. one or more bilateral creditors of any member of the Group becomes entitled to declare any Financial Indebtedness arising under bilateral lines provided to any member of the Group due and payable prior to its specified maturity as a result of an event of default (howsoever described) to the extent that such Financial Indebtedness or commitment for Financial Indebtedness exceeds EUR 10,000,000 in aggregate; and
        2. any commitment for Financial Indebtedness under any bilateral line provided to any member of the Group that enjoys the benefit of a guarantee from the Parent is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described).
  4. Insolvency
     1. A Material Company:
        1. is unable or admits inability to pay its debts as they fall due (including a state of *cessation des paiements* within the meaning of the French *Code de Commerce*);
        2. is deemed to or is declared to, be unable to pay its debts under applicable law;
        3. by reason of actual or anticipated financial difficulties suspends or threatens to suspend making payments on any of its debts; or
        4. 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,

and in particular a Material Company incorporated in Germany is unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of section 17 of the German Insolvency Code (*Insolvenzordnung*) or threatens to become unable to pay its debts (*drohend zahlungsunfähig*) within the meaning of section 18 of the German Insolvency Code (*Insolvenzordnung*), or is over-indebted (überschuldet) in the meaning of section 19 of the German Insolvency Code (*Insolvenzordnung*).

* + 1. A moratorium is declared in respect of any indebtedness of any member of the Restricted Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
  1. Insolvency proceedings
     1. Any corporate action is taken or any legal proceedings are initiated in relation to:
        1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, the opening of proceedings for *sauvegarde, sauvegarde financière accélérée, redressement judiciaire* or *liquidation judiciaire* or a judgement *for cession totale ou partielle de l'entreprise* pursuant to articles L.620-1 to L.670-8 of the French *Code de Commerce* or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise, including in the context of a *mandate ad hoc or* of a *conciliation* in accordance with articles L.611-3 to L.611-15 of the French *Code de Commerce*) of any Material Company, other than a solvent liquidation or reorganisation permitted under this Agreement;
        2. a composition, compromise, assignment or arrangement with any creditor of any Material Company;
        3. the appointment of a liquidator (other than in respect of a solvent liquidation permitted under this Agreement), receiver, administrative receiver, administrator, *mandataire ad hoc, concilateur*, compulsory manager or other similar officer in respect of any Material Company or any of its assets; or
        4. enforcement of any Security over any assets of any Material Company which represent a material portion of the assets of the Restricted Group taken as a whole,

or any analogous procedure or step is taken in any jurisdiction or any analogous procedure or step is taken in any jurisdiction, including, without limitation, the making of an application for the opening of insolvency proceedings for the reasons set out in sections 17 to 19 of the German Insolvency Code (*Insolvenzordnung*) (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the taking of actions pursuant to section 21 of the German Insolvency Code (*Insolvenzordnung*) (*Anordnung von Sicherungsmaßnahmen*).

* + 1. Paragraph (a) shall not apply to any winding-up petition which is discharged, stayed or dismissed within (fifteen) 15 Business Days of commencement.
  1. Creditors' process

Any expropriation, attachment, sequestration, distress or execution or analogous process in any jurisdiction (including any of the enforcement proceedings provided for in French Ordinance n° 2011-1895 of 19 December 2011) affects any asset or assets of a member of the Restricted Group which represents a material portion of the assets of the Restricted Group taken as a whole and is not discharged within thirty (30) Business Days.

* 1. Unlawfulness and invalidity
     1. It is or becomes unlawful for an Obligor or in the case of the Intercreditor Agreement, any member of the Restricted Group 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 Intercreditor Agreement is or becomes unlawful and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
     2. Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Restricted Group under the Intercreditor Agreement are not (subject to the Legal Reservations) 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.
     3. Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
  2. Intercreditor Agreement
     1. Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
     2. a representation or warranty given by that party in the Intercreditor 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 10 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

* 1. Cessation of business

A Material Company 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 permitted under Schedule 16 (*Restrictive covenants*).

* 1. Change of ownership
     1. An Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or
     2. an Obligor ceases to own at least the same percentage of shares in a Material Company as at the date of this Agreement,

except, in either case, as a result of a disposal which is permitted under Schedule 16 (*Restrictive covenants*).

* 1. Audit qualification

The Auditors of the Group qualify their report on the audited annual consolidated financial statements of the Parent in any manner which is or could reasonably be expected to be (individually or cumulatively) materially adverse to the interests of the Finance Parties under the Finance Documents.

* 1. Expropriation

The authority or ability of any member of the Restricted 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 Restricted Group or any of its assets to the extent that would reasonably be expected to have a Material Adverse Effect.

* 1. Repudiation and rescission of agreements
     1. An Obligor (or any other member of the Restricted Group) 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.
     2. Any party to the Intercreditor Agreement rescinds or purports to rescind or repudiates or purports to repudiate that document in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.
  2. Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Restricted Group or its assets (or against the directors of any member of the Restricted Group) which have or are reasonably likely to have a Material Adverse Effect.

* 1. 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.

* 1. 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, by notice to the Parent, without any judicial or extra-judicial step but, in respect of any French Obligor, subject to the mandatory provisions of articles L.620-1 to L.670 8 of the French *Code de commerce*:

* + 1. cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
    2. declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
    3. declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;
    4. declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable at which time they shall become immediately due and payable;
    5. declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities 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
    6. exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

CHANGES TO PARTIES

1. Changes to the Lenders
   1. Assignments and transfers by the Lenders

Subject to this Clause 27 and to Clause 28 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:

* + 1. assign any of its rights; or
    2. transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and the assets of such trust fund or other entity are actively managed (the "**New Lender**").

* 1. Conditions of assignment or transfer
     1. Subject to paragraph (b) below, the Existing Lender will consult for a period of five (5) Business Days with the Parent in relation to the proposed assignment or transfer unless the assignment or transfer is:
        1. to another Lender or an Affiliate of a Lender; or
        2. made at a time when an Event of Default is continuing.
     2. Notwithstanding paragraph (a) above, no assignment, transfer or sub-participation in relation to a Loan may be effected to any entity incorporated or acting through a Facility Office located in a Non-Cooperative Jurisdiction without the prior consent of the Parent.
     3. A transfer by a Lender, other than a transfer made as part of primary syndication of the Facility shall be in a minimum amount of EUR 5,000,000 unless the Existing Lender is transferring all of its Commitments which are, in aggregate, less than EUR 5,000,000.
     4. An assignment will only be effective on:
        1. 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;
        2. the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
        3. the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
     5. A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 27.5 (*Procedure for transfer*) is complied with.
     6. If:
        1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
        2. 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 Lender acting through its new Facility Office under Clause 16 (*Tax gross up and indemnities*) or Clause 17 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (f) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility carried out in accordance with the provisions of the Mandate Letter.

* + 1. 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.
  1. Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender or (ii) made in connection with primary syndication of the Facility, 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 EUR 3,000.

* 1. Limitation of responsibility of Existing Lenders
     1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
        1. the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
        2. the financial condition of any Obligor;
        3. 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
        4. the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

* + 1. Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
       1. 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 the Transaction Security; and
       2. 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.
    2. Nothing in any Finance Document obliges an Existing Lender to:
       1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27; or
       2. 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 Transaction Documents or otherwise.
  1. Procedure for transfer
     1. Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
     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.
     3. Subject to Clause 27.12 (*Pro rata interest settlement*), on the Transfer Date:
        1. 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, any other members of the Restricted Group 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**");
        2. 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 Restricted Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
        3. the Agent, the Arranger, the Security Agent, the New Lender, the other Lenders, and any relevant Ancillary Lender 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 Arranger, the Security Agent, and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
        4. the New Lender shall become a Party as a "Lender".
  2. Procedure for assignment
     1. Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
     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.
     3. Subject to Clause 27.12 (*Pro rata interest settlement)*, on the Transfer Date:
        1. the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
        2. the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
        3. the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
     4. Lenders may utilise procedures other than those set out in this Clause 27.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 27.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*).
  3. Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent

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

* 1. Accession of Hedge Counterparties

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a Party to this Agreement as a Hedge Counterparty in accordance with clause 20.12 (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement.

* 1. Lender Accordion Increase
     1. A Lender may increase its Commitment (as requested by the Parent), for the purposes of Clause 2.2 (*Accordion feature – Increase of Facility*) (and be entitled to share pari passu in all Security created by each Transaction Security Document owed to it as such) by delivering a Lender Accordion Increase Certificate in accordance with this Clause provided that no Lender may increase its Commitment if such increase, when aggregated with any additional Commitment provided by an Acceding Accordion Lender in accordance with Clause ‎27.10 (*Acceding Accordion Lenders*) below, would cause the Total Commitments to exceed, in aggregate, EUR 25,000,000 more than the Total Commitments as at the date of this Agreement.
     2. Any person specified in paragraph (a) above shall increase their Commitment if the Agent executes a Lender Accordion Increase Certificate duly completed and signed on behalf of that person.
     3. On the date that the Agent executes each Lender Acordion Increase Certificate, the Agent, the Arranger, the Security Agent, the Lender party to that Lender Accordion Increase Certificate, the other Lenders and the Obligors shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had that Lender been a Current Lender with the Commitment specified by it in that Lender Accordion Increase Certificate.
  2. Acceding Accordion Lenders
     1. The Parent may, for the purposes of Clause 2.2 (*Accordion feature – Increase of Facility*), request that a bank or financial institution or 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 becomes a party to this Agreement as a Lender (and be entitled to share pari passu in all Security created by each Transaction Security Document owed to it as such) (an "**Acceding Accordion Lender**"), provided that:
        1. such Acceding Accordion Lender is agreed upon between the Agent and the Parent;
        2. the Commitment assumed by such Acceding Accordion Lender shall be additional to, and not in replacement of, the Total Commitments as at the time immediately prior to such Acceding Accordion Lender becoming a party to this Agreement; and
        3. the Total Commitments (including, for the avoidance of doubt, any additional Commitment provided by an existing Lender in accordance with Clause 27.9 (*Lender Accordion Increase*) above) shall not exceed, in aggregate, EUR 25,000,000 more than the Total Commitments as at the date of this Agreement.
     2. Subject to paragraph (a) above, each of the Parties hereby agree that an Acceding Accordion Lender shall become a party to this Agreement as a "Lender" upon the execution and delivery by such Acceding Accordion Lender to the Agent of a Lender Accordion Accession Agreement and an Intercreditor Accession Deed and upon the countersignature by the Agent of each such document. Each Party (other than the Agent) hereby irrevocably authorises the Agent to execute a Lender Accordion Accession Agreement for this purpose.
     3. The Agent shall, subject to paragraph (d) below, within 3 Business Days after receipt by it of a duly completed Lender Accordion Accession 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 Lender Accordion Accession Agreement.
     4. The Agent shall only be obliged to execute a Lender Accordion Accession Agreement delivered to it by an Acceding Accordion 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 such Acceding Accordion Lender.
     5. On the date that the Agent executes a Lender Accordion Accession Agreement:
        1. the Agent, the Arranger, the Security Agent, the Acceding Accordion Lender party to that Lender Accordion Increase Certificate, the other Lenders and the Obligors shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had that Acceding Accordion Lender been a Current Lender with the Commitment specified by it in that Lender Accordion Accession Agreement; and
        2. that Acceding Accordion Lender shall become a Party as a "Lender".
  3. Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 27, 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:

* + 1. any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
    2. in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

* + - 1. 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
      2. require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.
  1. Pro rata interest settlement
     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 27.5 (*Procedure for transfer*) or any assignment pursuant to Clause 27.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
        1. 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
        2. 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:
           1. when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
           2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.12, have been payable to it on that date, but after deduction of the Accrued Amounts.
     2. In this Clause ‎29.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
  2. Novation
     1. To the extent a transfer of rights and obligations hereunder could be construed as a novation within the meaning of articles 1271 et seq. of the Belgian and French *Civil Code*, each Party agrees that upon a transfer under Clauses 27.1 (*Assignments and transfers by the Lenders*) and 27.5 (*Procedure for transfer*), the Security created under the Belgian and French law governed Transaction Security Documents shall be preserved and maintained for the benefit of the Security Agent, the New Lender and the remaining Finance Parties pursuant to articles 1278 et seq. of the Belgian and French *Civil Code*.
     2. The New Lender may, in case of an assignment of rights by an Existing Lender hereunder, if it considers it necessary to make such transfer effective as against third parties, arrange for the Assignment Agreement to be notified by way of signification to any French Obligor in accordance with article 1690 of the French *Civil Code*.

1. Restriction on Debt Purchase Transactions
   1. Prohibition on Debt Purchase Transactions by the Group

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "**Debt Purchase Transaction**".

* 1. Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates

(a) For so long as an Investor Affiliate:

* + - 1. beneficially owns a Commitment; or
      2. has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

* + - * 1. the Majority Lenders; or
        2. whether:

any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or

the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Investor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs ‎(A) and ‎(B) above (unless in the case of a person not being an Investor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

(b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with an Investor Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 15 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

(i) is terminated; or

(ii) ceases to be with an Investor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 15 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(d) Each Investor Affiliate that is a Lender agrees that:

(i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

(ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the request of, or on the instructions of, the Agent or one or more of the Lenders.

1. Changes to the Obligors
   1. Assignment and transfers by Obligors

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

* 1. Additional Borrowers
     1. Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 23.8 (*"Know your customer" checks*), the Parent may request that any of its wholly owned Restricted Subsidiaries becomes a Borrower. That Restricted Subsidiary shall become a Borrower if:
        1. it is incorporated in the same jurisdiction as an existing Obligor or otherwise if the Majority Lenders approve the addition of that Restricted Subsidiary;
        2. the Parent and that Restricted Subsidiary deliver to the Agent a duly completed and executed Accession Deed;
        3. the Restricted Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower to the extent permitted by applicable law and subject to the Agreed Security Principles;
        4. the Parent confirms that no Default is continuing or would occur as a result of that Restricted Subsidiary becoming an Additional Borrower; and
        5. the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
     2. The Agent shall notify the Parent 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 II of Schedule 2 (*Conditions precedent*).
     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 paragraph ‎(b) 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.
  2. Resignation of a Borrower
     1. In this Clause 29.3, Clause 29.5 (*Resignation of a Guarantor*) and Clause 29.7 (*Resignation*), "**Release Event**" means (i) the disposal of all or substantially all the assets of an Obligor (including by way of merger, consolidation, amalgamation or combination) or shares of that Obligor (or of any direct or indirect parent entity of that Obligor) to a person which in each case is not a member of the Restricted Group and where that disposal is permitted under Schedule 16 (*Restrictive covenants*) or (ii) the designation of an Obligor as an Unrestricted Subsidiary or (iii) the release of the guarantee of Financial Indebtedness that gave rise to the obligation to become a Guarantor (provided that Clause 25.17 (*Guarantors*) would remain satisfied following such release) or (iv) the release of the guarantee by a Guarantor in respect of the Senior Notes (provided that Clause 25.17 (*Guarantors*) would remain satisfied following such release) or (v) any other event or circumstance in which release of the guarantee of a Guarantor is contemplated in Clause 12 (*Release of Transaction Security and Guarantee of Guarantor*) of Schedule 16 (*Restrictive covenants*) or (vi) any similar event to which the Majority Lenders have provided their consent.
     2. With the prior consent of all the Lenders, the Parent may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter.
     3. The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:
        1. the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
        2. the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents; and
        3. where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 29.5 (*Resignation of 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 Parent has confirmed this is the case).
     4. Upon notification by the Agent to the Parent 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 except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Release Event takes effect.
     5. The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) 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.
  3. Additional Guarantors
     1. Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 23.8 (*"Know your customer" checks*), the Parent may request that any of its wholly owned Subsidiaries (or any intended successor or survivor of the Parent or an existing Guarantor contemplated in Clause 6 (*Merger, Consolidation or Sale of Assets*) of Schedule 16 (*Restrictive covenants*) becomes a Guarantor (and that in the case of such a successor or survivor of the Parent, be substituted as the Parent for all purposes under the Finance Documents as contemplated by that Clause).
     2. A member of the Restricted Group (or a successor or survivor referred to in paragraph (a)) shall become an Additional Guarantor (and in the case of such a successor or survivor of the Parent, be so substituted for the Parent) if:
        1. the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
        2. the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent; or
        3. in the circumstances provided for in Clause 6 (*Merger, consolidation or sale of assets*)of Schedule 16 (*Restrictive covenants*) provided that such accession complies with the terms and conditions set out in that Clause.
     3. The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence required by paragraph (b) above.
     4. Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph‎ (e) 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. Resignation of a Guarantor
     1. The Parent may request that a Guarantor (other than the Parent or the Original Borrower) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
        1. a Release Event (as defined in Clause 29.3 (*Resignation of a Borrower*)) occurs and the Parent has confirmed this is the case; or
        2. all the Lenders have consented to the resignation of that Guarantor.
     2. Subject to paragraph (a) of clause 20.15 (*Resignation of a Debtor*) of the Intercreditor Agreement, the Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:
        1. the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
        2. no payment is due from the Guarantor under Clause 21.1 (*Guarantee and indemnity*); and
        3. where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 29.3 (*Resignation of a Borrower*).
     3. The resignation of that Guarantor shall not be effective until the date of the relevant Release Event at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.
  5. Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause 22.36 (*Times when representations made*) 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.

* 1. Resignation

If a Borrower or Guarantor is or is proposed to be the subject of a Release Event then any resignation of that Borrower or Guarantor shall become effective only on the occurrence of that Release Event.

* 1. Changes to the Obligors – FATCA
     1. No Subsidiary may become an Additional Borrower or an Additional Guarantor, or cease to be a Borrower or Guarantor, before the date falling ten Business Days after the Parent's request in relation thereto has been notified by the Agent to the Lenders, unless each Lender is a "FATCA Protected Lender". The Agent shall notify the Lenders reasonably promptly of any such requests from the Parent.
     2. If the Agent or a Lender reasonably believes that a Subsidiary becoming an Additional Borrower or an Additional Guarantor, or ceasing to be a Borrower or Guarantor, may constitute a "material modification" for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Agent or such Lender (as the case may be) notifies the Parent and the Agent accordingly, that Subsidiary may, subject to paragraphs (c) below, not become an Additional Borrower or an Additional Guarantor, or cease to be a Borrower or Guarantor (as the case may be) without the consent of the Agent or that Lender (as the case may be).
     3. The consent of a Lender shall not be required pursuant to paragraph (b) above if that Lender is a FATCA Protected Lender.

SECTION 10

THE FINANCE PARTIES

1. Role of the Agent, the Arranger and Others
   1. Appointment of the Agent
      1. Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
      2. Each of the Arranger 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. Each of the Arranger and the Lenders hereby relieves the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Agent accordingly.
   2. Instructions
      1. The Agent shall:
         1. 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:
            1. all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
            2. in all other cases, the Majority Lenders; and
         2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
      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.
      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.
      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.
      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.
      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 paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
   3. Duties of the Agent
      1. The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
      2. Subject to paragraph (c) 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.
      3. Without prejudice to Clause 27.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
      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.
      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.
      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, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
      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).
   4. Role of the Arranger

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

* 1. No fiduciary duties
     1. Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
     2. None of the Agent, the Arranger or any Ancillary Lender 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.
  2. Business with the Group

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

* 1. Rights and discretions
     1. The Agent may:
        1. rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraph (b) or (c) of Clause 28.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*)) believed by it to be genuine, correct and appropriately authorised;
        2. assume that:
           1. 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
           2. unless it has received notice of revocation, that those instructions have not been revoked; and
        3. rely on a certificate from any person:
           1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
           2. 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 paragraph (A) above, may assume the truth and accuracy of that certificate.

* + 1. The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
       1. no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.1 (*Non-payment*));
       2. any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
       3. any notice or request made by the Parent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors; and
       4. no Notifiable Debt Purchase Transaction:
          1. has been entered into;
          2. has been terminated; or
          3. has ceased to be with an Investor Affiliate.
    2. The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
    3. Without prejudice to the generality of paragraph (c) above or paragraph (e) 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.
    4. 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.
    5. The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
       1. be liable for any error of judgment made by any such person; or
       2. 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.

* + 1. 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.
    2. Without prejudice to the generality of paragraph (g) above, the Agent:
       1. may disclose; and
       2. on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Parent and to the other Finance Parties.

* + 1. Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
    2. The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 14.2 (*Market disruption*).

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.

* 1. Responsibility for documentation

None of the Agent, the Arranger, or any Ancillary Lender is responsible or liable for:

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
    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
    3. for any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.
  1. No duty to monitor

The Agent shall not be bound to enquire:

* + 1. whether or not any Default has occurred;
    2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
    3. whether any other event specified in any Finance Document has occurred.
  1. Exclusion of liability
     1. Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, or any Ancillary Lender), none of the Agent, nor any Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
        1. 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;
        2. 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
        3. without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
           1. any act, event or circumstance not reasonably within its control; or
           2. 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.

* + 1. No Party (other than the Agent, or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, or any Ancillary Lender, in respect of any claim it might have against the Agent, or an Ancillary Lender 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, or any Ancillary Lender may rely on this Clause subject to Clause 1.8 (*Third party rights*) and the provisions of the Third Parties Act.
    2. 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.
    3. Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
       1. any "know your customer" or other checks in relation to any person; or
       2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger 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 Arranger.

* + 1. 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.
  1. Lenders' indemnity to the Agent
     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 33.11 (*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).
     2. Subject to paragraph ‎(c) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph ‎(a) above.
     3. Paragraph ‎(b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.
  2. Resignation of the Agent
     1. The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Parent.
     2. Alternatively the Agent may resign by giving 30 days notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.
     3. If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent provided that such successor Agent is a Lender or an Affiliate of a Lender with an experienced agency division.
     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 paragraph (c) 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 30 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with the 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.
     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 Parent shall, within three 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.
     6. The Agent's resignation notice shall only take effect upon the appointment of a successor.
     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 paragraph ‎(e) above) but shall remain entitled to the benefit of Clause ‎18.3 (*Indemnity to the Agent*) and this Clause 30 (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.
     8. Notwithstanding the foregoing, no Agent that is a resident of a Non-Cooperative Jurisdiction or that operates through an office in a Non-Cooperative Jurisdiction may be appointed without the prior consent of the Parent.
     9. In case a successor Agent is appointed, such successor Agent shall represent that it is a tax resident of a country other than a Non-Cooperative Jurisdiction and that, for the purposes of the Finance Documents, it will not be acting through an office in a Non-Cooperative Jurisdiction.
     10. The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
         1. the Agent fails to respond to a request under Clause 16.8 (*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;
         2. the information supplied by the Agent pursuant to Clause 16.8 (*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
         3. the Agent notifies the Parent 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 the Parent or that Lender, by notice to the Agent, requires it to resign.

* 1. Replacement of the Agent
     1. After consultation with the Parent, 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.
     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.
     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 paragraph (b) above) but shall remain entitled to the benefit of Clause ‎20.3 (*Indemnity to the Agent*) and this Clause 30 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
     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.
  2. Confidentiality
     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.
     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.
     3. Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is 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.
  3. Relationship with the Lenders
     1. Subject to Clause 27.12 (*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:
        1. entitled to or liable for any payment due under any Finance Document on that day; and
        2. 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.

* + 1. Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost Formula*).
    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 35.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 35.2 (*Addresses*) and paragraph (a) (ii) of Clause 35.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.
  1. Credit appraisal by the Lenders and Ancillary 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, and Ancillary Lender confirms to the Agent, the Arranger, and each Ancillary Lender 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:

* + 1. the financial condition, status and nature of each member of the Restricted Group;
    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;
    3. whether that Lender, or Ancillary 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 or 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;
    4. the adequacy, accuracy or completeness of the Information Memorandum, 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
    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.
  1. Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Parent) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

* 1. Agent's management time

Any amount payable to the Agent under Clause 18.3 (*Indemnity to the Agent*), Clause 20 (*Costs and expenses*) and Clause 30.11 (*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 Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 15 (*Fees*).

* 1. 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.

* 1. Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arranger 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 Arranger or Agent) the terms of any reliance letter or engagement letters relating to 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 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.

1. Conduct of Business by the Finance Parties

No provision of this Agreement will:

* + 1. interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
    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
    3. oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

1. Sharing Among the Finance Parties
   1. Payments to Finance Parties
      1. Subject to paragraph (b) below, if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 33 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:
         1. the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
         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 33 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
         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 33.6 (*Partial payments*).
      2. Paragraph (a) above shall not apply to any amount received or recovered by an Ancillary Lender in respect of any cash cover provided for the benefit of that Ancillary Lender.
   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 33.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

* 1. Recovering Finance Party's rights

On a distribution by the Agent under Clause 32.2 (*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.

* 1. 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:

* + 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
    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.
  1. Exceptions
     1. This Clause 32 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.
     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:
        1. it notified the other Finance Party of the legal or arbitration proceedings; and
        2. the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
  2. Ancillary Lenders
     1. This Clause 32 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause 26.18 (*Acceleration*).
     2. Following service of notice under Clause 26.18 (*Acceleration*), this Clause 32 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

SECTION 11

ADMINISTRATION

1. Payment Mechanics
   1. Payments to the Agent
      1. On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, excluding a payment under the terms of an Ancillary 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.
      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), other than a Non-Cooperative Jurisdiction, and with such bank as the Agent, in each case, specifies.
   2. Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to an Obligor*) and Clause 33.4 (*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 five 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), other than a Non-Cooperative Jurisdiction.

* 1. Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 34 (*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.

* 1. Clawback and pre-funding
     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.
     2. Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
     3. If the Agent 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:
        1. the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
        2. 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.
  2. Impaired Agent
     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 33.1 (*Payments to the Agent*) may instead either:
        1. pay that amount direct to the required recipient(s); or
        2. if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

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

* + 1. 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.
    2. A Party which has made a payment in accordance with this Clause 33.5 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.
    3. Promptly upon the appointment of a successor Agent in accordance with Clause (h) (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 33.2 (*Distributions by the Agent*).
    4. A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
       1. that it has not given an instruction pursuant to paragraph (d) above; and
       2. 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.

* 1. Partial payments
     1. If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
        1. **first**, in or towards payment *pro rata* of any unpaid amount owing to the Agent and the Arranger, or the Security Agent under those Finance Documents;
        2. **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
        3. **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
        4. **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
     2. The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
     3. Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
  2. 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.

* 1. Business Days
     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).
     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.
  2. Currency of account
     1. Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
     2. A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
     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.
     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.
     5. Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.
  3. Change of currency
     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:
        1. 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 Parent); and
        2. 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).
     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 Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.
  4. 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 Parent that a Disruption Event has occurred:

* + 1. the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
    2. the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) 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;
    3. the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
    4. any such changes agreed upon by the Agent and the Parent 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 39(*Amendments and Waivers*);
    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 33.11; and
    6. the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

1. Set-Off
   * 1. 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.
     2. Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.
2. Notices
   1. Communications in writing

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

* 1. 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:

* + 1. in the case of the Parent or the Original Borrower, that identified with its name below;
    2. in the case of each Lender, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
    3. in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

* 1. Delivery
     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:
        1. if by way of fax, when received in legible form; or
        2. if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 35.2 (*Addresses*), if addressed to that department or officer.

* + 1. Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
    2. All notices from or to an Obligor shall be sent through the Agent.
    3. Any communication or document made or delivered to the Parent in accordance with this Clause 35.3 will be deemed to have been made or delivered to each of the Obligors.
    4. Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
  1. Notification of address and fax number

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

* 1. 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.

* 1. Electronic communication

Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means:

* + 1. to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
       1. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
       2. 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.
    2. Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
    3. Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
  1. Use of websites
     1. The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Parent and the Agent (the "**Designated Website**") if:
        1. the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
        2. both the Parent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
        3. the information is in a format previously agreed between the Parent and the Agent.

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

* + 1. The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Parent and the Agent.
    2. The Parent shall promptly upon becoming aware of its occurrence notify the Agent if:
       1. the Designated Website cannot be accessed due to technical failure;
       2. the password specifications for the Designated Website change;
       3. any new information which is required to be provided under this Agreement is posted onto the Designated Website;
       4. any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
       5. the Parent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

* + 1. Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within ten Business Days.
  1. English language
     1. Any notice given under or in connection with any Finance Document must be in English.
     2. All other documents provided under or in connection with any Finance Document must be:
        1. in English; or
        2. 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.

1. Calculations and Certificates
   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.

* 1. 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.

* 1. 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 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

* 1. Evidence of Debt
     1. For the purposes of article 572 of the Spanish Civil Procedural Law (*Ley de Enjuiciamiento Civil*), the Parties expressly agree that upon the occurrence of an Event of Default, the Agent (and/or any Lender) will calculate the amount due following its accounting provisions and it will issue the relevant certificate (which will be upheld valid in a Court and shall produce all legal effects) detailing the total due amount as of the date of its issuance, being deemed such amount as true, net, due and payable.
     2. For any enforcement actions in Spain the submission of a "*copia autorizada*" or "*testimonio con carácter ejecutivo*" of this Agreement will suffice, together with the certificate referred to in article 517.2.5 of the above Spanish Civil Procedural Law (*Ley de Enjuiciamiento Civil*) and the submission of another certificate issued by an authorised representative of the Agent (and/or the relevant Lender) establishing the due amount by the Obligors hereunder, in which the Notary witnessing such certificate, at the Agent's (and/or the relevant Lender's) request, will certify that the said balance coincides with that set out in the Agent's (and/or the relevant Lender's) account and that the settlement of the due amount has been made in the manner agreed by the Parties in this Agreement.

1. Partial Invalidity

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

1. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy 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.

1. Amendments and Waivers
   1. Required consents
      1. Subject to Clause 39.2 (*All Lender matters*)and Clause 39.3(*Other exceptions*)*,* any term of the Finance Documents (other than the Mandate Letter and the Intercreditor Agreement) may be amended or waived only with the written consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.
      2. The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 39.
      3. Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause ‎32.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
      4. Each Obligor agrees to any such amendment or waiver permitted by this Clause 39 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Guarantors.
      5. No amendment or waiver may be made before the date falling ten Business Days after the terms of that amendment or waiver have been notified by the Agent to the Lenders, unless each Lender is a "FATCA Protected Lender". The Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Parent.
   2. All Lender matters

An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

* + 1. the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
    2. an extension to the date of payment of any amount under the Finance Documents;
    3. a reduction in the Margin (including, for the avoidance of doubt, the Margin Premium) or a reduction in the amount of any payment of principal, interest, fees or commission payable;
    4. a change in currency of payment of any amount under the Finance Documents;
    5. an increase in any Commitment or the Total Commitments (unless specifically provided for under this Agreement), an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
    6. a change to the Borrowers or Guarantors other than in accordance with Clause 29 (*Changes to the Obligors*);
    7. any provision which expressly requires the consent of all the Lenders;
    8. Clause 2.4 (*Finance Parties' rights and obligations*), Clause ‎13.10 (*Application of prepayments*), Clause 27 (*Changes to the Lender*), this Clause 39, Clause 42 (*Governing law*) or Clause 43.1 (*Jurisdiction of English courts*);
    9. (other than as expressly permitted by the provisions of any Finance Document and subject to paragraph (j) below in respect of release) the nature or scope of:
       1. the guarantee and indemnity granted under Clause 21 (*Guarantee and Indemnity*);
       2. the Charged Property; or
       3. the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraph (ii) and paragraph (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document);

* + 1. the release of any guarantee and indemnity granted under Clause 21 (*Guarantee and Indemnity*) or of any Transaction Security except where such release is contemplated under this Agreement (including for the avoidance of doubt, Clause 29 (*Changes to the Obligors*), Clause 4 (*Liens*),Clause 12 (*Release of Transaction Security and Guarantee of Guarantors*) of Schedule 16 (*Restrictive covenants*) or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document; or
    2. any amendment to the order of priority or subordination under the Intercreditor Agreement,

shall not be made, or given, without the prior written consent of all the Lenders.

* 1. Other exceptions
     1. An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Security Agent, any Ancillary Lender or a Hedge Counterparty (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, the Security Agent, that Ancillary Lender or, as the case may be, that Hedge Counterparty.
        1. If the Agent or a Lender reasonably believes that an amendment or waiver may constitute a "material modification" for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Agent or that Lender (as the case may be) notifies the Parent and the Agent accordingly, that amendment or waiver may, subject to paragraph (ii) below, not be effected without the consent of the Agent or that Lender (as the case may be).
        2. The consent of a Lender shall not be required pursuant to paragraph (i) above if that Lender is a FATCA Protected Lender.
  2. Excluded Commitments

If:

* + 1. any Defaulting Lender fails to respond to a request for a consent, waiver or amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within fifteen (15) Business Days of that request being made; or
    2. any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, or waiver or consent referred to in paragraphs ‎(b), ‎(c) and ‎(e) of Clause 39.2 (*All Lender matters*)) or such a vote within twenty (20) Business Days of that request being made,

(unless, in either case, the Parent and the Agent agree to a longer time period in relation to any request):

* + - 1. its Commitment(s) shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
      2. its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
  1. Replacement of Lender
     1. If an Obligor becomes obliged to repay any amount in accordance with Clause 9.1 (*Illegality*) or to pay additional amounts pursuant to Clause 17.1 (*Increased costs*), Clause 16.2 (*Tax gross-up*) or Clause ‎18.3 (*Tax Indemnity*) to any Lender or any Lender seeks to invoke the provisions of Clause 14 (*Changes to the calculation of interest*), then the Parent may, on 10 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause ‎29 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest (to the extent that the Agent has not given a notification under Clause ‎29.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.
     2. The replacement of a Lender pursuant to this Clause 39.5 shall be subject to the following conditions:
        1. the Parent shall have no right to replace the Agent or Security Agent;
        2. neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;
        3. in no event shall the Lender replaced under Clause 39.5 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
        4. the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) 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.
     3. A Lender shall perform the checks described in paragraph (b)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.
  2. Disenfranchisement of Defaulting Lenders
     1. For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
        1. the Majority Lenders; or
        2. whether:
           1. any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or
           2. the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,

that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

* + 1. For the purposes of this Clause 39.6, the Agent may assume that the following Lenders are Defaulting Lenders:
       1. any Lender which has notified the Agent that it has become a Defaulting Lender;
       2. any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

* 1. Replacement of a Defaulting Lender
     1. The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 15 Business Days' prior written notice to the Agent and such Lender:
        1. replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
        2. require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender; or
        3. require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause ‎29 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

(i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations (to the extent that the Agent has not given a notification under Clause ‎29.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or

(ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Parent and which does not exceed the amount described in paragraph (i) above.

* + 1. Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 39.7 shall be subject to the following conditions:
       1. the Parent shall have no right to replace the Agent or Security Agent;
       2. neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
       3. the transfer must take place no later than 10 Business Days after the notice referred to in paragraph (a) above;
       4. in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
       5. the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) 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 to the Replacement Lender.
    2. The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Parent when it is satisfied that it has complied with those checks.

1. Confidentiality
   1. Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 40.2 (*Disclosure of Confidential Information*) and Clause 40.3 (*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.

* 1. Disclosure of Confidential Information

Any Finance Party may, subject (where applicable) to the provisions of article L.511-33 of the French *Code monétaire et financier*, to the fullest extent permitted by law, disclose:

* + 1. to any of its Affiliates 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 paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
    2. to any person:
       1. 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, Representatives and professional advisers;
       2. 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, Representatives and professional advisers;
       3. appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.15 (*Relationship with the Lenders*));
       4. who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
       5. 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;
       6. 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;
       7. to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 27.9 (*Security over Lenders' rights*);
       8. who is a Party; or
       9. with the consent of the Parent;

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

* + - * 1. in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
        2. in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
        3. in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
    1. to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) 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 Parent and the relevant Finance Party; and
    2. 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.
  1. Disclosure to numbering service providers
     1. Any Finance Party may, subject (where applicable) to the provisions of article L.511-33 of the French *Code monétaire et financier*, to the fullest extent permitted by law*,* 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:
        1. names of Obligors;
        2. country of domicile of Obligors;
        3. place of incorporation of Obligors;
        4. date of this Agreement;
        5. Clause 42 (*Governing law*);
        6. the names of the Agent and the Arranger;
        7. date of each amendment and restatement of this Agreement;
        8. amounts of, and names of, the Facility (and any tranches);
        9. amount of Total Commitments;
        10. currencies of the Facility;
        11. type of Facility;
        12. ranking of Facility;
        13. Termination Date for Facility;
        14. changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
        15. such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

* + 1. 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.
    2. The Parent represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price sensitive information.
    3. The Agent shall notify the Parent and the other Finance Parties of:
       1. 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
       2. 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.
  1. Entire agreement

To the fullest extent permitted by law, this Clause 40 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.

* 1. 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.

* 1. Notification of disclosure

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

* + 1. of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 40.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
    2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 40.
  1. Continuing obligations

The obligations in this Clause 40 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

* + 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
    2. the date on which such Finance Party otherwise ceases to be a Finance Party.

1. 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

1. Governing Law
   * 1. Subject to paragraph (b) below, this Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
     2. Schedule 16 (*Restrictive covenants*) to this Agreement and any non-contractual obligations arising out of or in connection with it will be interpreted in accordance with the laws of the State of New York.
2. Enforcement
   1. Jurisdiction of English courts
      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 the consequences of its nullity) or any non-contractual obligations arising out of or in connection with this Agreement (a "**Dispute**").
      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.
      3. This Clause 43.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.
   2. Service of process

Each Obligor agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to Univeg Katope UK Limited at its registered office or place of business in England and Wales, or to such other address in England and Wales as each such Obligor may specify by notice in writing to the Agent. Nothing in this paragraph shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause applies to proceedings in England and proceedings elsewhere.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

1. The Original Parties
   1. The Original Obligors

|  |  |  |
| --- | --- | --- |
| Name of Original Borrowers | Registration number (or equivalent, if any) | Jurisdiction of incorporation |
| Univeg Holding B.V. | 24395727 | Netherlands |
| Univeg Belgium NV | 459.881.552 | Belgium |
|  |  |  |
| Name of Original Guarantors | Registration number (or equivalent, if any) | Jurisdiction of incorporation |
| Fieldlink NV | 847.600.648 | Belgium |
| Nova-Veg Logistics NV | 452.033.856 | Belgium |
| European Food Transport NV | 448.900.162 | Belgium |
| Univeg Belgium NV | 459.881.552 | Belgium |
| Univeg Holding B.V. | 24395727 | Netherlands |
| Univeg Trade Benelux B.V. | 29034104 | Netherlands |
| Bocchi Flower Trade Netherlands B.V. | 27223319 | Netherlands |
| Westland Packing B.V. | 27224030 | Netherlands |
| Univeg Nederland Exploitatie B.V. | 29022716 | Netherlands |
| Bakker Barendrecht B.V. | 24129442 | Netherlands |
| Bakker Centrale Inkoop B.V. | 24150319 | Netherlands |
| Bakker Barendrecht Transport B.V. | 24148368 | Netherlands |
| Holland Crop B.V. | 01051453 | Netherlands |
| European Food Transport Nederland B.V. | 24081254 | Netherlands |
| Univeg B.V. | 54048575 | Netherlands |
| Univeg Flowers B.V. | 55002331 | Netherlands |
| Univeg Logistics B.V. | 55020372 | Netherlands |
| Univeg Fruitpartners B.V. | 55017703 | Netherlands |
| Univeg Flowers and Logistics B.V. | 55001963 | Netherlands |
| Univeg Trade Spain S.A.U. | A46267746 | Spain |
| UNIVEG Trade INTERNATIONAL GmbH | HRB 26169 | Germany |
| UNIVEG Deutschland GmbH | HRB 25181 HB | Germany |
| UNIVEG Germany GmbH & Co. KG | HRA 26062 HB | Germany |
| UNIVEG Germany Beteiligungs-GmbH | HRB 27499 HB | Germany |
| Winchester Growers Limited | 03007729 | UK |
| Winchester Bulb Growers Limited | 03049878 | UK |
| Univeg Katope UK Limited | 02411719 | UK |
| Univeg Katope France SAS | 318 477 528 | France |

* 1. The Original Lenders

| Name of Original Lender | Commitment |
| --- | --- |
|  |  |
| ABN AMRO BANK N.V. | EUR 30,000,000 |
| ING BELGIUM SA/NV | EUR 30,000,000 |
| KBC BANK NV | EUR 30,000,000 |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| Total | EUR 90,000,000 |

* 1. The Original Hedge Counterparties

ABN AMRO BANK N.V.

ING BELGIUM SA/NV

KBC BANK NV

1. Conditions Precedent
   1. Conditions Precedent to initial utilisation
      1. **Obligors**
         * 1. A copy of the constitutional documents of each Original Obligor.
           2. In respect of each Original Obligor incorporated in the Netherlands, an extract of the trade register from the chamber of commerce.
           3. In respect of each Original Obligor incorporated in Germany:

an up-to-date (in any event not older than 14 calendar days from the date of this Agreement) official commercial register extract (*Handelsregisterausdruck*), its up-to-date articles of association (*Satzung*), or partnership agreement (*Gesellschaftsvertrag*), copies of any by-laws, as well as a list of shareholders (*Gesellschafterliste*), if applicable, in each case either certified by the commercial register as of a recent date or retrieved electronically (*elektronisch abgerufen*) from the electronic commercial register (*elektronisches Handelsregister*); and

a copy of a resolution signed by all the holders of the issued shares of such Original Obligor, and if applicable, a copy of a resolution of the supervisory board (*Aufsichtsrat*) and/or advisory board (*Beirat*) of such Original Obligor approving the terms of, and the transactions contemplated by the Finance Documents..

* + - * 1. In respect of each Original Obligor incorporated in Spain, a literal excerpt (*certificación literal*) issued by the relevant Mercantile Registry.
        2. In respect of each Original Obligor incorporated in France:

an original extract (*extrait K-bis*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old; and

a non-bankruptcy certificate (*certificat de non faillite*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old.

* + - * 1. A copy of a resolution of the board (or, if applicable, a committee of the board) of directors of each Original Obligor (duly notarised in the case of any Original Obligor incorporated in Spain):

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;

authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;

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

in the case of each Original Guarantor incorporated in Belgium, reflecting the assessment made by the board of directors of that Original Guarantor for concluding that the entry into this Agreement, and in particular the assumption of its guarantee obligations in accordance with Clause 21 (*Guarantee and Indemnity*), is of benefit to that Original Guarantor.

* + - * 1. If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (f) above.
        2. A specimen of the signature of each person authorised by the resolution referred to in paragraph (f) above in relation to the Finance Documents and related documents.
        3. If applicable, a copy of the resolution of the board of supervisory directors of each Original Obligor approving the resolutions of the board of managing directors referred to under (f) above.
        4. If applicable, 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.
        5. To the extent applicable, a copy of the resolution of the shareholders' meeting, or of a written resolution of all shareholders, of each Original Guarantor incorporated in Belgium approving Clauses 10.1 (*Exit*), 22.23 (*Legal and beneficial ownership*) and 26.12 (*Change of Ownership*).
        6. A certificate of the Parent (signed by two directors) 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.
        7. A certificate of an authorised signatory of the Parent or other relevant Original Obligor certifying that each copy document relating to it specified in this Part I 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.
        8. If applicable, a copy of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the positive advice from such works council which contains no condition, which if complied with, could result in a breach of any of any of the Finance Documents or have an adverse effect on the position of the Finance Parties..
    1. **Transaction Documents**
       - 1. A copy of each of the Transaction Documents (other than the Finance Documents) executed by the parties to those documents.
    2. **Finance Documents**
       - 1. The Intercreditor Agreement executed by the members of the Restricted Group party to that Agreement.
         2. This Agreement executed by the members of the Restricted Group party to this Agreement.
         3. The Fee Letters executed by the Parent.
         4. At least two originals of each of the Transaction Security Documents set out in Part III of Schedule 2 (*Transaction Security Documents to be entered into prior to first Utilisation*).
         5. A copy of all notices required to be sent under the Transaction Security Documents on the Closing Date executed by the relevant Obligor.
         6. A copy of all share certificates, shareholders registers, 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.
    3. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility.

* + - * 1. A legal opinion of Clifford Chance LLP, legal advisers to the Agent and the Arranger as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
        2. A legal opinion of the following legal advisers to the Agent and the Arranger:

Clifford Chance LLP, Brussels as to Belgian law;

Clifford Chance LLP, Amsterdam as to Dutch law;

Clifford Chance Europe LLP, Paris as to French law;

Clifford Chance Partnerschaftgesellschaft, Frankfurt as to German law;

Studio Legale Associato in associazione con Clifford Chance, Milan as to Italian law;

Clifford Chance, S.L., Madrid as to Spanish law; and

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

* + - * 1. A legal opinion of the following legal advisors to the Parent in respect of the existence and corporate power of the Obligors and in respect of due authorisation and due execution of the Finance Documents to which they are a party by such Obligors:

Cleary Gottlieb Steen & Hamilton LLP, Brussels as to Belgian law;

Allen & Overy LLP, Amsterdam as to Dutch law;

Cleary Gottlieb Steen & Hamilton LLP, London as to English law,

Allen & Overy LLP, Paris as to French law;

Allen & Overy LLP, Frankfurt, as to German Law; and

Allen & Overy LLP, Madrid, as to Spanish law,

each substantially in the form distributed to the Original Lenders prior to signing this Agreement.

* + 1. **Other documents and evidence**
       - 1. Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 15 (*Fees*), Clause 20 (*Costs and expenses*) and Clause 16.5 (*Stamp Taxes*) have been paid or will be paid by the first Utilisation Date.
         2. The Group Structure Chart which shows the Group.
         3. A copy of the Financial Model.
         4. A copy of the Rating Agency Presentation.
         5. A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of the Parent and each Original Borrower.
         6. A certificate of an authorised signatory of the Parent addressed to the Finance Parties confirming which companies within the Group are Material Companies and that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) and aggregate total assets (excluding goodwill) of the Original Obligors and each member of the Group whose shares are subject to Transaction Security (in each case calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds 80% of the EBITDA and the consolidated total assets of the Group.
         7. A certificate of an authorised signatory of the Parent confirming that (i) the Senior Notes in an aggregate principal amount of EUR 285,000,000 have been issued and subscribed for (and, if applicable, released from escrow) and (ii) all conditions precedent to the issuance and purchase of the Senior Notes have been (or will be on the Closing Date) satisfied or waived in full.
         8. Evidence that all outstanding amounts under the Existing Facilities Agreement have been or will be repaid in full and that the facilities will be cancelled on the Closing Date.
         9. Evidence that all Security granted in relation to the Existing Facilities Agreement has been or will be released unconditionally on the Closing Date (subject solely, as the case may be, to completion of customary perfection requirements).
         10. Any information and evidence reasonably requested by any Finance Party in order to comply with applicable law in respect of anti-money laundering requirements and "know your customer" requirements.
         11. Evidence that the ratio of Total Net Debt to EBITDA at the Closing Date does not exceed 4.25:1.0 (calculated on the basis of LTM EBITDA as at the end of September 2013 and Total Net Debt on the Closing Date).
         12. Information relating to paragraphs (f) and (g) of Clause 23.6 (*Information: miscellaneous*) which is complete and accurate as at the Closing Date.
         13. A copy of any information which has been provided to the holders of the Senior Notes not otherwise provided to the Original Lenders.
         14. Evidence that the EUR 8,850,000 subordinated shareholder loan provided by De Weide Blik NV to the Parent has been repaid and cancelled in full.
         15. A copy of the funds flow in form and substance satisfactory to the Lenders.
         16. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary (if it has notified the Parent 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.
  1. Conditions Precedent Required to be  
     Delivered by an Additional Obligor
     1. An Accession Deed executed by the Additional Obligor and the Parent.
     2. A copy of the constitutional documents of the Additional Obligor.
     3. In respect of each Additional Obligor incorporated in the Netherlands, an extract of the trade register from the chamber of commerce.
     4. In respect of each Additional Obligor incorporated in Germany, an up-to-date certified (*beglaubigt*) commercial register extract (*Handelsregisterausdruck*), its articles of association (*Satzung*) certified by the commercial register as of a recent date or partnership agreement (*Gesellschaftsvertrag*), copies of any by-laws as well as a list of shareholders (*Gesellschafterliste*) certified by the commercial register as of a recent date.
     5. In respect of each Additional Obligor incorporated in Spain, a literal excerpt (*certificación literal*) issued by the relevant Mercantile Registry.
     6. In respect of each Additional Obligor incorporated in France:
        + 1. an original extract (*extrait K-bis*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old; and
          2. a non-bankruptcy certificate (*certificat de non faillite*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old.
     7. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor (duly notarised in the case of any Additional Obligor incorporated in Spain):
        + 1. approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is a party;
          2. authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
          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. in the case of each Additional Guarantor incorporated in Belgium, reflecting the assessment made by the board of directors of that Additional Guarantor for concluding that the entry into this Agreement, and in particular the assumption of its guarantee obligations in accordance with Clause 21 (*Guarantee and Indemnity*), is of benefit to that Additional Guarantor; and
          5. authorising the Parent to act as its agent in connection with the Finance Documents.
     8. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.
     9. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
     10. If applicable, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
     11. A copy of the resolution of the shareholders' meeting, or of a written resolution of all shareholders, of each Additional Guarantor incorporated in Belgium approving Clauses 10.1 (*Exit*), 22.23 (*Legal and beneficial ownership*) and 26.12 (*Change of Ownership*) together with evidence that an extract of such resolution has been filed with the clerk of the competent commercial court in accordance with Article 556 of the Belgian Company Code.
     12. If applicable, a copy of the resolution of the board of supervisory directors and/or the advisory board (*Beirat*) of each Additional Obligor approving the resolutions of the board of managing directors referred to under 3 above.
     13. 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.
     14. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
     15. If applicable, a copy of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the positive advice from such works council which contains no condition, which if complied with, could result in a breach of any of any of the Finance Documents or have an adverse effect on the position of the Finance Parties.
     16. 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 Letter or for the validity and enforceability of any Finance Document.
     17. If available, the latest audited financial statements of the Additional Obligor.
     18. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
         + 1. A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
           2. If the Additional Obligor is not incorporated in England, a legal opinion of the legal advisers to the Agent in the jurisdiction of the incorporation of that Additional Obligor in the form distributed to the Lenders prior to signing the Accession Deed.
     19. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor.
     20. Any notices or documents required to be given or executed under the terms of those security documents.
         + 1. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
           2. 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.
  2. Transaction Security Documents to be entered into prior to first utilisation

| **Name of Original Obligor** | **Transaction Security Document** |
| --- | --- |
| Field Link NV | Pledge over receivables |
|  | Dutch law pledge over shares in Univeg Holding B.V. |
|  | Pledge over shares in Nova-Veg Logistics NV |
| Univeg Belgium NV | Pledge over receivables |
|  | French law financial securities account pledge agreement in relation to the shares issued by Univeg Katope France S.A.S. |
| Nova-Veg Logistics NV | Pledge over receivables |
| European Food Transport NV | Pledge over receivables |
|  | Pledge over shares in Univeg Belgium NV |
| Univeg Holding B.V. | Omnibus pledge agreement, covering a pledge of moveable assets, a pledge of receivables, a pledge of intercompany receivables, a pledge of bank accounts and a pledge of insurance receivables (the "**Omnibus Pledge**") |
|  | English law charge over shares in Winchester Growers Limited |
|  | Pledge over shares in Univeg Flowers and Logistics B.V. |
|  | Pledge over shares in Univeg Fruitpartners B.V. |
|  | Pledge over shares in Univeg B.V. |
|  | Belgian law pledge over shares in European Food Transport NV |
| Univeg Trade Benelux B.V. | Omnibus Pledge |
| Bocchi Flower Trade Netherlands B.V. | Omnibus Pledge |
| Westland Packing B.V. | Omnibus Pledge |
| Univeg Nederland Exploitatie B.V. | Omnibus Pledge |
|  | Pledge over shares in Bakker Barendrecht B.V. |
|  | Pledge over shares in European Food Transport Nederland B.V. |
|  | Partnership interest pledge agreement relating to interests in UNIVEG Germany GmbH & Co. KG by UNIVEG Germany Beteiligungs-GmbH as general partner and Univeg Nederland Exploitatie B.V. as limited partner |
| Bakker Barendrecht B.V. | Omnibus Pledge |
|  | Pledge over shares in Bakker Centrale Inkoop B.V. |
|  | Pledge over shares in Bakker Barendrecht Transport B.V. |
|  | Pledge over shares in Holland Crop B.V. |
| Bakker Centrale Inkoop B.V. | Omnibus Pledge |
| Bakker Barendrecht Transport B.V. | Omnibus Pledge |
| European Food Transport Nederland B.V. | Omnibus Pledge |
| Holland Crop B.V. | Omnibus Pledge |
| Univeg B.V. | Omnibus Pledge |
|  | Belgian law pledge over shares in Univeg Belgium NV |
|  | Belgian law pledge over shares in Nova-Veg Logistics NV |
|  | Pledge over shares in Univeg Trade Benelux B.V. |
|  | Pledge over shares in Univeg Nederland Exploitatie B.V. |
|  | Spanish law pledge over its participation in the capital account of Univeg Iberia S.L. S. Com |
|  | Pledge of quota in Univeg Trade Italia S.r.l. |
|  | Pledge of shares in Univeg Iberia S.L.U. |
|  | Pledge over shares in Univeg Finance B.V. |
|  | German law pledge over shares in UNIVEG Germany Beteiligungs GmbH |
| Univeg Flowers B.V. | Omnibus Pledge |
|  | Pledge over shares in Bocchi Flower Trade Netherlands B.V. |
|  | Pledge over shares in Westland Packing B.V. |
| Univeg Logistics B.V. | Omnibus Pledge |
|  | Belgian law pledge over shares in European Food Transport NV |
| Univeg Fruitpartners B.V. | Omnibus Pledge |
| Univeg Flowers & Logistics B.V. | Omnibus Pledge |
|  | Pledge over shares in Univeg Flowers B.V. |
|  | Pledge over shares in Univeg Logistics B.V. |
| Univeg Trade Spain, S.A.U. | Pledge of receivables |
|  | Pledge of insurance receivables |
| UNIVEG Trade INTERNATIONAL GmbH | Pledge of bank accounts |
|  | Global assignment agreement |
| UNIVEG Deutschland GmbH | Pledge of bank accounts |
|  | Global assignment agreement |
| UNIVEG Germany GmbH & Co. KG | Pledge of bank accounts |
|  | Global assignment agreement |
|  | Pledge of shares in UNIVEG Trade INTERNATIONAL GmbH |
|  | Pledge of shares in UNIVEG Deutschland GmbH |
| UNIVEG Germany Beteiligungs-GmbH | Pledge of bank accounts |
|  | Global assignment agreement |
|  | Partnership interest pledge agreement relating to interests in UNIVEG Germany GmbH & Co. KG by UNIVEG Germany Beteiligungs-GmbH as general partner and Univeg Nederland Exploitatie B.V. as limited partner |
| Winchester Growers Limited | Debenture (including shares in Winchester Bulb Growers Limited but excluding real estate) |
| Winchester Bulb Growers Limited | Debenture (excluding real estate) |
| Univeg Katope France SAS | French law securities account pledge agreement in relation to the shares issued by Agrisol SA |
|  | Security over shares in Univeg Katope UK Limited |

|  |  |
| --- | --- |
| **Name of third party security provider** | **Transaction Security Document** |
| Univeg Finance B.V. | Pledge of intercompany receivables |
|  | Pledge of bank accounts |
| Cherry B.V. | Pledge over shares in UNIVEG Deutschland GmbH |

1. Utilisation Requests

From: [*Borrower*]/[*Parent*]\*

To: [*Agent*]

Dated:

Dear Sirs

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated [**•**] (the "Facility Agreement")**

* + 1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
    2. [We wish to borrow a Loan on the following terms:

|  |  |
| --- | --- |
| * + - * 1. Borrower: | [•] |
| * + - * 1. Proposed Utilisation Date: | [•] (or, if that is not a Business Day, the next Business Day) |
| * + - * 1. Currency of Loan: | [•] |
| * + - * 1. Amount: | [•] or, if less, the Available Facility |
| * + - * 1. Interest Period: | [•] |

* + 1. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
    2. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify maturing Loan*]./[The proceeds of this Loan should be credited to [*account*]].
    3. This Utilisation Request is irrevocable.

Yours faithfully

…………………………………

authorised signatory for and on behalf of

[the Parent for and on behalf of] [*insert name of Borrower*]\*\*

**NOTES**:

\* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

\*\* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

**PLEASE ENSURE THAT THE SHARE OF EACH LENDER IN ANY UTILISATION IS AT LEAST EUR 100,000 (or its equivalent in another currency). OTHERWISE, ANY LENDER WHO LENDS A LESSER AMOUNT SHOULD CONFIRM THAT IT IS A PROFESSIONAL MARKET PARTY WITHIN THE MEANING OF THE DUTCH FINANCIAL SUPERVISION ACT.**

1. Mandatory Cost Formulae
   * 1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Conduct Authority (the "**FCA**") and the Prudential Regulation Authority (the "**PRA**") (or, in each case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
     2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the "**Additional Cost Rate**") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
     3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
     4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:
        + 1. in relation to a sterling Loan:

 per cent. per annum

* + - * 1. in relation to a Loan in any currency other than sterling:

 per cent. per annum.

Where:

A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.

B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 12.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.

C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.

D is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.

E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks) to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

* + 1. For the purposes of this Schedule:
       - 1. "**Eligible Liabilities**" and "**Special Deposits**" have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
         2. "**Fees Rules**" means the rules on periodic fees contained in the FCA Fees Manual and the PRA Fees Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
         3. "**Fee Rates**" means the fee rates specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
         4. "**Tariff Base**" has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
    2. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
    3. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the FCA and PRA, supply to the Agent the rate of charge payable by that Reference Bank to the FCA, or as the case may be, the PRA, pursuant to the Fees Rules in respect of the relevant financial year of the FCA or, as the case may be, PRA (calculated for this purpose by that Reference Bank as being the sum of (i) the average of the Fee Rates specified in the FCA Fees Manual and (ii) the average of the Fee Rates specified in the PRA Fees Manual applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.
    4. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:
       - 1. the jurisdiction of its Facility Office; and
         2. any other information that the Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

* + 1. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.
    2. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
    3. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.
    4. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
    5. The Agent may from time to time, after consultation with the Parent and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the FCA, the PRA or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

1. 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:

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated** [•] **(the "Facility Agreement")**

* + 1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the "**Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
    2. We refer to Clause 27.5 (*Procedure for transfer*) of the Facility Agreement:
       - 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 27.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facility Agreement as specified in the Schedule.
         2. The proposed Transfer Date is [•].
         3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 35.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
    3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
    4. The New Lender confirms for the benefit of the Agent and without liability to any Obligor that it is:
       - 1. a Qualifying Lender (other than a Treaty Lender);
         2. a Treaty Lender; or
         3. not a Qualifying Lender

and that it is [neither] incorporated [nor] acts through a Facility Office situated in a Non-Cooperative Jurisdiction.

* + 1. The benefit of each Transaction Security Document shall be maintained in favour of the New Lender, without prejudice to paragraph (a) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*).
    2. The New Lender hereby confirms that it has received a copy of each of the Transaction Security Documents which are governed by German law and are pledges, is aware of their contents and hereby expressly consents to the declarations of the Security Agent made on behalf of the New Lender as future pledgee in such Transaction Security Document.

6. The New Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) as provided for in paragraph [ ] of Clause 30.1 (*Appointment of the Agent*).

7. The New Lender confirms that it [is]/[is not]\* an Investor Affiliate.

8. We refer to clause [22.5] (*Change of Senior Lender*) of the Intercreditor Agreement.

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

9. For the purposes of articles 1278 et seq. of the French *Code civil*, it is expressly agreed that the Security created under the Transaction Security Documents governed by French law shall be preserved and maintained for the benefit of the Security Agent, the New Lender and the remaining Finance Parties.

10. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11. This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

12. This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

WARNING NOTE:

PLEASE ENSURE THAT THE AMOUNT TRANSFERRED BY ONE LENDER TO ANOTHER LENDER IN RELATION TO A LOAN/COMMITMENT TO ANY BORROWER IS AT LEAST EUR 100,000 (OR ITS EQUIVALENT IN ANOTHER CURRENCY). OTHERWISE, INSERT A CONFIRMATION BY THE NEW LENDER WHO LENDS TO THE RELEVANT BORROWER THAT THE NEW LENDER IS A PROFESSIONAL MARKET PARTY WITHIN THE MEANING OF THE DUTCH FINANCIAL SUPERVISION ACT.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*]

|  |  |
| --- | --- |
| For and on behalf of | For and on behalf of |
| [Existing Lender] | [New Lender] |
|  |  |
| By: | By: |

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

For and on behalf of

[Agent]

By:

For and on behalf of

[Security Agent]

By:

**NOTES:**

\* Delete as applicable.

1. Form of Assignment Agreement[[1]](#footnote-1)

To: [•] as Agent, [•] as Security Agent and [•] as Parent for and on behalf of each Obligor

From: [*the Existing Lender*] (the "**Existing Lender**") and [*the New Lender*] (the "**New Lender**")

Dated:

Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement  
dated [•] (the "Facility Agreement")

* + 1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
    2. We refer to Clause 27.6 (*Procedure for assignment*) of the Facility Agreement:
       - 1. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facility Agreement as specified in the Schedule.
         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 Utilisations under the Facility Agreement specified in the Schedule.
         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 (b) above.
    3. The proposed Transfer Date is [•].
    4. On the Transfer Date the New Lender becomes:
       - 1. party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
         2. party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
    5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 35.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
    6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
    7. The New Lender confirms for the benefit of the Agent and without liability to any Obligor that it is:
       - 1. a Qualifying Lender (other than a Treaty Lender);
         2. a Treaty Lender; or
         3. not a Qualifying Lender

and that it is[not] incorporated in or acting through a Facility Office situated in a Non-Cooperative Jurisdiction.

* + 1. The benefit of each Transaction Security Document shall be maintained in favour of the New Lender, without prejudice to paragraph (a) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*).
    2. The New Lender hereby confirms that it has received a copy of each of the Transaction Security Documents which are governed by German law and are pledges, is aware of their contents and hereby expressly consents to the declarations of the Security Agent made on behalf of the New Lender as future pledgee in such Transaction Security Document.

9. The New Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) as provided for in paragraph [ ] of Clause 30.1 (*Appointment of the Agent*).

10. The New Lender confirms that it [is]/[is not]\* an Investor Affiliate.

11. We refer to clause [22.5] (Change of Senior Lender) of the Intercreditor Agreement.

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

12 This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 27.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.

13 This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

14 This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

15 This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this 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.**

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment,  
release and accession

[*insert relevant details*]

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

|  |  |
| --- | --- |
| For and on behalf of | For and on behalf of |
| [Existing Lender] | [New Lender] |
| By: | By: |

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

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

For and on behalf of

[Agent]

By:

For and on behalf of

[Security Agent]

By:

NOTES:

\* Delete as applicable.

1. Accordion Documentation
   1. Form of Lender Accordion Increase Certificate

To: [•] as Agent

From: [*The Increasing Accordion Lender*] (the "**Increasing Accordion Lender**") and the Parent

Dated:

Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement dated [•] (the "Facility Agreement")

* + 1. We refer to the Facility Agreement. This is a Lender Accordion Increase Certificate. Terms defined in the Facility Agreement have the same meaning in this Lender Accordion Increase Certificate unless given a different meaning in this Lender Accordion Increase Certificate.
    2. [Increasing Accordion Lender] confirms that is bound by the terms of the Facility Agreement and the Intercreditor Deed as a Lender in accordance Clause ‎[27.9] (*Lender Accordion Increase*) of the Agreement.
    3. [Increasing Accordion Lender]'s Commitment is increased to EUR [•].
    4. This Lender Accordion Increase Certificate and any non contractual obligations arising out of or in connection with it are governed by English law.
    5. This Lender Accordion Increase Certificate is a Finance Document.

[Proposed Increasing Accordion Lender]

By:

[The Parent]

By:

This Agreement is accepted as a Lender Increase Certificate for the purposes of the Agreement by the Agent.

[Agent]

By:

* 1. Form of Lender Accordion Accession Agreement

To: [•] as Agent

From: [ ]

Dated:

Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement dated [•] (the "Facility Agreement")

THIS Lender Accordion Accession Agreement is made the [•] day of [•] 20[•] by [*insert name of acceding lender*] (the "**Acceding Accordion Lender**").

We refer to the Facility Agreement. This is a Lender Accordion Accession Agreement. Terms defined in the Facility Agreement have the same meaning in this Lender Accordion Accession Agreement unless given a different meaning in this Lender Accordion Accession Agreement.

The Acceding Accordion Lender hereby agrees with each other person who is or who becomes a party to or bound by the provisions of the Facility Agreement that with effect on and from the date on which this Lender Accordion Accession Agreement and the Intercreditor Accession Deed have been countersigned by the Agent it:

* + - * 1. will become a party to the Facility Agreement as a "Lender" and will accordingly become a "Finance Party" for the purposes of the Facility Agreement; and
        2. will be bound by the terms of the Intercreditor Deed as a [Lender].

The Acceding Accordion Lender expressly confirms that it [can/cannot] exempt the Facility Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) as provided for in paragraph (b) of Clause 30.1 (*Appointment of the Agent*).

The Facility Office and other notice details of the Acceding Accordion Lender for the purposes of the Facility Agreement are as follows:

Address:

Attention:

Tel.:

Fax:

E mail:

The Commitment of the Acceding Accordion Lender for the purposes of the Facility Agreement is [•].

The Acceding Accordion Lender hereby confirms that it has received a copy of each of the Transaction Security Documents which are governed by German law and are pledges, is aware of their contents and hereby expressly consents to the declarations of the Security Agent made on behalf of the Acceding Accordion Lender as future pledgee in such Transaction Security Document.

This Lender Accordion Accession Agreement and any non contractual obligations arising out of or in connection with it are governed by English law.

This Lender Accordion Accession Agreement is a Finance Document.

for and on behalf of

[*insert name of Acceding Accordion Lender*]

Countersigned by the Agent:

for and on behalf of

[•]

Dated:

1. Form Of Accession Deed

To: [                   ] as Agent and [                  ] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [*Subsidiary*] and [*Parent*]

Dated:

Dear Sirs

Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement

dated [•] (the "Facility Agreement")

* + 1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1-[3]/[4] of this Accession Deed unless given a different meaning in this Accession Deed.
    2. [*Subsidiary/successor/survivor*] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facility Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [29.2 (*Additional Borrowers*)]/[Clause 29.4 (*Additional Guarantors*)] of the Facility Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company and registered number [                   ].[*Insert any relevant guarantee limitation language as agreed with the Agent*]
    3. [The Parent confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional Borrower].
    4. [*Subsidiary's*] administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:

Address:

Fax No.:

Attention:

* + 1. [*Subsidiary/successor/survivor*] (for the purposes of this paragraph [4]/[5], the "**Acceding Debtor**") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

*[Insert details (date, parties and description) of relevant documents]*

the "**Relevant Documents**".

**IT IS AGREED** as follows:

* + - * 1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph [4]/[5].
        2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:

[any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

all proceeds of that Security; and]

all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

* + - * 1. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
        2. [In consideration of the Acceding Debtor being accepted as an Intra‑Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra‑Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra‑Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].\*
    1. This Accession Deed [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

**THIS ACCESSION DEED** has been signed on behalf of the Security Agent (for the purposes of paragraph [4]/[5] above only), signed on behalf of the Parent and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

**[*Subsidiary*]**

[EXECUTED AS A DEED ]

By: [*Subsidiary*] )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director/Secretary

***OR***

|  |  |
| --- | --- |
| [EXECUTED AS A DEED  By: [*Subsidiary*] |  |
|  | Signature of Director |
| in the presence of | Name of Director |
|  | Signature of witness |
|  | Name of witness |
|  | Address of witness |
|  |  |
|  |  |
|  |  |
|  | Occupation of witness] |

**The Parent**

|  |  |
| --- | --- |
| For and on behalf of |  |
| [*Parent*] |  |

By:

**The Security Agent**

For and on behalf of

[*Full Name of Current Security Agent*]

By:

Date:

NOTES:

\* Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

1. Form Of Resignation Letter

To: [•] as Agent

From: [*resigning Obligor*] and [*Parent*]

Dated:

Dear Sirs

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated** [•] **(the "Facility Agreement")**

* + 1. We refer to the Facility Agreement. This is a Resignation Letter. Terms defined in the Facility Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
    2. Pursuant to [Clause 29.3 (*Resignation of a Borrower*)]/[Clause 29.5 (*Resignation of a Guarantor*)], we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor] under the Facility Agreement and the Finance Documents (other than the Intercreditor Agreement).
    3. We confirm that:
       - 1. no Default is continuing or would result from the acceptance of this request; and
         2. \* [this request is given in relation to a Release Event of [*resigning Obligor*];]
         3. [•]\*\*
    4. This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.
    5. The Parent agrees to indemnify the Finance Parties and Secured Parties for any costs, expenses, or liabilities which would have been payable by [*resigning Obligor*] in connection with the Finance Documents but for the release set out in paragraph 1 above.

|  |  |
| --- | --- |
| For and on behalf of | For and on behalf of |
| [Parent] | [*resigning Obligor*] |
| By: | By: |

**NOTES**:

\* Insert where resignation only permitted in case of a Release Event.

\*\* Insert any other conditions required by the Facility Agreement.

1. Form Of Compliance Certificate

To: [•] as Agent

From: [*Parent*]

Dated:

Dear Sirs

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated** [•] **(the "Facility Agreement")**

* + 1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
    2. We confirm that:
       - 1. On the last day of the Relevant Period ending on [•] Total Net Debt was [•] and EBITDA for such Relevant Period was [•]. Therefore Total Net Debt at such time [did/did not] exceed [•] times EBITDA for such Relevant Period and the covenant contained in paragraph [•] of Clause 24 (*Financial Covenants*) [has/has not] been complied with;
         2. We confirm that the ratio of Total Net Debt to EBITDA is [•]:1 and that, therefore, the Margin should be [ ].
    3. [We confirm that no Default is continuing.]\*
    4. [We confirm that the following companies constitute Material Companies for the purposes of the Facility Agreement: [•].]

[We confirm that the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) and aggregate total asset of the Guarantors (calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents not less than 80 per cent of EBITDA and consolidated total assets of the Group.

|  |  |  |
| --- | --- | --- |
| Signed | ………………….. | …………………….. |
|  | Director | Director |
|  | For and on behalf of | For and on behalf of |
|  | [Parent] | [Parent] |

[*insert applicable certification language*]

……………………..

for and on behalf of

[*name of auditors of the Parent*]

**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. LMA Form of Confidentiality Undertaking
2. Timetables
   1. Loans

|  | **Loans in euro** | **Loans in sterling** | **Loans in other currencies** |
| --- | --- | --- | --- |
| Agent notifies the Parent if a currency is approved as an Optional Currency in accordance with Clause 4.3 (*Conditions relating to Optional Currencies*) | - | - | U-4 |
| Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (Clause 13.1 (*Selection of Interest Periods and Terms*)) | U-3  9.30am | U-1  9.30am | U-3  9.30am |
| Agent determines (in relation to a Utilisation) the Base Currency 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-3  Noon | U-1  noon | U-3  noon |
| Agent receives a notification from a Lender under Clause 6.2 (*Unavailability of a currency*) | Quotation Day  9.30am | - | Quotation Day  9.30am |
| Agent gives notice in accordance with Clause 6.2 (*Unavailability of a currency*) | Quotation Day  5.30pm | - | Quotation Day  5.30pm |
| LIBOR or EURIBOR is fixed | Quotation Day 11:00 a.m. in respect of LIBOR and 11.00 a.m. (Brussels time) in respect of EURIBOR | Quotation Day 11:00 a.m. | Quotation Day 11:00 a.m. |

"U" = date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan.

"U – X" = X Business Days prior to date of utilisation

1. Agreed Security Principles
   * 1. SECURITY PRINCIPLES
        + 1. The guarantees and Security to be provided pursuant to the Debt Documents (as defined in the Intercreditor Agreement, the "**Debt Documents**") will be given in accordance with the agreed security principles set out herein (the "**Agreed Security Principles**"). This Schedule addresses the manner in which the Agreed Security Principles will impact on the guarantees and Security required to be given in relation to the Debt Documents.
          2. The Agreed Security Principles embody recognition by all parties that there may be certain legal and practical difficulties in obtaining effective guarantees and Security from, or over the shares of, members of the Group in the jurisdiction in which they are incorporated or conduct business (the "**Security Jurisdictions**"). In particular:

general statutory limitations, financial assistance, corporate benefit, fraudulent preference, "thin capitalisation" rules, retention of title claims and similar principles may limit the ability of an Obligor to provide a guarantee or Security or may require that the guarantee or Security be limited by an amount or otherwise provided that such Obligor shall use reasonable endeavours lawfully available to it to overcome any such obstacle;

the Security and extent of its perfection will be agreed taking into account the cost to the Group of providing security so as to ensure that it is proportionate to the benefit accruing to the Secured Parties;

any assets subject to third party arrangements which are not prohibited by the Debt Documents and which prevent those assets from being charged will be excluded from any relevant Transaction Security Document provided that reasonable endeavours to obtain consent to charging any such assets shall be used by the Obligors if the relevant asset is material and if seeking such consent will not adversely affect the business or commercial relationships of such Obligors;

no Obligor will be required to give guarantees or enter into Transaction Security Documents to the extent it would conflict with the fiduciary duties of the directors (or other officers) of such Obligor or contravene any legal or regulatory prohibition or result in a risk of personal, civil or criminal liability on the part of any director (or other officer) or the Obligor itself provided that such Obligor shall use reasonable endeavours lawfully available to it to overcome any such obstacle;

perfection of Security, when required, and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified in the Debt Documents or (if earlier or to the extent no such time periods are specified in the Transaction Security Documents) within the time periods specified by applicable law in order to ensure due perfection. The perfection of Security granted will not be required if it would have a material adverse effect on the ability of the relevant Obligor to conduct its operations and business in the ordinary course as otherwise permitted by the Debt Documents;

perfection of Security over intellectual property, if any, will only be made in respect of material intellectual property rights in any relevant jurisdiction as may be agreed between the Parent and the Security Agent at the relevant time;

no perfection action will be required in jurisdictions where Obligors are not located but perfection action may be required in the jurisdiction of one Obligor in relation to Security granted by another Obligor located in a different jurisdiction;

no security will be granted over any hedging agreements entered into by members of the Group (except for Super Senior Hedging Liabilities (as defined in the Intercreditor Agreement));

other than a general security agreement and related filing, no perfection action will be required with respect to assets of a type not owned by members of the Group;

unless and to the extent local law considerations require otherwise, all Security shall be given in favour of the Security Agent (for the benefit of the Secured Parties, as defined in the Intercreditor Agreement) and not the Secured Parties individually; "Parallel Debt" provisions will be used where necessary and such provisions will be contained in the Intercreditor Agreement and not the individual Transaction Security Documents unless required under local laws;

o Security will be required over any real estate assets owned by any member of the Group on the date of this Agreement;

unless granted under a global Transaction Security Document governed by the law of its Security Jurisdiction or under English law, all Transaction Security Documents (other than Transaction Security Documents creating pledges or charges over shares in any member of the Group) shall be governed by the law of, and create a charge or pledge over assets located in, the Security Jurisdiction of the member of the Group granting such Security;

on the date of this Agreement, no Security (other than Security over shares in any member of the Group) shall be granted in any Security Jurisdiction other than Belgium, the Netherlands, Germany, the United Kingdom or Spain; and

Transaction Security Documents creating charges or pledges over shares in a member of the Group shall be governed by the laws of the jurisdiction in which the company whose shares are being pledged is incorporated.

* + - * 1. The Security Agent or the Finance Parties, as the case may be, shall promptly discharge any guarantees and release any Security which is or are subject to any legal or regulatory prohibition as is referred to in paragraph (b)(iv) above.
    1. GUARANTORS AND SECURITY
       - 1. Subject to the requirements of these Agreed Security Principles and the Legal Reservations, the Secured Parties shall:

receive the benefit of an upstream, cross-stream and/or downstream guarantee from and Security over the assets of each Obligor to secure all liabilities of each Debtor (as defined in the Intercreditor Agreement) and including, for the avoidance of doubt, the Senior Note Issuer (as defined in the Intercreditor Agreement) and each Obligor and any Debtors under the Debt Documents to the Secured Parties in accordance with, and subject to, the requirements of the Agreed Security Principles in each Security Jurisdiction (the "**Secured Obligations**"); and

obtain a first ranking Security over the shares in all Obligors, together with Univeg Trade Italia Srl and Agrisol SA.

* + - * 1. the Parent shall be responsible for all costs and expenses reasonably incurred by the Finance Parties (including all reasonable legal expenses, disbursements, registration costs and all taxes, duties and fees (notarial or otherwise)) in respect of guarantees and Security required under the Debt Documents.
        2. The Guarantors will be required to pay the cost of any re-execution, notarisation, re-registration, amendment or other perfection requirement for any security on any assignment or transfer on or prior to the Syndication Date by the Mandated Lead Arranger to a new Lender. Otherwise the cost or fee shall be for the account of the transferee Lender.
        3. The guarantees and Security to be granted by any Additional Obligors in the Security Jurisdictions shall be granted as soon as reasonably practical and in any event (subject to any such longer period as may be agreed between the Parent and the Agent) within 45 days of the date on which they accede to this Agreement as an Additional Obligor.
        4. It is the intention that all Security will be granted and perfected to the benefit of all Secured Parties (as such term is defined in the Intercreditor Agreement) contemporaneously, and in particular, no Security need be granted to the benefit of the Lenders if such Security cannot contemporaneously (and validly) be granted to the benefit of the holders of the Senior Notes, and no Security need be granted to the benefit of the holders of the Senior Notes if such Security cannot contemporaneously (and validly) be granted to the benefit of the Lenders.
    1. TERMS OF SECURITY DOCUMENTS

The following principles will be reflected in the terms of the Transaction Security Documents:

* + - * 1. the Security will be first ranking, to the extent possible;
        2. Security will not be enforceable until an Event of Default has occurred which is continuing and notice of acceleration has been given by the Agent in accordance with the terms of the Debt Documents (an "**Enforcement Event**");
        3. the Secured Parties shall only be able to exercise a power of attorney granted to them under the Transaction Security Documents following the occurrence of an Event of Default which is continuing or if an Obligor has failed to comply with a further assurance or perfection obligation within five (5) Business Days of the Parent or the relevant Obligor becoming aware of such failure or being notified of such failure by the Security Agent;
        4. the Transaction Security Documents shall operate to create security rather than to impose new commercial obligations. Accordingly they shall not contain additional representations or undertakings (such as in respect of insurance, maintenance of assets, information or the payment of costs) unless required for the creation or perfection of the Security or other provisions already covered by the principal Debt Documents;
        5. the Transaction Security Documents shall not operate to prevent transactions which are otherwise permitted under the Debt Documents;
        6. information, such as lists of assets, will be provided if, and only to the extent, required by local law to be provided to perfect or register the security and, when required, shall be provided quarterly (unless required more frequently under local law) or, following an Event of Default which is outstanding, on the Security Agent's reasonable request and provided that information can be provided without breaching confidentiality requirements (including any data protection requirements) ; and
        7. security will, where possible and practical, automatically create security over future assets of the same type as those already pledged or charged to the benefit of the Security Agent.
    1. BANK ACCOUNTS
       - 1. If an Obligor grants Security over its material bank accounts it shall be free to deal with those accounts in the course of its business until notice to the contrary is given by the Security Agent following an Event of Default which has occurred and is continuing.
         2. If required by local law to perfect the Security, notice of the Security or a form of account control agreement will be served on the account bank within five (5) Business Days of the Security being granted and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice (or acceptance of such account control agreement) within twenty (20) Business Days of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement (or acceptance) its obligation to obtain acknowledgement or acceptance shall cease on the expiry of that twenty (20) Business Day period. Irrespective of whether notice of the security is required for perfection, if the service of notice would prevent the Obligor from using a bank account in the course of its business, no such notice shall be served until the occurrence of an Event of Default which has occurred and is continuing.
         3. Any Security over bank accounts shall be subject to any prior security interests in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of Security may request these are waived by the account bank but the Obligor shall not be required to change its banking arrangements if these security interests are not waived or only partially waived.
         4. Subject to these Agreed Security Principles, Security over bank accounts will be registered if required for the validity or perfection thereof under the law of the Security Jurisdiction.
    2. FIXED ASSETS
       - 1. If an Obligor grants Security over its material fixed assets it shall be free to deal with those assets in the course of its business or as otherwise permitted under the Debt Documents until notice to the contrary is given by the Security Agent following an Event of Default which has occurred and is continuing.
         2. No notice whether to third parties or by attaching a notice to the fixed assets shall be prepared or given until an Event of Default has occurred which is continuing.
         3. Subject to these Agreed Security Principles, Security over fixed assets will be registered if required for the validity or perfection thereof under the law of the Security Jurisdiction.
    3. INSURANCE POLICIES
       - 1. If required under the law of the relevant Security Jurisdiction for the perfection of such Security, notice of the Security will be served on the insurance provider within five (5) Business Days of the Security being granted and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within twenty (20) Business Days of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that twenty (20) Business Day period.
         2. No loss payee or other endorsement shall be made on the insurance policy.
    4. INTELLECTUAL PROPERTY
       - 1. If an Obligor grants security over its material intellectual property it shall be free to deal with those assets in the course of its business (including, without limitation, allowing its intellectual property to lapse if no longer material to its business) or as otherwise permitted under the Debt Documents until notice to the contrary has been given by the Security Agent following an Event of Default which has occurred and is continuing.
         2. No Security shall be granted over any intellectual property which cannot be secured under the terms of the relevant licensing agreement. No notice shall be served on any third party from whom intellectual property is licensed until an Event of Default has occurred and is continuing.
         3. Subject to these Agreed Security Principles, Security over intellectual property will be registered under the law of the relevant Security Jurisdiction or at a relevant supra-national registry (such as the EU).
    5. INTERCOMPANY RECEIVABLES
       - 1. If an Obligor grants security over its material intercompany receivables it shall be free to deal with those receivables in the course of its business until notice to the contrary has been given by the Security Agent following an Event of Default which has occurred and is continuing.
         2. If required under the law of the relevant Security Jurisdiction, notice of the Security will be served on the relevant borrower within five (5) Business Days of the Security being granted and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within twenty (20) Business Days of service.
         3. Subject to these Agreed Security Principles, Security over intercompany receivables will be registered if required for the validity or perfection thereof under the law of the relevant Security Jurisdiction.
    6. TRADE RECEIVABLES
       - 1. If an Obligor grants Security over its material trade receivables it shall be free to deal with those receivables in the course of its business or as otherwise permitted under the Debt Documents until an Enforcement Event.
         2. No notice of Security may be served on the underlying trade debtor until the occurrence of an Event of Default has occurred which is continuing.
         3. No Security will be granted over any trade receivables which cannot be secured under the terms of the relevant contract.
         4. Subject to these Agreed Security Principles, Security over trade receivables will be registered if required for the validity or perfection thereof under the law of the relevant Security Jurisdiction.
         5. Any list of trade receivables delivered to the Agent or Security Agent shall only be required to include details of the underlying contracts to the extent necessary to create or perfect the Security over such receivables.
    7. SHARES
       - 1. Until notice to the contrary has been given by the Security Agent following an Event of Default which has occurred and is continuing, the charging Obligor will be permitted to retain and to exercise voting rights appertaining to any shares charged by it and the company whose shares have been charged will be permitted to pay dividends upstream on pledged shares to the extent permitted under the Debt Documents with the proceeds to be available to the Group.
         2. Where customary, on, or as soon as reasonably practicable following execution of the share charge, the share certificate and a stock transfer form executed in blank will be provided to the Security Agent and where required by law the share certificate or shareholders' register will be endorsed or written up and the endorsed share certificate or a copy of the written up register provided to the Security Agent.
         3. Unless the restriction is required by law or regulation, the constitutional documents of the company whose shares have been charged will be amended to remove any restriction on the transfer or the registration of the transfer of the shares on enforcement of the Security granted over them. Where this is not practicable, on a costs / benefit analysis and, subject to local counsel's advice, minority shareholder consent will be obtained in lieu of amendment to the relevant constitutional documents.
    8. REAL ESTATE
       - 1. After the date of this Agreement, an Original Obligor may be required to grant security over any newly acquired material real estate and an Additional Obligor may be required to grant security over any material real estate.
         2. Save as required under the law of the relevant Security Jurisdiction, there will be no obligation to investigate title, provide surveys or other insurance or environmental due diligence.
         3. An Obligor will be under no obligation to obtain any landlord consent required to grant Security over its material real estate, nor to investigate the possibility thereof. Costs of granting real estate Security must be within the agreed costs cap and the amount secured by each Security over material real estate may be restricted to an agreed level.
    9. RELEASE OF SECURITY

Unless required by the law of the relevant Security Jurisdiction, the circumstances in which the Security shall be released should not be dealt with in the Transaction Security Documents but, if so required, shall, except to the extent required by local law, be the same as those set out in the Intercreditor Agreement.

1. Form of Increase Confirmation

To: [ ] as Agent, [     ] as Security Agent, and [ ] as Parent, for and on behalf of each Obligor

From: [*the Increase Lender*] (the "**Increase Lender**")

Dated:

Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement

dated [ ] (the "Facility Agreement")

* + 1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
    2. We refer to Clause 2.2 (*Increase*) of the Facility Agreement.
    3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facility Agreement.
    4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [•].
    5. On the Increase Date, the Increase Lender becomes:
       - 1. party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
         2. party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
    6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 35.2 (*Addresses*) are set out in the Schedule.
    7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (g) of Clause 2.2 (*Increase*).
    8. The Increase Lender hereby confirms that it has received a copy of each of the Transaction Security Documents which are governed by German law and are pledges, is aware of their contents and hereby expressly consents to the declarations of the Security Agent made on behalf of the Increase Lender as future pledgee in such Transaction Security Document.

[8./9.] The Increase Lender confirms that it is not an Investor Affiliate.

[10/11] We refer to clause [22.11] (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

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

The Increase Lender expressly confirms that it [can/cannot] exempt the Facility Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) as provided for in paragraph (b) of Clause 30.1 (*Appointment of the Agent*).

[11/12] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[12/13] This Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

[13/14] This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[*insert relevant details*]

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

|  |  |
| --- | --- |
| [Increase Lender] |  |
| By: |  |

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

|  |  |
| --- | --- |
| For and on behalf of |  |
| Agent |  |
| By: |  |

|  |  |
| --- | --- |
| For and on behalf of |  |
| Security Agent |  |
| By:] |  |

NOTES:

\* Delete as applicable.

1. Forms of Notifiable Debt Purchase Transaction Notice
   1. Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [             ] as Agent

From: [*The Lender*]

Dated:

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated [**           **] (the "Facility Agreement")**

* + 1. We refer to paragraph (b) of Clause [ ] (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
    2. We have entered into a Notifiable Debt Purchase Transaction.
    3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

|  |  |
| --- | --- |
| **Commitment** | **Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)** |
| Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |

For and on behalf of

[Lender]

By:

* 1. Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction ceasing to be with Investor Affiliate

To: [             ] as Agent

From: [*The Lender*]

Dated:

**Fieldlink NV – EUR 90,000,000 Revolving Facility Agreement**

**dated [**           **] (the "Facility Agreement")**

* + 1. We refer to paragraph (c) of Clause [ ] (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
    2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [•] has [terminated]/[ceased to be with an Investor Affiliate].[[2]](#footnote-2)\*
    3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

|  |  |
| --- | --- |
| **Commitment** | **Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)** |
| Commitment | [*insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies*] |

For and on behalf of

[Lender]

By:

1. Restrictive Covenants
   1. Covenants
      1. **Definitions**

Capitalised terms used in this Schedule 16 shall have the meaning ascribed to them in Part II (*Definitions*) of this Schedule 16, provided that:

* + - * 1. capitalised terms used in this Schedule 16 but not defined in this Schedule 16 shall have the meaning ascribed to them in Clause 1.1 (*Definitions*) of this Agreement (but shall be construed in accordance with the laws of the State of New York when used in this Schedule 16);
        2. if a term defined in this Schedule 16 is also defined in Clause 1.1 (*Definitions*) of this Agreement, then, for the purposes of this Schedule 16 only, such term shall have the meaning ascribed to it in this Schedule 16; and
        3. terms used in this Schedule 16 but not defined in this Schedule 16 or Clause 1.1 (*Definitions*) of this Agreement and which are given a meaning or defined in the Senior Note Indenture or the Intercreditor Agreement shall have the meaning ascribed to them under the Senior Note Indenture or Intercreditor Agreement as applicable.
    1. **Restricted Payments**
       - 1. The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

declare or pay any dividend or make any other payment or distribution on account of the Parent’s or any of its Restricted Subsidiaries’ Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Parent’s or any of its Restricted Subsidiaries’ Equity Interests in their capacity as holders (other than in Equity Interests (other than Disqualified Stock) of the Parent or any of its Restricted Subsidiaries or Subordinated Shareholder Debt, and other than dividends or distributions payable to the Parent or a Restricted Subsidiary);

purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Parent) any Equity Interests of the Parent or any direct or indirect parent entity of the Parent;

make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Parent's or any Guarantor that is expressly contractually subordinated in right of payment to the RCF Liabilities (excluding any intercompany Indebtedness between or among the Parent and any of its Restricted Subsidiaries), except (i) a payment of principal at the Stated Maturity thereof or (ii) the purchase, repurchase, defeasance or other acquisition of Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal instalment or scheduled maturity, in each case due within one year of the date of such purchase, repurchase, defeasance or other acquisition;

make any Restricted Investment; or

make any payment of principal or interest on any Subordinated Shareholder Debt (other than non-cash interest paid in the form of Equity Interests (other than Disqualified Stock) or additional Subordinated Shareholder Debt),

(all such payments and other actions set forth in paragraphs (i) to (v) being collectively referred to as "**Restricted Payments**"), unless, at the time of any such Restricted Payment:

no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

the Parent would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four- quarter period, have been permitted to incur at least €1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in paragraph (a) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*); and

such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent and its Restricted Subsidiaries since the Closing Date (excluding Restricted Payments permitted by sub-paragraphs (ii), (iii), (iv), (v), (vi), (vii), (viii)(A), (x), (xi) and (xii) of paragraph (c) below), is less than the sum, without duplication, of:

50% of the Consolidated Net Income of the Parent for the period (taken as one accounting period) commencing January 1, 2014 to the end of the Parent’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); plus

100% of the aggregate net cash proceeds and the Fair Market Value of marketable securities received by the Parent since the Closing Date as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Parent (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock of the Parent or any Restricted Subsidiary or convertible or exchangeable debt securities of the Parent or any Restricted Subsidiary, in each case that have been converted into or exchanged for Equity Interests of the Parent or from the issue or sale of Subordinated Shareholder Debt (other than Equity Interests (or Disqualified Stock, debt securities or Subordinated Shareholder Debt) sold to a Subsidiary of the Parent); plus

to the extent that any Restricted Investment that was made after the Closing Date is (a) sold, disposed of or otherwise cancelled, liquidated or repaid, 100% of the aggregate amount received in cash and the Fair Market Value of any other property received by the Parent or any Restricted Subsidiary, (b) made in an entity that subsequently becomes a Restricted Subsidiary (or is merged or consolidated into the Parent or a Restricted Subsidiary), 100% of the Fair Market Value of the Restricted Investment of the Parent and its Restricted Subsidiaries as of the date such entity becomes a Restricted Subsidiary (or is so merged or consolidated), or (c) if such Restricted Investment is a guarantee that is released or cancelled, the amount of the guarantee so released or cancelled; plus

to the extent that any Unrestricted Subsidiary of the Parent designated as such after the Closing Date is redesignated as a Restricted Subsidiary or is merged or consolidated into the Parent or a Restricted Subsidiary, or all of the assets of such Unrestricted Subsidiary are transferred to the Parent or a Restricted Subsidiary, the Fair Market Value of the property received by the Parent or Restricted Subsidiary or the Parent’s Restricted Investment in such Subsidiary as of the date of such redesignation, merger, consolidation or transfer of assets, to the extent such investments reduced the restricted payments capacity under this sub-paragraph (D) and were not previously repaid or otherwise reduced; plus

100% of any dividends, distributions or payments received by the Parent or a Restricted Subsidiary after the Closing Date from an Unrestricted Subsidiary or Restricted Investment, to the extent that such dividends, distributions or payments were not otherwise included in the Consolidated Net Income of the Parent for such period.

* + - * 1. Paragraphs (a) and (b) will not prohibit:

the payment of any dividend or the consummation of any redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Agreement;

the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Parent) of, Equity Interests of the Parent (other than Disqualified Stock), Subordinated Shareholder Debt or from the substantially concurrent contribution of common equity capital to the Parent; provided that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from sub-paragraph (iii)(B) of paragraph (b) above;

the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Parent, or any Restricted Subsidiary that is contractually subordinated to the RCF Liabilities in exchange for or with the net cash proceeds from an incurrence of Permitted Refinancing Indebtedness;

the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Parent (or any direct or indirect parent entity) or any Restricted Subsidiary held by any current or former officer, director, employee or consultant of the Parent or any of its Restricted Subsidiaries (or permitted transferees of such current or former officers, directors, employees or consultants) pursuant to any equity subscription agreement, stock option agreement, restricted stock grant, shareholders’ agreement, employment agreement or similar agreement or plan; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed €3.0 million in any twelve month period (with unused amounts in any twelve-month period (including, for the avoidance of doubt, carried-over amounts) to be carried over to the next succeeding twelve month period); and provided, further, that such amount in any twelve month period may be increased by an amount not to exceed the cash proceeds from the sale of Equity Interests of the Parent or a Restricted Subsidiary received by the Parent or a Restricted Subsidiary during such calendar year, in each case to members of management, directors or consultants of the Parent, any of its Restricted Subsidiaries or any of its direct or indirect parent companies to the extent the cash proceeds from the sale of Equity Interests have not otherwise been applied to the making of Restricted Payments pursuant to sub-paragraph (iii)(B) of paragraph (b) or paragraph (c)(ii) above;

the repurchase of Equity Interests deemed to occur upon the exercise of stock options or warrants to the extent such Equity Interests represent a portion of the exercise price of those stock options or warrants;

the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Parent or any preferred stock of any Restricted Subsidiary issued on or after the Closing Date in accordance with Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*);

payments of cash, dividends, distributions, advances or other Restricted Payments by the Parent or any of its Restricted Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon (x) the exercise of options or warrants or (y) the conversion or exchange of Capital Stock of any such Person;

(x) payments pursuant to any tax sharing agreement or arrangement among the Parent and/or any of its Restricted Subsidiaries and other Persons with which the Parent or any of its Restricted Subsidiaries is required or permitted to file a consolidated tax return or with which the Parent or any of its Restricted Subsidiaries is a part of a group for tax purposes; provided, however, that such payments will not exceed the lesser of (i) the amount of tax that the Parent and its Restricted Subsidiaries (or such of them as are part of the relevant group for tax purposes) would owe on a stand-alone basis and (ii) the related tax liabilities of the Parent and its Restricted Subsidiaries are relieved thereby, (y) payments to fund any Public Offering Expenses and Related Taxes and (z) so long as no Default or Event of Default has occurred and is continuing, payment to fund management fees, expenses and costs relating directly or indirectly to activities of the Parent and its Subsidiaries in an amount not to exceed €2.5 million in any calendar year;

advances or loans to (x) any future, present or former officer, director, employee or consultant of the Parent or a Restricted Subsidiary to pay for the purchase or other acquisition for value of Equity Interests of the Parent (other than Disqualified Stock), or any obligation under a forward sale agreement, deferred purchase agreement or deferred payment arrangement pursuant to any management equity plan or stock option plan or any other management or employee benefit or incentive plan or other agreement or arrangement or (y) any management equity plan or stock option plan or any other management or employee benefit or incentive plan or unit trust or the trustees of any such plan or trust to pay for the purchase or other acquisition for value of Equity Interests of the Parent (other than Disqualified Stock); provided that the total aggregate amount of Restricted Payments made under this sub-paragraph (ix) does not exceed €2.5 million in any calendar year;

the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary to the holders of its Equity Interests (other than the Parent or any Restricted Subsidiary) then entitled to participate in such dividends on no more than a pro rata basis;

the payment of any Receivables Fees and purchases of Receivables Assets and related assets pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing;

any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Parent or any Guarantor that is subordinated in right of payment to the RCF Liabilities (other than any Indebtedness so subordinated and held by Affiliates of the Parent) pursuant to provisions in (and to the extent required by) any agreement governing such Indebtedness, but only if, in the case of an Asset Sale, the Parent has complied with its obligations under Clause 11 (*Asset Sales*);

so long as no Default or Event of Default has occurred and is continuing, following an Initial Public Offering, the declaration and payment by the Issuer of dividends or distributions to holders of the Parent’s Capital Stock in an amount per annum not to exceed 6% of the net cash proceeds received from such Initial Public Offering, or any subsequent Public Offering, that are contributed to the Parent’s equity (other than through the issuance of Disqualified Stock); or

so long as no Default or Event of Default has occurred and is continuing, other Restricted Payments in an aggregate amount not to exceed €20.0 million since the Closing Date.

* + - * 1. The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. Unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness by virtue of its nature as unsecured Indebtedness.
    1. **Incurrence of Indebtedness and Issuance of Preferred Stock**
       - 1. The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Parent will not and will not permit any Restricted Subsidiary (including the Issuer) to issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries (including the Issuer) to issue any shares of preferred stock; provided, however, that the Parent may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock and the Issuer and the other Restricted Subsidiaries may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Fixed Charge Coverage Ratio for the Parent’s most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be, would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period; provided further that the amount of Indebtedness that may be incurred pursuant to this paragraph (a) by non-Guarantor Restricted Subsidiaries shall not exceed €25 million in aggregate principal amount at any one time outstanding.
         2. Paragraph (a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "**Permitted Debt**"):

the incurrence by the Parent and any Restricted Subsidiary of additional Indebtedness under Credit Facilities (including this Agreement) in an aggregate principal amount at any one time outstanding under this sub-paragraph (i) not to exceed €100.0 million, plus in the case of any refinancing of any Indebtedness permitted under this sub-paragraph (i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing, less the aggregate amount of all Net Proceeds from the sale, lease, conveyance or other disposition of Collateral applied by the Parent or any of its Restricted Subsidiaries since the Closing Date to repay any Indebtedness under Credit Facilities (including this Agreement) and effect a corresponding commitment reduction thereunder pursuant to Clause 11 (*Asset Sales*) (provided that the aggregate principal amount of Indebtedness permitted to be incurred pursuant to this paragraph (i) shall not be reduced below €80 million at any one time outstanding);

Indebtedness of the Parent or any Restricted Subsidiary outstanding on the Closing Date after giving effect to the use of proceeds of the Facility;

the incurrence by the Issuer and the Guarantors of Indebtedness represented by the Senior Notes issued on the Closing Date and the related Note Guarantees;

Indebtedness or Disqualified Stock of the Parent and Indebtedness or preferred stock of any Restricted Subsidiary, in each case, represented by Capital Lease Obligations, mortgage financings or purchase money obligations or other Indebtedness incurred or assumed in connection with the acquisition or development of real or personal, movable or immovable property or assets, in each case incurred for the purpose of financing or refinancing all or any part of the purchase price, lease expense, rental payments or cost of design, construction, installation or improvement of property, plant or equipment or other assets (including Capital Stock) used or useful in the business of the Parent or any of its Restricted Subsidiaries (including any reasonable related fees or expenses incurred in connection with such acquisition or development), in an aggregate principal amount not to exceed €10.0 million at any time outstanding;

Permitted Refinancing Indebtedness or Disqualified Stock of the Parent and Permitted Refinancing Indebtedness or preferred stock of any Restricted Subsidiary in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge, any Indebtedness, Disqualified Stock and preferred stock (other than intercompany Indebtedness) that was permitted by this Agreement to be incurred by a Guarantor or a Restricted Subsidiary, as the case may be, under paragraphs (a) or (b)(ii), (iii), (v) or (xiii) of this Clause 3;

the incurrence by the Parent or any Restricted Subsidiary of intercompany Indebtedness between or among the Parent or any Restricted Subsidiary; provided that:

(except in respect of current liabilities incurred in the ordinary course of business in connection with cash management, tax and accounting operations) if any Guarantor is the obligor on such Indebtedness and the creditor is not a Guarantor, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the RCF Liabilities; and

(x) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Parent or a Restricted Subsidiary and (y) any sale or other transfer of any such Indebtedness to a Person that is not either the Parent or a Restricted Subsidiary, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Parent or such Restricted Subsidiary, as the case may be, that was not permitted by this sub-paragraph (vi);

the issuance by any Restricted Subsidiary to the Parent or to any of its Restricted Subsidiaries of preferred stock; provided that:

any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Parent or a Restricted Subsidiary; and

any sale or other transfer of any such preferred stock to a Person that is not either the Parent or a Restricted Subsidiary, will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this sub-paragraph (vii);

the incurrence by the Parent or any Restricted Subsidiary of Hedging Obligations in the ordinary course of business and not for speculative purposes;

the Guarantee by the Parent or any Restricted Subsidiary of Indebtedness of the Parent or any Restricted Subsidiary to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this Clause 3; provided that if the Indebtedness being guaranteed is subordinated to or pari passu with the RCF Liabilities, then the Guarantee must be subordinated or pari passu, as applicable, to the same extent as the Indebtedness guaranteed;

the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness in respect of workers’ compensation claims, health, disability or other employee benefits, or property, casualty, liability or other insurance, environmental remediation or other environmental matters, self-insurance obligations, captive insurance companies, bankers’ acceptances, statutory, appeal, completion, export, import, customs, revenue, performance, bid, surety, reclamation, remediation and similar bonds and completion guarantees (not for borrowed money) in the ordinary course of business;

the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from the honouring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

Indebtedness incurred in any Qualified Receivables Financing;

(i) Indebtedness of any Person outstanding on the date on which such Person becomes a Restricted Subsidiary or is merged, consolidated, amalgamated or otherwise combined with the Parent or any Restricted Subsidiary or that is assumed by the Parent or any Restricted Subsidiary in connection with its acquisition of assets from such Person or any Affiliate thereof or (ii) Indebtedness Incurred to provide all or any portion of the funds used to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Parent or a Restricted Subsidiary; provided, however, with respect to this sub-paragraph (xiii), that at the time of the acquisition or other transaction pursuant to which such Indebtedness was deemed to be incurred (x) the Parent would have been able to incur €1.00 of additional Indebtedness pursuant to the first paragraph of this covenant after giving effect to the incurrence of such Indebtedness pursuant to this sub-paragraph (xiii) or (y) the Fixed Charge Coverage Ratio would not be less than it was immediately prior to giving effect to such acquisition or other transaction;

Indebtedness arising from agreements of the Parent or a Restricted Subsidiary providing for customary indemnification, earnouts or other adjustments of purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Equity Interests of a Subsidiary, provided that the maximum liability of the Parent and its Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Parent and its Restricted Subsidiaries in connection with such acquisition or disposition;

Indebtedness of the Parent and its Restricted Subsidiaries in respect of (A) letters of credit or similar instruments in the ordinary course of business, provided, however, that upon the drawing of such letters of credit or other instrument, such obligations are reimbursed within 30 days following such drawing, and (B) any customary cash management, cash pooling or netting or setting off arrangements;

Indebtedness of a Restricted Subsidiary under working capital facilities or for general corporate purposes or other purposes not otherwise prohibited by this Agreement in an aggregate principal amount at any time outstanding, including all Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this sub-paragraph (xvi), not to exceed €25.0 million;

Indebtedness consisting of customer deposits and advance payments received from customers for goods and services purchased in the ordinary course of business, and take-or-pay obligations contained in supply arrangements incurred in the ordinary course of business;

Indebtedness secured by Liens permitted by paragraph (v) of the definition of Permitted Liens, whereby the holder has no recourse whatsoever against any of the stock or assets of the Parent or any Restricted Subsidiary other than the property to which such Lien relates; and

Indebtedness or Disqualified Stock of the Parent or Indebtedness or preferred stock of any Restricted Subsidiary (including the Issuer) in an aggregate principal amount at any time outstanding, including all Indebtedness, Disqualified Stock and preferred stock incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness, Disqualified Stock and preferred stock incurred pursuant to this sub-paragraph (xix), not to exceed €15.0 million.

* + - * 1. No Guarantor will incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the RCF Liabilities on substantially identical terms; provided, however, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of any Guarantor solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness under Credit Facilities (including this Agreement).
        2. For purposes of determining compliance with this Clause 3, in the event that an item of Indebtedness meets the criteria of more than one of the categories described in sub-paragraphs (b)(i) through (xix) of this covenant, or is entitled to be incurred pursuant to paragraph (a), the Parent, in its sole discretion, will be permitted to classify such item of Indebtedness on the date of its incurrence and only be required to include the amount and type of such Indebtedness in one of such clauses and will be permitted on the date of such incurrence to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in paragraphs (a) and (b) of this Clause 3, from time to time to reclassify all or a portion of such item of Indebtedness, in any manner that complies with this covenant; provided, (i) Indebtedness under this Agreement outstanding on the Closing Date will initially be deemed to have been incurred on such date in reliance on sub-paragraph (b)(i) of this covenant, (ii) Indebtedness under Qualified Receivables Financings outstanding on the Closing Date will initially be deemed to have been incurred on such date in reliance on sub-paragraph (b)(xii) of this covenant and (iii) Indebtedness of Restricted Subsidiaries outstanding on the Closing Date under working capital facilities will initially be deemed to have been incurred on such date in reliance on sub-paragraph (b)(xvi) of this covenant, and in each case may not be reclassified.
        3. The accrual of interest or preferred stock dividends, the accretion or amortisation of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on preferred stock or Disqualified Stock in the form of additional shares of the same class of preferred stock or Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of preferred stock or Disqualified Stock for purposes of this covenant. For purposes of determining compliance with any euro denominated restriction on the incurrence of Indebtedness, the euro equivalent principal amount of Indebtedness denominated in a different currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving Indebtedness; provided, however, that (i) if such Indebtedness denominated in non-euro currency is subject to a Currency Exchange Protection Agreement with respect to euro the amount of such Indebtedness expressed in euro will be calculated so as to take account of the effects of such Currency Exchange Protection Agreement; and (ii) the euro equivalent of the principal amount of any such Indebtedness outstanding on the Closing Date shall be calculated based on the relevant currency exchange rate in effect on the Closing Date. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebtedness being refinanced will be the euro equivalent of the Indebtedness refinanced determined on the date such Indebtedness was originally incurred, except that to the extent that:

such euro equivalent was determined based on a Currency Exchange Protection Agreement, in which case the Refinancing Indebtedness will be determined in accordance with the preceding sentence; and

the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the euro equivalent of such excess will be determined on the date such refinancing Indebtedness is being incurred.

* + - * 1. Notwithstanding any other provision of this Clause 3, the maximum amount of Indebtedness that the Parent or any Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.
        2. The amount of any Indebtedness outstanding as of any date will be:

the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

the principal amount of the Indebtedness, in the case of any other Indebtedness;

in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

the Fair Market Value of such assets at the date of determination; and

the amount of the Indebtedness of the other Person; and

in the case of any Hedging Obligations, the net amount payable if such Hedging Obligations were terminated at that time due to default by such Person (after giving effect to any contractually permitted set-off).

* + 1. **Liens**
    2. The Parent will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien on any of its property or assets (including Capital Stock of any other Person), whether owned on the Closing Date or thereafter acquired, securing any Indebtedness, except (1) in the case of any property or asset that does not constitute Collateral, (a) Permitted Liens, or (b) if such Lien is not a Permitted Lien, to the extent that all payments due under this Agreement to the RCF Finance Parties are secured on an equal and rateable pari passu basis with the obligations so secured (and if such obligations so secured are subordinated in right of payment to the RCF Liabilities, on a senior priority basis) until such time as such obligations are no longer secured by a Lien and (2) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.
    3. Any such Lien thereby created in favour of the RCF Finance Parties pursuant to paragraph (a)(1)(b) above will be automatically and unconditionally released and discharged upon (i) the release and discharge of the initial Lien to which it relates, (ii) in the case of any such Lien in favour of any such RCF Guarantee, upon the termination and discharge of such RCF Guarantee in accordance with the terms of this Agreement, (iii) any sale, exchange or transfer (other than a transfer constituting a transfer of all or substantially all of the assets of the Parent or the Issuer that is governed by the provisions of Clause 6 (*Merger, consolidation or sale of assets*) to any Person not an Affiliate of the Parent or Issuer of the property or assets secured by such initial Lien, or of all of the Capital Stock held by the Parent or any Restricted Subsidiary in, or all or substantially all the assets of, any Restricted Subsidiary creating such initial Lien or (iv) in other relevant circumstances in which release of security is contemplated in Clause 12 (*Release of Transaction Security and Guarantee of Guarantors*).
    4. **Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries**
       - 1. The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

pay dividends or make any other distributions on its Capital Stock to the Parent or any Restricted Subsidiary, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Parent or any Restricted Subsidiary;

make loans or advances to the Parent or any Restricted Subsidiary; or

sell, lease or transfer any of its properties or assets to the Parent or any Restricted Subsidiary, provided that (x) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill period to) loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness incurred by the Parent or any Restricted Subsidiary, in each case, shall not be deemed to constitute such an encumbrance or restriction.

* + - * 1. However, paragraph (a) will not apply to encumbrances or restrictions existing under or by reason of any one or more of the following:

any Credit Facilities (including this Agreement), any related agreements or instruments, as well as any other agreements or instruments, that, in each case, are in effect or entered into on the Closing Date, and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements or instruments; provided that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements or instruments on the Closing Date (as, in each case, determined in good faith by a responsible accounting or financial officer of the Parent);

the Senior Note Indenture, the Senior Notes, and the Note Guarantees, the Intercreditor Agreement, and the Transaction Security Documents;

the Finance Documents;

agreements governing other Indebtedness permitted to be incurred under the provisions of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) and any guarantees thereof or Liens with respect thereto, and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements, if (i) the restrictions therein are not materially less favourable, taken as a whole, to the Lenders than is customary in comparable financings or than the restrictions contained in the Credit Facilities then in effect, and in any related agreements or instruments (as, in each case, determined in good faith by a responsible accounting or financial officer of the Parent);

applicable law, rule, regulation or order or the terms of any license, authorisation, concession or permit;

any agreement or instrument of, or governing Indebtedness or Capital Stock of, a Person acquired by the Parent or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such agreement or instrument was entered into in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness is permitted by the terms of this Agreement to be incurred;

customary non-assignment and similar provisions in contracts, leases and licenses entered into in the ordinary course of business;

purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in sub-paragraph (iii) of paragraph (a) above;

any agreement or instrument for the sale or other disposition of the Capital Stock or all or substantially all of the property and assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;

Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements and instruments governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced (as determined in good faith by a responsible accounting or financial officer of the Parent);

Liens permitted to be incurred under the provisions of Clause 4 (*Liens*);

provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements or instruments (including agreements entered into in connection with a Restricted Investment), which limitation is applicable only to the assets that are the subject of such agreements or instruments;

restrictions on cash or other deposits or net worth imposed by customers or suppliers or required by insurance, surety or bonding companies, in each case, under contracts entered into in the ordinary course of business;

any encumbrance or restriction effected in connection with a Qualified Receivables Financing (or any other Receivables Financing permitted under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*)); and

any encumbrance or restriction existing under (i) any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions in the foregoing paragraphs (i) through (xiv), or in this paragraph (xv) or (ii) any Additional Intercreditor Agreement; provided that the terms and conditions of any such encumbrances or restrictions are not materially more restrictive, taken as a whole, than those under or pursuant to the agreement so extended, renewed, refinanced or replaced or, in the case of an Additional Intercreditor Agreement, the Intercreditor Agreement or any other Additional Intercreditor Agreement then outstanding (as, in each case, determined in good faith by a responsible accounting or financial officer of the Parent).

* + 1. **Merger, Consolidation or Sale of Assets**
       - 1. The Parent will not directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Parent is the surviving corporation), or, (2) directly or indirectly sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

either: (a) in the case of consolidation or merger, the Parent is the surviving corporation or (b) the Person formed by or surviving any such consolidation or merger (if other than the Parent), or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made, is an entity organized or existing under the laws of any member state of the Pre-Expansion European Union, Switzerland, Canada, any state of the United States or the District of Columbia;

the Person formed by or surviving any such consolidation or merger (if other than the Parent) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made, becomes an Additional Guarantor under Clause 29.4 (*Additional Guarantors*);

immediately after such transaction, no Default or Event of Default exists;

the Parent (or the Person formed by or surviving any such consolidation or merger of the Parent, or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made) would, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period (i) be permitted to incur at least €1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test in paragraph (a) of Clause 3 or (ii) have a Fixed Charge Coverage Ratio not less than it was immediately prior to giving effect to such transaction; and

the Parent delivers to the Agent, in form and substance reasonably satisfactory to the Agent, an Officer’s Certificate and opinion of counsel, in each case, stating that such consolidation, merger or transfer complies with this covenant.

The Person formed by or surviving any such merger or consolidation (if other than the Parent or the Issuer, as applicable) will succeed to, and be substituted for, and may exercise every right and power of, the Parent, and the Person to which any such sale, assignment, transfer, conveyance, lease or other disposition has been made will succeed to, and be substituted for, and may exercise every right and power of, the Parent, under the Finance Documents to which it is a party.

* + - * 1. A Guarantor (other than a Guarantor whose RCF Guarantee is to be released in accordance with Clause 29.5 (*Resignation of a Guarantor*)) will not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not such Guarantor is the surviving corporation), or (2) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of such Guarantor and its Subsidiaries which are Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless such transaction is in compliance with Clause 11 (*Asset Sales*) or:

either:

such Guarantor is the surviving corporation; or

the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made becomes an Additional Guarantor under Clause 29.4 (*Additional Guarantors*);

immediately after giving pro forma effect to such transaction or transactions (and treating any Indebtedness which becomes an obligation of the surviving corporation as a result of such transaction as having been incurred by the surviving corporation at the time of such transaction or transactions), no Default or Event of Default exists; and

the Parent delivers to the Agent an Officer’s Certificate and opinion of counsel, in each case, stating that such consolidation, merger or transfer and such supplemental indenture comply with this covenant.

* + - * 1. Notwithstanding anything to the contrary in the preceding paragraphs or elsewhere in this Agreement, this Clause will not apply to (a) any consolidation or merger of any Restricted Subsidiary that is not a Guarantor into any Guarantor or any non-Guarantor Restricted Subsidiary, (b) any consolidation or merger among Guarantors, or (c) any sale, assignment, transfer, conveyance, lease or other disposition of assets among the Parent and its Restricted Subsidiaries. Clauses (c) and (d) of the first paragraph and clause (b) of the third paragraph of this Clause will not apply to any merger or consolidation of the Parent or any Guarantor with or into an Affiliate solely for the purpose of reincorporating the Parent or such Guarantor in another jurisdiction.
    1. **Transactions with Affiliates**
       - 1. The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, make any payment to or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Parent (each, an "**Affiliate Transaction**") involving aggregate consideration in excess of €2.0 million, unless:

the Affiliate Transaction is on terms that are no less favourable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated Person; and

the Parent delivers to the Agent:

with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of €7.5 million, a resolution of the Board of Directors of the Parent set forth in an Officer’s Certificate certifying that such Affiliate Transaction complies with this Clause 7 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Parent (or if there is only one such member in respect of the Affiliate Transaction, such member); and, in addition,

with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of €15.0 million, an opinion of an accounting, appraisal or investment banking firm of international standing, or other recognized independent expert of international standing with experience appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required, stating that the transaction or series of related transactions is (i) fair from a financial point of view taking into account all relevant circumstances or (ii) on terms not less favourable than might have been obtained in a comparable transaction at such time on an arm’s length basis from a Person who is not an Affiliate.

* + - * 1. The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

transactions pursuant to any employment agreement, collective bargaining agreement, consultant, employee benefit arrangements with any employee, consultant, officer or director of the Parent or any Restricted Subsidiary, including under any stock option, stock appreciation rights, stock incentive or similar plans, entered into in the ordinary course of business;

transactions between or among the Parent and/or its Restricted Subsidiaries;

transactions with a Person (other than an Unrestricted Subsidiary of the Parent) that is an Affiliate of the Parent solely because the Parent owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

payment of reasonable and customary fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of Officers, directors, employees or consultants of the Parent or any of its Restricted Subsidiaries;

any issuance of Equity Interests (other than Disqualified Stock) of the Parent to Affiliates of the Parent;

any Investment (other than a Permitted Investment) or other Restricted Payment, in either case, that does not violate Clause 2 (*Restricted Payments*);

any Permitted Investment described in paragraphs (d), (e), (f), (h), (j), (k) and (n) of the definition thereof;

the incurrence of any Subordinated Shareholder Debt;

transactions pursuant to, or contemplated by any agreement in effect or entered into on the Closing Date and transactions pursuant to any amendment, modification or extension to such agreement, so long as such amendment, modification or extension, taken as a whole, is not-materially more disadvantageous to the Lenders than the original agreement as in effect on the Closing Date (in each case, in the good faith determination of the Board of Directors of the Parent or the senior management thereof);

Management Advances;

transactions with customers, clients, lenders, borrowers, suppliers, or purchasers or sellers of goods or services (including in connection with the provision of administrative, treasury, insurance, accounting, management or other similar corporate services) or providers of employees or other labour, in each case in the ordinary course of business and otherwise in compliance with the terms of the Senior Note Indenture that are fair to the Parent or the Restricted Subsidiaries or are on terms at least as favourable as might reasonably have been obtained at such time from an unaffiliated Person (in each case, in the good faith determination of the Board of Directors of the Parent or the senior management thereof);

payments pursuant to any tax sharing agreement or arrangement among the Parent and its Restricted Subsidiaries and other Persons with which the Parent or any of its Restricted Subsidiaries is required or permitted to file a consolidated tax return or with which the Parent or any of its Restricted Subsidiaries is a part of a group for tax purposes; provided, however, that such payments will not exceed the amount of tax that the Parent and its Restricted Subsidiaries would owe on a stand-alone basis if the Parent were filing a separate tax return (or a separate consolidated or combined tax return with its Restricted Subsidiaries that are part of that consolidated or combined group); and

any transaction effected as part of a Qualified Receivables Financing.

* + 1. **Limitation on Issuances of Guarantees of Indebtedness**
       - 1. The Parent will not permit any of its Restricted Subsidiaries (other than Guarantors), directly or indirectly, to guarantee the payment of any Indebtedness of any Guarantor under any Credit Facility or any Public Debt (including the Senior Notes) unless such Restricted Subsidiary simultaneously becomes an Additional Guarantor in accordance with Clause 29.4 (*Additional Guarantors*) which guarantee will be senior to or pari passu with such Restricted Subsidiary's guarantee of such other Indebtedness.
         2. This covenant will not apply to any guarantees (a) that existed at the time such Person became a Restricted Subsidiary if the Guarantee was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary, (b) given to a bank or trust company incorporated in Switzerland or any member of the European Union as of the Closing Date or any commercial banking institution that is a member of the U.S. Federal Reserve System (or any branch, Subsidiary or Affiliate thereof), in each case having combined capital and surplus and undivided profits of not less than U.S.$250 million, whose debt has a rating, at the time such guarantee was given, of at least A- or the equivalent thereof by S&P and at least A3 or the equivalent thereof by Moody’s in connection with the operation of cash management programs established for the Issuer’s or such Restricted Subsidiary’s benefit, (c) that constitute a Lien not prohibited by Clause 4 (*Liens*) or (d) of any Qualified Receivables Financing.
         3. Each additional RCF Guarantee provided as a result of paragraph (a) will be limited as necessary to recognise certain defences generally available to guarantors (including those that relate to fraudulent conveyance or transfer, voidable preference, financial assistance, corporate purpose, capital maintenance or similar laws, regulations or defences affecting the rights of creditors generally) or other considerations under applicable law.
         4. Notwithstanding the foregoing, the Parent shall not be obligated to cause such Restricted Subsidiary to guarantee the RCF Liabilities to the extent that such guarantee by such Restricted Subsidiary would be contrary to the Agreed Security Principles or would reasonably be expected to give rise to or result in a violation of applicable law which, in any case, cannot be prevented or otherwise avoided through measures reasonably available to the Parent or the Restricted Subsidiary or any liability for the officers, directors or shareholders of such Restricted Subsidiary; provided that the Parent will procure that the relevant Restricted Subsidiary becomes a Guarantor at such time as such restriction would no longer apply to the providing of the guarantee or no longer would prohibit such Restricted Subsidiary from becoming a Guarantor (or prevent the Parent from causing such Restricted Subsidiary to become a Guarantor).
    2. **No Impairment of Security Interest**

The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, take or knowingly or negligently omit to take, any action which action or omission might or would have the result of materially impairing the Transaction Security with respect to the Collateral (it being understood that the incurrence of Transaction Security on the Collateral permitted by the definition of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the Transaction Security with respect to the Collateral) for the benefit of the RCF Finance Parties, and the Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, grant to any Person other than the Security Agent, for the benefit of the RCF Finance Parties, any interest whatsoever in any of the Collateral, except as permitted by this Agreement, the Intercreditor Agreement or in the Transaction Security Documents; provided that (a) nothing in this provision shall restrict the discharge or release of the Collateral in accordance with the Transaction Security Documents and the Intercreditor Agreement and (b) the Parent and its Restricted Subsidiaries may incur Permitted Collateral Liens.

* + 1. **Designation of Restricted and Unrestricted Subsidiaries**
       - 1. The Board of Directors of the Parent may designate any Restricted Subsidiary (other than the Original Borrowers) to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Parent and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Clause 2 (*Restricted Payments*) or under one or more paragraphs of the definition of Permitted Investments, as determined by the Parent. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Parent may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.
         2. Any designation of a Subsidiary of the Parent as an Unrestricted Subsidiary will be evidenced to the Agent by filing with the Agent a copy of a resolution of the Board of Directors giving effect to such designation and an Officer’s Certificate certifying that such designation complied with the preceding conditions and was permitted by Clause 2 (*Restricted Payments*). If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness is not permitted to be incurred as of such date under the covenant described under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*), the Parent will be in default of such covenant. The Board of Directors of the Parent may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*), calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Default or Event of Default would be in existence following such designation.
    2. **Asset Sales**
       - 1. The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale unless:

the Parent (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

at least 75% of the consideration received in the Asset Sale by the Parent or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

any liabilities, as recorded on the balance sheet of the Parent or any Restricted Subsidiary (other than contingent liabilities), that are assumed by the transferee of any such assets and as a result of which the Parent and its Restricted Subsidiaries are no longer obligated with respect to such liabilities or are indemnified against further liabilities;

any securities, notes or other obligations received by the Parent or any such Restricted Subsidiary from such transferee that are converted by the Parent or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of the Asset Sale, to the extent of the cash or Cash Equivalents received in that conversion;

any Capital Stock or assets of the kind referred to in sub-paragraphs (ii) or (iv) of paragraph (b) below;

Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Sale, to the extent that the Parent and each other Restricted Subsidiary are released from any Guarantee of such Indebtedness in connection with such Asset Sale;

consideration consisting of unsubordinated Indebtedness of the Parent or any Restricted Subsidiary received from Persons who are not the Parent or any Restricted Subsidiary that is cancelled; and

any Designated Non-cash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this paragraph, not to exceed an aggregate amount at any time outstanding equal to €20 million at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value),

* + - * 1. Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Parent (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds (at the option of the Parent or Restricted Subsidiary), but subject always to Clause 25.21 (*Note purchase condition*):

to purchase the Senior Notes (and, at the option of the Parent (or the applicable Restricted Subsidiary), other Pari Passu Indebtedness) pursuant to an offer in accordance with and subject to the procedures set forth in the second paragraph below, provided such offer is made to all holders of Senior Notes at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to (but not including) the date of purchase;

to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary;

to make a capital expenditure;

to acquire other assets (other than Capital Stock) not classified as current assets under IFRS that are used or useful in a Permitted Business;

to repurchase, prepay, redeem or repay (a) any Indebtedness that is secured by a Permitted Collateral Lien and which has priority over the Senior Notes as to receipt of enforcement proceeds from the Collateral; (b) Pari Passu Indebtedness that is secured by a Permitted Collateral Lien that ranks equal to or in priority to any Liens on such assets securing the Senior Notes or the Senior Note Indenture; (c) Indebtedness of the Parent or a Restricted Subsidiary that is secured by a Lien on assets or property which do not constitute Collateral; or (d) any Indebtedness of a Restricted Subsidiary that is not a Guarantor, and in each case, if the Indebtedness repaid, prepaid, redeemed or purchased in connection with a Collateral Sale is revolving credit Indebtedness, to the extent the Net Proceeds used for such repayment, prepayment, redemption or purchase are Net Proceeds from the sale, lease, conveyance or other disposition of Collateral, to correspondingly reduce the commitments with respect thereto (but only to the extent that available commitments for Indebtedness under Credit Facilities that would have priority over the Senior Notes as to receipt of enforcement proceeds from the Collateral following such reduction are at least €80 million);

enters into a binding commitment to apply the Net Proceeds pursuant to sub-paragraph (ii), (iii) or (iv) of this paragraph; provided that such binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment until the earlier of (x) the date on which such acquisition or expenditure is consummated, and (y) the 180th day following the expiration of the aforementioned 365 day period; or

any combination of the foregoing.

* + - * 1. Pending the final application of any Net Proceeds, the Parent (or the applicable Restricted Subsidiary) may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by this Agreement.
        2. Any Net Proceeds from Asset Sales that are not applied or invested as provided in paragraph (b) above will constitute "**Excess Proceeds**" When the aggregate amount of Excess Proceeds exceeds €15.0 million, within ten Business Days thereof, the Issuer will make an offer to all holders of Senior Notes, and may, in the manner contemplated by the relevant governing documentation, purchase, prepay or redeem (or make an offer to purchase, prepay or redeem) any other Indebtedness that is pari passu with the Senior Notes or any Note Guarantees in an aggregate principal amount equal to the amount of such Excess Proceeds. The offer to purchase to all holders of Senior Notes (the "**Asset Sale Offer**") and the purchase, prepayment or redemption (or offer to purchase, prepay or redeem) such Pari Passu Indebtedness will be made pro rata in each case to the aggregate principal amounts of the Senior Notes and such Pari Passu Indebtedness (plus, in each case, all accrued interest and the amount of all fees and expenses, including premiums, incurred in connection therewith, or in the event of Indebtedness issued with original issue discount, 100% of the accreted value thereof) outstanding. The offer price for the Senior Notes in any Asset Sale Offer will be equal to 100% of the principal amount, plus accrued and unpaid interest and Additional Amounts, if any, to the date of purchase, prepayment or redemption, subject to the rights of holders of Senior Notes on the relevant record date to receive interest due on the relevant interest payment date, and will be payable in cash, and the purchase, prepayment or redemption price or amount, as applicable, for such Pari Passu Indebtedness shall be as set forth in the related documentation governing such Pari Passu Indebtedness. If any Excess Proceeds allocated to the Asset Sale Offer or any offer to purchase, prepay or redeem Pari Passu Indebtedness remain after the consummation thereof, the Parent may, following the completion of the Asset Sale Offer, use those Excess Proceeds for any purpose not otherwise prohibited by this Agreement and the amount of Excess Proceeds will be reset to zero.
    1. **Release of Transaction Security and Guarantee of Guarantors**
       - 1. The RCF Guarantee of a Guarantor will be automatically and unconditionally released and any Transaction Security on the Collateral and/or Charged Property securing the Secured Obligations will be automatically and unconditionally released (or, where not automatically released, the Person having granted such Transaction Security will be entitled to seek such Transaction Security's unconditional release) under any one or more of the following circumstances:

in connection with any sale or other disposition of all or substantially all of the assets of a Guarantor (including by way of merger, consolidation, amalgamation or combination) (in which case release will be of the RCF Guarantee of such Guarantor, and any Transaction Security over the assets, and Capital Stock, of such Guarantor), or of any assets subject to Transaction Security (in which case release will be of the Transaction Security over the relevant assets) to a Person that is not (either before or after giving effect to such transaction) the Parent or a Restricted Subsidiary, if the sale or other disposition does not violate Clause 6 (*Merger, consolidation or Sale of Assets*) or 11 (*Asset Sales*);

in the case of a Guarantor (other than the Parent), in connection with any sale or other disposition of Capital Stock of that Guarantor (or Capital Stock of any direct or indirect parent entity (other than the Issuer) of such Guarantor) to a Person that is not (either before or after giving effect to such transaction) the Parent or a Restricted Subsidiary (in which case release will be of the RCF Guarantee of such Guarantor, and any Transaction Security over the assets, and Capital Stock, of such Guarantor), if the sale or other disposition does not violate Clause 6 (*Merger, consolidation or Sale of Assets*) or 11 (*Asset Sales*) and the Guarantor ceases to be a Restricted Subsidiary as a result of the sale or other disposition;

in the case of a Guarantor (other than the Parent), if the Parent designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with this Agreement (in which case release will be of the RCF Guarantee of such Guarantor, and any Transaction Security over the assets, and Capital Stock, of such Guarantor);

(a) upon release of the guarantee or Indebtedness that gave rise to an obligation to provide a RCF Guarantee under Clause 8 (*Limitation on Issuances of Guarantees of Indebtedness*) or (b) in the case of any RCF Guarantee provided on the Closing Date, upon release of the relevant Guarantor from its guarantee in respect of the Senior Notes (or any Refinancing thereof), so long as, in each case, no other Indebtedness is at that time guaranteed by the relevant Guarantor in a manner that would require the granting of an RCF Guarantee pursuant to that covenant and, in the case of clause (b), the Senior Notes (or any Refinancing thereof) remains in full force and effect following such release (and in each case such release will be of the RCF Guarantee of such Guarantor, and any Transaction Security over the assets, and Capital Stock, of such Guarantor);

if the relevant assets no longer secure the Senior Notes (or any Refinancing thereof) (in which case release will be of the Transaction Security over the relevant assets), provided this Agreement (or any Refinancing thereof) remains in full force and effect following such release;

as provided for elsewhere in this Agreement and as contemplated in Clause 39 (*Amendments and waivers*);

in connection with enforcement sales pursuant to or other sales contemplated or permitted by the Intercreditor Agreement; or

upon repayment in full of the Facility.

* + - * 1. Upon any occurrence giving rise to a release of an RCF Guarantee or any Transaction Security, as specified above, the Security Agent, subject to receipt of an Officer's Certificate certifying that such event or circumstance has occurred, will execute any documents reasonably required in order to evidence or effect such release, discharge and termination in respect of such RCF Guarantee or Transaction Security.
  1. Definitions

1. "**Acquired Debt**" means, with respect to any specified Person:
   1. Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary; and
   2. Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.
2. "**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.
3. "**Asset Sale**" means:
   1. the sale, lease, conveyance or other disposition of any assets by the Parent or any of its Restricted Subsidiaries; and
   2. the issuance of Equity Interests by any Restricted Subsidiary or the sale by the Parent or any of its Restricted Subsidiaries of Equity Interests in any of the Restricted Subsidiaries (in each case, other than directors’ qualifying shares).
4. Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:
   1. any single transaction or series of related transactions that involves assets having a Fair Market Value of less than €5.0 million;
   2. any transfer or disposition of assets governed by Clause 6 (*Merger, Consolidation or Sale of Assets*);
   3. a transfer of assets or Equity Interests between or among the Parent and any Restricted Subsidiary;
   4. an issuance of Equity Interests by a Restricted Subsidiary to the Parent or to a Restricted Subsidiary;
   5. the sale, lease, assignment or other transfer of accounts receivable, inventory or other assets in the ordinary course of business, and any sale or other disposition of damaged, worn-out or obsolete assets or other assets that are no longer used or useful in or necessary for the proper conduct of the business of the Parent and its Restricted Subsidiaries;
   6. licenses and sublicenses by the Parent or any of its Restricted Subsidiaries in the ordinary course of business;
   7. any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business;
   8. the granting of Liens not prohibited by Clause 4 (*Liens*);
   9. the sale or other disposition of cash or Cash Equivalents;
   10. a Restricted Payment that does not violate of Clause 2 (*Restricted Payments*), a Permitted Investment or any transaction specifically excluded from the definition of Restricted Payment;
   11. the disposition of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
   12. the foreclosure, condemnation or any similar action with respect to any property or other assets or a surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;
   13. the disposition of assets to a Person who is providing services (the provision of which have been or are to be outsourced by the Parent or any Restricted Subsidiary to such Person) related to such assets;
   14. any sale, transfer or other disposition of Receivables Assets and related assets in connection with any Qualified Receivables Financing;
   15. the unwinding of any Hedging Obligations; and
   16. dispositions to the extent required by, or made pursuant to, customary buy/sell arrangements between joint venture parties set forth in joint venture arrangements and similar binding agreements.
5. "**Asset Sale Offer**" has the meaning assigned to that term in Clause 11 (*Asset Sales*).
6. "**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the U.S. Exchange Act. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.
7. "**Board of Directors**" means:
   1. with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
   2. with respect to a partnership, the board of directors of the general partner of the partnership;
   3. with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and
   4. with respect to any other Person, the board or committee of such Person serving a similar function.
8. "**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet (excluding the footnotes thereto) prepared in accordance with IFRS, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.
9. "**Capital Stock**" means:
   1. in the case of a corporation, corporate stock;
   2. in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
   3. in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
   4. any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.
10. "**Cash Equivalents**" means:
    1. direct obligations (or certificates representing an interest in such obligations) issued by, or unconditionally guaranteed by, the government of a member state of the Pre-Expansion European Union, the United States of America, Switzerland or Canada (including, in each case, any agency or instrumentality thereof), as the case may be, the payment of which is backed by the full faith and credit of the relevant member state of the European Union or the United States of America, Switzerland or Canada, as the case may be, and which are not callable or redeemable at the Parent’s option;
    2. overnight bank deposits, time deposit accounts, certificates of deposit, banker’s acceptances and money market deposits with maturities (and similar instruments) of 12 months or less from the date of acquisition issued by a bank or trust company which is organized under, or authorized to operate as a bank or trust company under, the laws of a member state of the Pre-Expansion European Union or of the United States of America or any state thereof, Switzerland or Canada; provided that such bank or trust company has capital, surplus and undivided profits aggregating in excess of €250 million (or the foreign currency equivalent thereof as of the date of such investment) and whose long-term debt is rated A3 or higher by Moody’s or A- or higher by S&P or the equivalent rating category of another internationally recognized rating agency;
    3. repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraphs (a) and (b) above entered into with any financial institution meeting the qualifications specified in paragraph (b) above;
    4. commercial paper having one of the two highest ratings obtainable from Moody’s or S&P and, in each case, maturing within one year after the date of acquisition; and
    5. money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in paragraphs (a) to (d) above.
11. "**Consolidated EBITDA**" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus the following to the extent deducted in calculating such Consolidated Net Income, without duplication:
    1. taxes based on income or profits of such Person and its Subsidiaries which are Restricted Subsidiaries for such period; *plus*
    2. the Fixed Charges of such Person and its Subsidiaries which are Restricted Subsidiaries for such period; *plus*
    3. depreciation, amortisation (including, without limitation, amortisation of intangibles and deferred financing fees) and other non-cash charges and expenses (including without limitation write downs and impairment of property, plant, equipment and intangibles and other long-lived assets and the impact of purchase accounting on the Parent and its Restricted Subsidiaries for such period, but excluding any such non-cash charge or expense to the extent that it represents an accrual of or reserve for cash charges or expenses in any future period or amortisation of a prepaid cash charge or expense that was paid in a prior period) of such Person and its Subsidiaries which are Restricted Subsidiaries for such period; *plus*
    4. any expenses, charges or other costs related to the issuance of any Capital Stock, or any Permitted Investment, acquisition, disposition, recapitalisation or listing or the incurrence of Indebtedness permitted to be incurred under the covenant described above under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) (including refinancing thereof) whether or not successful, including (i) such fees, expenses or charges related to any incurrence of Indebtedness and (ii) any amendment or other modification of any incurrence; *plus*
    5. any foreign currency translation losses (including losses related to currency remeasurements of Indebtedness) of the Parent and its Restricted Subsidiaries; *plus*
    6. the amount of any minority interest expense consisting of subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Restricted Subsidiary in such period or any prior period, except to the extent of dividends declared or paid on, or other cash payments in respect of, Equity Interests held by such parties; *minus*
    7. non-cash items increasing such Consolidated Net Income for such period (other than any non-cash items increasing such Consolidated Net Income pursuant to paragraphs (a) to (l) of the definition of Consolidated Net Income), other than the reversal of a reserve for cash charges in a future period in the ordinary course of business, in each case, on a consolidated basis and determined in accordance with IFRS.
12. "**Consolidated Net Income**" means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries which are Restricted Subsidiaries for such period, on a consolidated basis (excluding the net income (loss) of any Unrestricted Subsidiary), determined in accordance with IFRS and without any reduction in respect of preferred stock dividends; provided that:
    1. any goodwill or other intangible asset impairment charges will be excluded;
    2. the net income (loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary which is a Subsidiary of the Person;
    3. solely for the purpose of determining the amount available for Restricted Payments under paragraph (b)(iii)(A) of Clause 2 (*Restricted Payments*), any net income (loss) of any Restricted Subsidiary (other than the Issuer or any Guarantor) will be excluded to the extent that such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Issuer by operation of the terms of such Restricted Subsidiary’s charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its shareholders (other than (a) restrictions that have been waived or otherwise released and (b) any restriction listed under sub-paragraphs (i), (ii), (iii), (iv), (v) or (ix) of paragraph (b) of Clause 5 (*Dividend and Other Payments Affecting Restricted Subsidiaries*) except that the Parent’s equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Restricted Subsidiary during such period to the Parent or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary (other than any Guarantor), to the limitation contained in this clause);
    4. any net gain (or loss), together with any related provision for taxes on such gain (but not loss), realized upon the sale or other disposition of any asset or disposed operations of the Parent or any Restricted Subsidiaries (including pursuant to any sale leaseback transaction) outside of the ordinary course of business (as determined in good faith by a responsible accounting or financial officer of the Parent) or in connection with the sale or disposition of securities will be excluded;
    5. (a) any gain or loss classified as extraordinary, exceptional or unusual gain, loss or charge, together with any related provision for taxes on such gains (but not loss), as determined in good faith by a responsible accounting or financial officer of the Parent, (b) any asset impairments charges, or the financial impacts of natural disasters (including fire, flood and storm and related events), (c) any non- cash expenses, charges, reserves or other costs in respect of any restructuring, redundancy, integration or severance, (d) any expenses, charges, reserves or other costs (including any increases in amortisation or depreciation) in relation to any acquisition of another Person or business or (e) any expenses, charges, reserves or other costs related to the issuance of the Senior Notes, in each case, will be excluded;
    6. any non-cash compensation charge or expense, including from any grant of stock, stock options or other equity based awards will be excluded;
    7. all deferred financing costs written off and premium paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness and any net gain (loss) from any write-off or forgiveness of Indebtedness will be excluded;
    8. any unrealized gains or losses in respect of Hedging Obligations or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value or changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations will be excluded;
    9. any unrealized foreign currency gains or losses will be excluded;
    10. the impact of any capitalized interest (including accreting or pay-in-kind interest) on any Subordinated Shareholder Debt will be excluded;
    11. to the extent covered by insurance and actually reimbursed, or, so long as the Parent has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption will be excluded; and
    12. the cumulative effect of a change in accounting principles will be excluded.
13. "**Consolidated Senior Secured Leverage**" means, with respect to any Person as of any date of determination, the sum without duplication of the total amount of Senior Secured Debt of such Person and its Restricted Subsidiaries on a consolidated basis.
14. "**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that, in each case, does not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor"), including any obligation of such Person, whether or not contingent:
    1. to purchase any such primary obligation or any property constituting direct or indirect security therefor;
    2. to advance or supply funds:
       1. for the purchase or payment of any such primary obligation;
       2. to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
    3. to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.
15. "**Credit Facilities**" means, one or more debt facilities, instruments or arrangements incurred by any Restricted Subsidiary (including this Agreement or commercial paper facilities and overdraft facilities) with banks, other institutions or investors, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit, notes or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or trustees or other banks or institutions and whether provided under this Agreement or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "Credit Facilities" shall include any agreement or instrument (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Parent as additional borrowers, issuers or guarantors thereunder, (3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.
16. "**Currency Exchange Protection Agreement**" means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option, cap, floor, ceiling or collar or agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates as to which such Person is a party.
17. "**Designated Non-cash Consideration**" means the Fair Market Value of non-cash consideration received by the Parent or any of its Restricted Subsidiaries in connection with an Asset Sale that is designated as "Designated Non-cash Consideration" by the Parent.
18. "**Disqualified Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the six-month anniversary of the date that the Senior Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the issuer thereof may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Clause 2 (*Restricted Payments*). For purposes hereof, the amount of Disqualified Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to the Senior Note Indenture, and if such price is based upon, or measured by, the Fair Market Value of such Disqualified Stock, such Fair Market Value to be determined as set forth herein.
19. "**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).
20. "**Equity Offering**" means any public of private offering of Capital Stock (other than Disqualified Stock) of the Parent or any direct or indirect parent thereof, provided that, in the case of any such offering by a direct or indirect parent, the net cash proceeds thereof are contributed to the equity of the Parent (other than through the issuance of Disqualified Stock) or loaned to the Parent as Subordinated Shareholder Debt.
21. "**European Government Obligations**" means direct obligations of, or obligations guaranteed by, a member state of the European Union, and the payment for which such member state of the European Union pledges its full faith and credit; provided that such member state has a long-term government debt rating of "A1" or higher by Moody’s or A+ or higher by S&P or the equivalent rating category of another internationally recognized rating agency.
22. "**Existing Receivables Financings**" means the receivables financing facilities provided pursuant to the agreement dated December 20, 2007 between Bakker Centrale Inkoop B.V., Univeg Trade Benelux B.V. and ABN Amro Commercial Finance N.V; the agreement dated December 31, 2007 between Univeg Belgium NV, European Food Transport NV and Fortis Commercial Finance N.V.; the agreement dated December 27, 2007 between Univeg Import Italia s.r.l. (now Univeg Trade Italia s.r.l.) and Fortis Commercial Finance SpA (now ifitalia); the agreement dated March 28, 2008 between Agrisol S.A. and Fortis Commercial Finance SAS; the agreement dated March 28, 2008 between Malet Azoulay U.K. Limited (now Univeg Katopé U.K. Limited) and Fortis Commercial Finance Limited; the agreement dated March 28, 2008 between Univeg Katopé France and Fortis Commercial Finance SAS; the agreement (the sale and assignment of trade receivables) dated October 15, 2008 between Atlanta AG (now Univeg Deutschland GmbH) and ING Commercial Finance Belux N.V.; the agreement dated May 25, 2009 between Nova-veg Logistics NV and Dexia Commercial Finance NV/SA; the agreement (factoring-vertrag) dated December 15, 2009 between Univeg Austria GmbH and FactorBank Aktiengesellschaft; the agreement dated March 31, 2010 between Winchester Growers Limited and Fortis Commercial Finance Limited; the agreement dated September 22, 2011 between Univeg Trade International GmbH and Dexia Commercial Finance NV/SA; the agreement dated September 1, 2012 between Univeg Belgium NV and Carrafour Belgium NV; and the agreement dated April 26, 2013 between Bocchi Flower Trade Netherlands B.V. and ABN Amro Commercial Finance N.V., in each case as the same may be amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid or extended in whole or in part from time to time.
23. "**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress of either party, determined in good faith by the Parent’s Chief Executive Officer, Chief Financial Officer or responsible accounting or financial officer of the Parent.
24. "**Fixed Charge Coverage Ratio**" means, with respect to any specified Person for any period, the ratio of the Consolidated EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Subsidiaries which are Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Parent) to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period; provided, however, that the pro forma calculation of Fixed Charges shall not give effect to (i) any Indebtedness incurred on the Calculation Date pursuant to the provisions described in paragraph (b) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) or (ii) the discharge on the Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions described in paragraph (b) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*).
25. In addition, for purposes of calculating the Fixed Charge Coverage Ratio:
    1. acquisitions and investments that have been made by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Subsidiaries which are Restricted Subsidiaries acquired by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Subsidiaries which are Restricted Subsidiaries, during the four- quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Parent and may include anticipated expense and cost reduction synergies) as if they had occurred on the first day of the four-quarter reference period;
    2. the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;
    3. the Fixed Charges attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Subsidiaries which are Restricted Subsidiaries following the Calculation Date;
    4. any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;
    5. any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and
    6. if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness).
26. "**Fixed Charges**" means, with respect to any specified Person for any period, the sum, without duplication, of:
    1. the consolidated interest expense (net of interest income) of such Person and its Subsidiaries which are Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortisation of debt discount (but not debt issuance costs, commissions, fees and expenses), non- cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments or Subordinated Shareholder Debt), the interest component of deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings (and excluding commissions, discounts, yield and other fees and charges related to any Qualified Receivables Financing (or any other Receivables Financing permitted under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*)); plus
    2. the consolidated interest expense (but excluding such interest on Subordinated Shareholder Debt) of such Person and its Subsidiaries which are Restricted Subsidiaries that was capitalized during such period; plus
    3. any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Subsidiaries which are Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Subsidiaries which are Restricted Subsidiaries; plus
    4. net payments and receipts (if any) pursuant to interest rate Hedging Obligations (excluding amortisation of fees) with respect to Indebtedness; plus
    5. the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of any Restricted Subsidiary, other than dividends on Equity Interests payable to the Parent or a Restricted Subsidiary, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined national, state and local statutory tax rate of such Person, expressed as a decimal, as estimated in good faith by a responsible accounting or financial officer of the Parent.
27. "**Guarantee**" means a guarantee other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business, of all or any part of any Indebtedness (whether arising by agreements to keep-well, to take or pay or to maintain financial statement conditions, pledges of assets or otherwise).
28. "**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under:
    1. interest rate swap agreements, (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;
    2. other agreements or arrangements designed to manage interest rates or interest rate risk; and
    3. other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates, including Currency Exchange Protection Agreements, or commodity prices.
29. "**IFRS**" means the International Financial Reporting Standards promulgated by the International Accounting Standards Board or any successor board or agency as endorsed from time to time by the European Union or any variation thereof with which the Parent or its Restricted Subsidiaries are, or may be, required to comply. Except as otherwise set forth in this Schedule 16, all ratios and calculations based on IFRS contained in the Senior Note Indenture shall be computed in accordance with IFRS as in effect from time to time.
30. "**Indebtedness**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables):
    1. in respect of borrowed money;
    2. evidenced by bonds, notes, debentures or similar instruments for which such Person is responsible or liable;
    3. representing reimbursement obligations in respect of letters of credit, bankers’ acceptances or similar instruments (except to the extent such reimbursement obligations relate to trade payables in the ordinary course of business);
    4. representing Capital Lease Obligations;
    5. representing the balance deferred and unpaid of the purchase price of any property or services due more than one year after such property is acquired or such services are completed; and
    6. representing any Hedging Obligations;
31. if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of the specified Person prepared in accordance with IFRS. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.
32. The term "**Indebtedness**" shall not include:
    1. Subordinated Shareholder Debt;
    2. any lease of property which would be considered an operating lease under IFRS in effect on the Closing Date and any Guarantee given by the Parent or a Restricted Subsidiary of the Parent in the ordinary course of business solely in connection with, and in respect of, the obligations of the Parent or a Restricted Subsidiary under any operating lease;
    3. Contingent Obligations in the ordinary course of business;
    4. in connection with the purchase by the Parent or any Restricted Subsidiary of any business, any post- closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; or
    5. the avoidance of doubt, any contingent obligations in respect of workers’ compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes.
33. "**Initial Public Offering**" means a public Equity Offering of the Issuer or any Parent Company or any successor of the Issuer or any parent company (the "**IPO Entity**") pursuant to (x) a flotation on the London Stock Exchange or any other nationally recognized stock exchange or listing authority in a member state of the European Union, the Commonwealth of Australia, Hong Kong or Singapore or any other internationally recognized exchange or market or (y) an effective registration statement under the Securities Act (other than a registration statement on Form S-8 or otherwise relating to Equity Interests issued or issuable under any employee benefit plan), and following which there is a Public Market.
34. "**Investments**" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations, but excluding advances or extensions of credit to customers or suppliers (including advances to farmers or other producers or suppliers of agricultural products) made in the ordinary course of business), advances or capital contributions (excluding commission, travel, moving, entertainment and similar loans and advances to directors, officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items (except to the extent excluded by the foregoing) that are or would be classified as Investments on a balance sheet (excluding the footnotes) prepared in accordance with IFRS. If the Parent or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary, the Parent will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Parent’s Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in paragraph (d) of Clause 2 (*Restricted Payments*). The acquisition by the Parent or any Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Parent or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in paragraph (d) of Clause 2 (*Restricted Payments*). Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.
35. "**IPO Entity**" has the meaning given to it in the definition of "**Initial Public Offering**".
36. "**Issuer**" means Univeg Holding B.V..
37. "**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement or any lease in the nature thereof.
38. "**Management Advances**" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers or employees of any Parent or any Restricted Subsidiary:
    1. in respect of payroll, travel, entertainment, moving, other relocation and similar expenses incurred in the ordinary course of business; or
    2. in respect of moving related expenses incurred in connection with any closing or consolidation of any facility or office; or
    3. in the ordinary course of business and (in the case of this paragraph (c)) not exceeding €500,000 in the aggregate outstanding at any time.
39. "**Moody’s**" means Moody’s Investors Service, Inc.
40. "**Net Proceeds**" means the aggregate cash proceeds received by the Parent or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration or Cash Equivalents substantially concurrently received in any Asset Sale, but excluding, for the avoidance of doubt, any non-cash consideration or Cash Equivalents deemed to be cash under Clause 11 (*Asset sales*) until any such sale or disposition), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, and all distributions and other payments required to be made to minority interest holders (other than the Parent or any Subsidiary) in Subsidiaries or joint ventures as a result of such Asset Sale, and any reserve for adjustment or indemnification obligations in respect of the sale price of such asset or assets established in accordance with IFRS.
41. "**Non-Recourse Debt**" means Indebtedness as to which neither the Parent nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise.
42. "**Note Guarantee**" means the Guarantee by each Guarantor of the Issuer’s obligations under the Senior Note Indenture and the Senior Notes, executed pursuant to the provisions of the Senior Note Indenture.
43. "**Obligations**" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.
44. "**Officer**" means, with respect to any Person, the Chief Executive Officer and the Chief Financial Officer of the Parent or a responsible accounting or financial officer of the Parent.
45. "**Officer’s Certificate**" means a certificate signed by an Officer.
46. "**Pari Passu Indebtedness**" means (1) any Indebtedness of the Issuer that is pari passu in right of payment to the Senior Notes and (2) with respect to any Senior Note Guarantee, Indebtedness which ranks pari passu in right of payment to such Note Guarantee, provided, however, that no Indebtedness will be deemed to not rank pari passu in right of payment to the Senior Notes solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions in respect of collateral enforcement proceeds affecting different tranches of Indebtedness.
47. "**Permitted Business**" means (1) any businesses, services or activities engaged in by the Parent or any of the Restricted Subsidiaries on the Closing Date and (2) any businesses, services and activities that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.
48. "**Permitted Collateral Liens**" means:
    1. Liens on the Collateral to secure the Secured Obligations on the Closing Date;
    2. Liens on the Collateral to secure Indebtedness that is (i) Pari Passu Indebtedness and (ii) permitted to be incurred by sub-paragraph (i) of the definition of "Permitted Debt"; provided that all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secures the RCF Liabilities on a senior or pari passu basis; and provided further that each of the parties thereto will have entered into the Intercreditor Agreement as "Senior Creditors" (or the corresponding terms in any additional intercreditor agreement) (and for the avoidance of doubt, Indebtedness (plus accrued interest, fees and expenses, including premiums, incurred in connection therewith) incurred under paragraph (a) of the definition of Permitted Debt may receive priority as to receipt of enforcement proceeds from such Collateral);
    3. Liens on the Collateral to secure any Indebtedness that is (i) Pari Passu Indebtedness and (ii) permitted to be incurred by paragraph (a) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) or paragraph (xix) of the definition of "Permitted Debt"; provided that on the date of the incurrence or issuance of such Indebtedness and on a pro forma basis (including a pro forma application of the net proceeds therefrom) the Senior Secured Leverage Ratio of the Parent is less than 3.75 to 1.0; provided further that all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secures the RCF Liabilities on a senior or pari passu basis; and provided further that each of the parties thereto will have entered into the Intercreditor Agreement as "Senior Creditors" (or the corresponding term in any additional intercreditor agreement) (and for the avoidance of doubt, Indebtedness permitted to be incurred by paragraph (a) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) which, when aggregated with amounts referred to in clause (b)(ii) above, shall not exceed €115.0 million in aggregate principal amount at any time outstanding (plus accrued interest, fees and expenses, including premiums, incurred in connection therewith), may receive priority as to receipt of enforcement proceeds from such Collateral, provided that on the date of the incurrence of such Indebtedness and on a pro forma basis (including a pro forma application of the net proceeds therefrom) the Senior Secured Leverage Ratio of the Parent would be less than 3.5 to 1.0);
    4. Liens on the Collateral to secure (i) Hedging Obligations under interest rate related agreements or arrangements (of the sort specified in paragraphs (a) and (b) of the definition of "Hedging Obligations") originally entered into in respect of the Existing Senior Facilities Agreement (or renewals, but without extensions of maturity, thereof) or (ii) to the extent such Hedging Obligations relate solely to Indebtedness permitted to be secured by a Lien on the Collateral pursuant to paragraphs (a) to (c) above or paragraph (e) below, Hedging Obligations permitted to be incurred by sub-paragraph (viii) of the definition of "Permitted Debt"; provided that all property and assets (including, without limitation, the Collateral) securing such Hedging Obligations also secures the other RCF Liabilities on a senior or pari passu basis; and provided further that each of the parties thereto will have entered into the Intercreditor Agreement as "Hedge Counterparties" (or the corresponding terms in any additional intercreditor agreement) (and for the avoidance of doubt, any such Hedging Obligations that constitute Priority Hedging Obligations may receive priority as to receipt of enforcement proceeds from such Collateral);
    5. Liens on the Collateral to secure Permitted Refinancing Indebtedness secured by a Lien on the Collateral pursuant to paragraphs (a) to (d) above or this paragraph (e); provided that all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secures the RCF Liabilities with priority with respect to the Permitted Refinancing Indebtedness no greater than that of the Indebtedness which is being exchanged, renewed, refunded, refinanced, replaced or discharged; provided further that each of the parties thereto will have entered into the Intercreditor Agreement; and
    6. Liens on the Collateral (other than Collateral consisting of Capital Stock of the Issuer) that are described in one or more of paragraphs (b), (c), (d), (f), (g), (h), (i), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (aa) of the definition of "Permitted Liens" and that, in each case, would not materially interfere with the ability of the Security Agent to enforce the Liens over the Collateral.
49. "**Permitted Holders**” means any direct or indirect beneficial owner of De Weide Blik NV at the Closing Date, or any Affiliate or Related Party of the foregoing; provided, when making a determination as to whether a Change of Control has occurred, any such direct or indirect beneficial owner of De Weide Blik NV (other than Hein Deprez and his Affiliates and Related Parties) shall not be deemed a Permitted Holder if such beneficial owner, together with his Affiliates and Related Parties, owns more Voting Stock than Hein Deprez and his Affiliates and Related Parties.
50. "**Permitted Investments**" means:
    1. any Investment in the Parent or in a Restricted Subsidiary;
    2. any Investment in cash and Cash Equivalents;
    3. any Investment by the Parent or any Restricted Subsidiary in a Person, if as a result of such Investment:
       1. such Person becomes a Restricted Subsidiary; or
       2. such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Parent or a Restricted Subsidiary;
    4. any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Clause 11 (*Asset Sales*);
    5. any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Parent or Subordinated Shareholder Debt;
    6. any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Parent or any of its Restricted Subsidiaries, including pursuant to any plan of reorganisation or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;
    7. any Investment in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;
    8. Investments in endorsements for collection or deposit in the ordinary course of business and receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business (including through customary cash management, cash pooling or netting or setting off arrangements); provided that trade terms may include such concessionary trade terms as the Parent or any Restricted Subsidiary deems reasonable under the circumstances;
    9. Investments represented by Hedging Obligations, which obligations are permitted by sub-paragraph (b)(viii) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*);
    10. Investments in the Senior Notes and any other Indebtedness of the Parent or any Restricted Subsidiary;
    11. any Guarantee of Indebtedness permitted to be incurred by Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*);
    12. any Investment existing on, or made pursuant to binding commitments existing on, the Closing Date and any Investment consisting of an extension, modification or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the Closing Date; provided that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Closing Date or (b) as otherwise permitted under the Senior Note Indenture;
    13. Investments acquired after the Closing Date as a result of the acquisition by the Parent or any Restricted Subsidiary of another Person, including by way of a merger, amalgamation or consolidation with or into the Parent or any of its Restricted Subsidiaries in a transaction that is not prohibited by Clause 6 (*Merger, Consolidation or Sale of Assets*) after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
    14. Investments in joint ventures engaged in a Permitted Business or that consists of a minority investment in an entity engaged in a Permitted Business, which Investment, when taken together with all other Investments made pursuant to this paragraph (n) that are at the time outstanding, shall not exceed €20.0 million (net of the cash return thereon received after the Closing Date as a result of any sale for cash, repayment, redemption, liquidation, distribution or other cash realization; provided that, any such amount used to reduce the aggregate amount of Investments made pursuant to this paragraph (n) will not be included in Consolidated Net Income for purposes of Clause 2 (*Restricted Payments*); and provided further that if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to Clause 10 (*Designation of Restricted and Unrestricted Subsidiaries*), such Investment, if applicable, shall thereafter be deemed to have been made pursuant to paragraph (a) or (c) of the definition of "**Permitted Investments**" and not this clause);
    15. Management Advances; and
    16. other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this paragraph (p) that are at the time outstanding, not to exceed €20.0 million (net of the cash return thereon received after the Closing Date as a result of any sale for cash, repayment, redemption, liquidation, distribution or other cash realization); provided that, any such amount used to reduce the aggregate amount of Investments made pursuant to this paragraph (p) will not be included in Consolidated Net Income for purposes of Clause 2 (*Restricted Payments*); and provided further that if an Investment is made pursuant to this clause in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to Clause 10 (*Designation of Restricted and Unrestricted Subsidiaries*), such Investment, if applicable, shall thereafter be deemed to have been made pursuant to paragraph (a) or (c) of the definition of "**Permitted Investments**" and not this clause).
51. "**Permitted Liens**" means:
    1. Liens in favour of the Parent or any of the Restricted Subsidiaries;
    2. Liens on property (including Capital Stock) of a Person existing at the time such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with the Parent or any Restricted Subsidiary; provided that such Lien was in existence prior to such Person becoming a Restricted Subsidiary or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary or is merged with or into or consolidated with the Parent or any Restricted Subsidiary;
    3. Liens incurred or deposits made in the ordinary course of business that are incidental to the conduct of business or the ownership of properties and assets (including Liens to secure the performance of statutory obligations, trade contracts, insurance, surety or appeal bonds, in connection with workers compensation, unemployment insurance, old-age pensions and other like laws, or good faith deposits in connection with bids, tenders and contracts; leases (including, without limitation, statutory and common law landlord’s liens), utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character, performance bonds, surety and appeal bonds or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations), Liens on goods, the related documents of title and/or other related documents arising or created in the ordinary course of the Parent’s or any Restricted Subsidiary’s business or operations as Liens only for Indebtedness to a bank or financial institution directly relating to the goods or documents on or over which the pledge exists, and Liens incurred or deposits made as security for contested taxes or import duties or for the payment of rent, in each such case, not in connection with the borrowing of money);
    4. Liens to secure Indebtedness permitted by sub-paragraph (iv) of paragraph (b) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) covering only the assets acquired, improved, constructed, developed or financed by such Indebtedness (or assets affixed or appurtenant thereto and any proceeds thereof);
    5. Liens existing on the Closing Date;
    6. Liens for taxes, assessments or governmental charges or claims that (a) are not yet due and payable or (b) are being contested in good faith by appropriate proceedings;
    7. Liens imposed by law, such as carriers’, warehousemen’s, landlord’s and mechanics’ Liens, in each case, incurred in the ordinary course of business;
    8. survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
    9. Liens created for the benefit of (or to secure) the Secured Obligations;
    10. Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement; provided, however, that:
        1. the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and
        2. the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged with such Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;
    11. Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;
    12. filing of Uniform Commercial Code financing statements under U.S. state law (or similar filings under applicable jurisdiction) in connection with operating leases in the ordinary course of business;
    13. bankers’ liens, rights of setoff or similar rights and remedies as to deposit accounts, Liens arising out of judgments or awards not constituting an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;
    14. Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;
    15. Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person’s obligations in respect of bankers’ acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
    16. leases (including operating leases), licenses, subleases and sublicenses of assets in the ordinary course of business;
    17. Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of assets entered into in the ordinary course of business;
    18. Liens on Receivables Assets and related assets incurred in connection with any Qualified Receivables Financing;
    19. (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any real property leased by the Parent or any Restricted Subsidiary and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings or compulsory purchase order affecting real property;
    20. Liens on property or assets under construction (and related rights) in favour of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
    21. (a) Liens securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities; (b) Liens securing permitted Hedging Obligations, including rights of offset and set-off;
    22. Liens (including put and call arrangements) on Capital Stock or other securities of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary; and Liens in respect of the ownership interests in any joint ventures which are not Restricted Subsidiaries securing obligations of such joint ventures, or in either case, securing Indebtedness in respect thereof the incurrence of which is permitted under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*);
    23. pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the Parent or any Restricted Subsidiary’s business or operations as Liens only for Indebtedness to a bank or financial institution directly relating to the goods or documents on or over which the pledge exists;
    24. Liens resulting from escrow arrangements entered into in connection with the disposition of assets;
    25. Liens on assets of a Restricted Subsidiary of the Issuer that is not a Guarantor to secure Indebtedness of such Restricted Subsidiary (or any other Restricted Subsidiary that is not a Guarantor) and that is otherwise permitted under this Agreement;
    26. Liens created on any asset of the Parent or a Restricted Subsidiary established to hold assets of any stock option plan or any other management or employee benefit or incentive plan or unit trust of the Parent or a Restricted Subsidiary securing any loan to finance the acquisition of such assets;
    27. Liens to secure Indebtedness permitted by paragraph (a) of Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*) and under paragraph (a) of the definition of Permitted Debt in an aggregate principal amount no greater than €25 million;
    28. Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Parent or any Restricted Subsidiary, provided that such Liens were in existence prior to such acquisition and not incurred in contemplation of, such acquisition;
    29. any extension, renewal, refinancing or replacement, in whole or in part, of any Liens described in the foregoing paragraphs (a) to (bb); provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced; and
    30. Liens incurred by the Parent or any Restricted Subsidiary to secure Indebtedness in an aggregate amount not to exceed €15.0 million at any one time outstanding.
52. "**Permitted Refinancing Indebtedness**" means any Indebtedness of the Parent or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, exchange, defease or discharge other Indebtedness of the Parent or any of its Restricted Subsidiaries (other than intercompany Indebtedness unless such intercompany Indebtedness is a proceeds loan); provided that:
    1. the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, exchanged, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);
    2. such Permitted Refinancing Indebtedness has (a) a final maturity date that is either (i) no earlier than the final maturity date of the Indebtedness being renewed, refunded, refinanced, replaced, exchanged, defeased or discharged or (ii) after the Termination Date and (b) has a Weighted Average Life to Maturity that is either (i) equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged or (ii) more than 180 days after the Termination Date;
    3. if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is expressly contractually subordinated in right of payment to the RCF Liabilities, as the case may be, such Permitted Refinancing Indebtedness is subordinated in right of payment to the RCF Liabilities, as the case may be, on terms at least as favourable to the Finance Parties, as the case may be, as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, exchanged, defeased or discharged; and
    4. if the Issuer or any Guarantor was the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged, such Indebtedness is incurred either by the Issuer or a Guarantor, or, if the Indebtedness being renewed refunded, refinanced, replaced, defeased or discharged was incurred on or after the Closing Date, by another Restricted Subsidiary that would have capable of incurring such initial Indebtedness under Clause 8 (*Limitation on Issuances of Guarantees of Indebtedness*),
53. "**Pre-Expansion European Union**" means the European Union as of January 1, 2004, including the countries of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, but not including any country which became or becomes a member of the European Union after January 1, 2004.
54. "**Priority Hedging Obligations**" means Hedging Obligations referred to in paragraph (d)(i) of, or relating to Indebtedness of the type specified under paragraph (b)(ii) and in the concluding parenthetical to paragraph (c) of, the definition of Permitted Collateral Liens.
55. "**Public Debt**" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (1) a public offering registered under the Securities Act or (2) a private placement to institutional and other investors, in each case, that are not Affiliates of the Company, in accordance with Section 4(2) of and/or Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC for public resale.
56. "**Public Market**" means any time after: (1) an Initial Public Offering has been consummated; and (2) at least 20% of the total issued and outstanding ordinary shares or common equity of the IPO Entity has been distributed to investors other than the Permitted Holders pursuant to such Initial Public Offering.
57. "**Public Offering**" means, following an Initial Public Offering, a public Equity Offering of the IPO Entity on (x) the London Stock Exchange or any other nationally recognized stock exchange or listing authority in a member state of the European Union, the Commonwealth of Australia, Hong Kong or Singapore or any other internationally recognized exchange or market or (y) pursuant to an effective registration statement under the Securities Act (other than a registration statement on Form S-8 or otherwise relating to Equity Interests issued or issuable under any employee benefit plan).
58. "**Public Offering Expenses**" means expenses incurred by any direct or indirect parent entity of the Parent in connection with any public offering of Capital Stock or Indebtedness (whether or not successful):
    1. where the net proceeds of such offering are intended to be received by or contributed or loaned to the Parent or a Restricted Subsidiary; or
    2. in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received, contributed or loaned; or
    3. otherwise on an interim basis prior to completion of such offering so long as any such direct or indirect parent entity shall cause the amount of such expenses to be repaid to the Parent or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed, in each case, to the extent such expenses are not paid by another Subsidiary of such direct or indirect parent entity.
59. "**Qualified Receivables Financing**"means (i) the Existing Receivables Financings and (ii) any other financing pursuant to which the Parent or any of its Restricted Subsidiaries may sell, convey or otherwise transfer to any other Person or grant a security interest in, any Receivables Assets (and related assets) in any aggregate principal amount equivalent to the Fair Market Value of such Receivables Assets (and related assets) of the Parent or any of its Restricted Subsidiaries; provided that (a) the covenants, events of default and other provisions applicable to such financing shall be on market terms (as determined in good faith by a responsible accounting or financial officer of the Parent) at the time such financing is entered into, (b) the interest rate applicable to such financing shall be a market interest rate (as determined in good faith by a responsible accounting or financial officer of the Parent) at the time such financing is entered into; (c) such financing shall be non-recourse to the Parent or any of its Restricted Subsidiaries except to the extent customary for such transactions (as determined in good faith by a responsible accounting or financial officer of the Parent) and (d) the weighted average minimum advance rate (as contractually agreed, or absent such agreement, as determined in good faith by a responsible accounting or financial officer of the Parent) on all outstanding amounts of Qualified Receivables Financing, after giving effect to any proposed Qualified Receivables Financing, shall not fall below 85%.
60. "**RCF Guarantee**" means the guarantee and indemnity given pursuant to Clause 21 of this Agreement.
61. "**Receivables Assets**" means any accounts receivable subject to a Qualified Receivables Financing and any dedicated bank or collateral accounts in respect thereof and any other assets customarily transferred (or in respect of which security interests are customarily granted) in connection with comparable Qualified Receivables Financings (as determined in good faith by a responsible accounting or financial officer of the Parent).
62. "**Receivables Fees**" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not the Parent or a Restricted Subsidiary in connection with any Qualified Receivables Financing.
63. "**Receivables Repurchase Obligation**" means any obligation of a seller of Receivables Assets in a Qualified Receivables Financing to repurchase Receivables Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defence, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.
64. "**Refinance**" means, in respect of any Indebtedness, to refinance, extend, renew, refund, replace, exchange or repay, or to issue other Indebtedness, in exchange or replacement for, such Indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.
65. "**Related Taxes**" means any taxes, including but not limited to sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar taxes (other than (x) taxes measured by income and (y) withholding imposed on payments made by the relevant direct or indirect parent entity), required to be paid (provided that such taxes are in fact paid) by any direct or indirect parent entity of the Parent by virtue of its: (i) being organized or incorporated or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than the Parent or any of the Parent’s Subsidiaries), or (ii) being a holding company parent of the Parent or any of the Parent’s Subsidiaries.
66. **"S&P**" means Standard & Poor’s Ratings Group.
67. "**SEC**" means the U.S. Securities and Exchange Commission.
68. "**Senior Secured Debt**" means, as of any date of determination, (a) any Indebtedness that is secured by Liens (other than Indebtedness of the type specified in sub-paragraph (xii) of the definition of Permitted Debt) and (b) any Indebtedness, Disqualified Stock or preferred stock of a Restricted Subsidiary of the Parent that is not a Guarantor.
69. "**Senior Secured Leverage Ratio**" means, with respect to any specified Person, as of any date of determination, the ratio of (1) the Consolidated Senior Secured Leverage of such Person on such date to (2) the Consolidated EBITDA for such Person for the four most recent full fiscal quarters ending immediately prior to such date for which financial statements are available, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma provisions set forth in the definition of "Fixed Charge Coverage Ratio."
70. "**Significant Subsidiary**" means, at the date of determination, any Restricted Subsidiary that together with its Subsidiaries which are Restricted Subsidiaries (1) for the most recent fiscal year, accounted for more than 10% of the consolidated revenues of the Parent or (2) as of the end of the most recent fiscal year, was the owner of more than 10% of the consolidated assets of the Parent.
71. "**Stated Maturity**" means, with respect to any instalment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of its issuance, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.
72. "**Subordinated Shareholder Debt**" means, collectively, any subordinated shareholder debt provided to the Parent by any direct or indirect shareholder of the Parent, in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, together with any such security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Debt; provided that such Subordinated Shareholder Debt:
    1. does not (including upon the happening of any event) mature or require (including upon the happening of any event) any amortisation or other payment of principal (including pursuant to a sinking fund or otherwise) prior to the first anniversary of the Termination Date (other than through conversion or exchange of any such security or instrument for Equity Interests of the Parent (other than Disqualified Stock) or for any other security or instrument meeting the requirements of the definition);
    2. does not (including upon the happening of any event) require or provide for the payment of cash interest prior to the first anniversary of the Termination Date;
    3. does not (including upon the happening of any event) provide for the acceleration of its maturity nor confers on its shareholders any right (including upon the happening of any event) to declare a default or event of default, accelerate, place on demand or exercise any remedies or take any enforcement action, in each case, prior to the first anniversary of the Termination Date;
    4. is not secured by a Lien on any assets of the Parent or a Restricted Subsidiary and is not guaranteed by any Subsidiary of the Parent;
    5. is subordinated in right of payment to the prior payment in full in cash of the RCF Liabilities, at least to the same extent as the Subordinated Liabilities (as defined in the Intercreditor Agreement) are subordinated to the RCF Liabilities under the Intercreditor Agreement, in any event, such that:
       1. the Parent shall make no payment in respect of such Subordinated Shareholder Debt (whether in cash, securities or otherwise, except as permitted by paragraph (a) above) and may not acquire such Subordinated Shareholder Debt except as permitted by this Agreement until the prior payment in full in cash of all RCF Liabilities;
       2. upon any total or partial liquidation, dissolution or winding up of the Parent or in a bankruptcy, reorganisation, insolvency, receivership or similar proceeding relating to the Parent or its property, the beneficiaries of the RCF Liabilities shall be entitled to receive payment in full in cash of the RCF Liabilities before the holders of such Subordinated Shareholder Debt shall be entitled to receive any payment in respect of such Subordinated Shareholder Debt;
       3. such Subordinated Shareholder Debt may not be amended such that it would cease to qualify as Subordinated Shareholder Debt until a date that is after the prior payment in full in cash of all RCF Liabilities;
       4. the holders of such Subordinated Shareholder Debt shall assign any rights to vote, including by way of power of attorney, in a bankruptcy, insolvency or similar proceeding to the Senior Note Trustee or the Agent on behalf of the Finance Parties or the Security Agent on behalf of the Secured Parties under the Intercreditor Agreement to the extent necessary to give effect to the priority and subordination provisions described in this definition; and
       5. the holders of such Subordinated Shareholder Debt shall agree that, in the event any payment on such Subordinated Shareholder Debt is received by such holder in contravention of the terms of the Senior Note Indenture, this Agreement and the Intercreditor Agreement and any applicable Additional Intercreditor Agreement, then such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the Senior Note Trustee, or the Agent on behalf of the Finance Parties or the Security Agent on behalf of the Secured Parties;
    6. does not (including upon the happening of any event) restrict the payment of amounts due in respect of the RCF Liabilities or compliance by the Parent or any Guarantee with its obligations under the Senior Notes, the Senior Note Indenture, the Note Guarantees, the Intercreditor Agreement and any Additional Intercreditor Agreement, the Security Documents or any Credit Facility or the Parent and its Restricted Subsidiaries; and
    7. is not (including upon the happening of any event) mandatorily convertible or exchangeable, or convertible or exchangeable at the option of the holder, in whole or in part, prior to the first anniversary of the Termination Date mature other than into or for Capital Stock (other than Disqualified Stock) of the Parent,
73. provided, however, that on any event or circumstance that results in such Indebtedness ceasing to qualify as Subordinated Shareholder Debt, such Indebtedness shall constitute an incurrence of such Indebtedness by the Parent.
74. "**Tangible Assets**" means, with respect to any specified Person, the total assets of such Person, as shown on the most recent balance sheet of such Person, determined on an entity, consolidated or combined basis, as applicable, in each case excluding goodwill.
75. "**Unrestricted Subsidiary**" means any Subsidiary of the Parent (other than the Issuer) that is designated by the Board of Directors of the Parent as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors (and any Subsidiary of a Subsidiary that is so designated, which will be deemed to have been similarly designated) but only to the extent that such Subsidiary (and any Subsidiary of such Subsidiary):
    1. has no Indebtedness other than Non-Recourse Debt;
    2. except as permitted by Clause 7 (*Transactions with Affiliates*), is not party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favourable to the Parent or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Parent; and
    3. is a Person with respect to which neither the Parent nor any Restricted Subsidiary has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified levels of operating results other than Contingent Obligations the incurrence of which would not constitute Indebtedness;
76. except (i) that the Parent or any Restricted Subsidiary may pledge Equity Interests or Indebtedness of an Unrestricted Subsidiary on a non-recourse basis as long as the pledgee has no claim whatsoever against the Parent or any Restricted Subsidiary other than to obtain such pledged property and (ii) to the extent of Indebtedness of the Parent or any Restricted Subsidiary the incurrence of which was permitted under Clause 3 (*Incurrence of Indebtedness and Issuance of Preferred Stock*).
77. "**U.S. Exchange Act**" means the United States Securities Exchange Act of 1934, as amended.
78. "**U.S. Securities Act**" means the United States Securities Act of 1933, as amended.
79. "**Voting Stock**" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.
80. "**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:
    1. the sum of the products obtained by multiplying (a) the amount of each then remaining instalment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one- twelfth) that will elapse between such date and the making of such payment; by
    2. the then outstanding principal amounts of such Indebtedness.

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SIGNATURES

**THE PARENT**

For and on behalf of FIELDLINK NV

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**The Original Borrowers**

For and behalf of UNIVEG HOLDING B.V.

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For and behalf of UNIVEG BELGIUM NV

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**THE ORIGINAL GUARANTORS**

For and on behalf of FIELDLINK NV

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For and behalf of NOVA-VEG LOGISTICS NV

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For and behalf of EUROPEAN FOOD TRANSPORT NV

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For and behalf of UNIVEG HOLDING B.V.

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For and behalf of UNIVEG TRADE BENELUX B.V.

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For and behalf of BOCCHI FLOWER TRADE NETHERLANDS B.V.

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For and behalf of WESTLAND PACKING B.V.

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For and behalf of UNIVEG NEDERLAND EXPLOITATIE B.V.

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For and behalf of BAKKER BARENDRECHT B.V.

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For and behalf of BAKKER CENTRALE INKOOP B.V.

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For and behalf of BAKKER BARENDRECHT TRANSPORT B.V.

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For and behalf of HOLLAND CROP B.V.

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For and behalf of EUROPEAN FOOD TRANSPORT NEDERLAND B.V.

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For and behalf of UNIVEG B.V.

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For and behalf of UNIVEG FLOWERS B.V.

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For and behalf of UNIVEG LOGISTICS B.V

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For and behalf of UNIVEG FRUITPARTNERS B.V.

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For and behalf of UNIVEG FLOWERS AND LOGISTICS B.V.

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For and behalf of UNIVEG TRADE SPAIN S.A.U.

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For and behalf of UNIVEG TRADE INTERNATIONAL GMBH

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For and behalf of UNIVEG DEUTSCHLAND GMBH

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For and behalf of UNIVEG GERMANY GMBH & CO. KG

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For and behalf of UNIVEG GERMANY BETEILIGUNGS-GMBH

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For and behalf of WINCHESTER GROWERS LIMITED

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For and behalf of WINCHESTER BULB GROWERS LIMITED

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For and behalf of UNIVEG KATOPE UK LIMITED

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For and behalf of UNIVEG KATOPE FRANCE SAS

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**THE ARRANGER**

For and on behalf of

ABN AMRO BANK n.V.

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Franck de Lange | By: | Floris Welcker |
|  | Acquisition & Leveraged Finance |  |  |

For and on behalf of

ING BELGIUM SA/NV

|  |  |
| --- | --- |
| By: | Kristien de Clercq |
| Title: | Proxyholder |

For and on behalf of

KBC BANK NV

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Annelies Hamers | By: | Ariane Roggen |
| Title: | Origination Manager Benelux Syndication and Debt Placement | Title: | Origination Manager Benelux Syndication and Debt Placement |

**THE DOCUMENTATION AGENT**

For and on behalf of

KBC BANK NV

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Annelies Hamers | By: | Ariane Roggen |
| Title: | Origination Manager Benelux Syndication and Debt Placement | Title: | Origination Manager Benelux Syndication and Debt Placement |

**THE AGENT**

For and on behalf of

ABN AMRO BANK N.V.

|  |  |  |  |
| --- | --- | --- | --- |
| By: | A.G. Demmers-Cortés | By: | Mr. S.A.M. Andreoli |
| Title: |  |  | Proxyholder |
| Address: | Gustav Mahlerlaan 10 1082PP Amsterdam The Netherlands | | |
| Fax: | +31 20 628 6985 | | |
| Attention: | A.G. Demmers Cortés | | |

**THE SECURITY AGENT**

For and on behalf of

ING BANK N.V.

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| --- | --- | --- | --- |
| By: | Kristien de Clercq | By: | Arnaud de Locht |
| Title: | Proxyholder |  | Proxyholder |
| Address: | Bijlmerplein 888 1102 Amsterdam The Netherlands | | |
| Fax: | +31 20 565 8226 | | |
| Attention: | Olivier de Vries / Kenneth van Coblijn Location Code: AMP N 04 047 | | |

**THE ORIGINAL LENDERS**

For and on behalf of

ABN AMRO BANK n.V.

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Franck de Lange | By: | Floris Welcker |
|  | Acquisition & Leveraged Finance |  |  |

For and on behalf of

ING BELGIUM SA/NV

|  |  |
| --- | --- |
| By: | Kristien de Clercq |
| Title: | Proxyholder |

For and on behalf of

KBC BANK NV

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Koen Struyf | By: | Paul Verheyen |
| Title: | Senior Banker | Title: | Manager Corporate Center |

**THE ORIGINAL HEDGE COUNTERPARTIES**

For and on behalf of

ABN AMRO BANK N.V.

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Franck de Lange | By: | Floris Welcker |
|  | Acquisition & Leveraged Finance |  |  |

For and on behalf of

ING BELGIUM SA/NV

|  |  |
| --- | --- |
| By: | Kristien de Clercq |
| Title: | Proxyholder |

For and on behalf of

KBC BANK NV

|  |  |  |  |
| --- | --- | --- | --- |
| By: | Koen Struyf | By: | Paul Verheyen |
| Title: | Senior Banker | Title: | Manager Corporate Center |

1. The New Lender may, in case of an assignment of rights by an Existing Lender hereunder, if it considers it necessary to make such transfer effective as against third parties, arrange for the Assignment Agreement to be notified by way of signification to any French Obligor in accordance with article 1690 of the French *Code Civil*. [↑](#footnote-ref-1)
2. \* Delete as applicable [↑](#footnote-ref-2)